

The History of Condominium Development Rhymes: Contract Purchasers Are Again Seeking to Get Out of Purchasing Condominium Units

November 01, 2019

Following the real estate crash of 2008, many condominium developers nearing completion of their projects issued notices of completion only to find themselves facing lawsuits from their contract purchasers, who were looking for ways to get out of their contractual obligation to purchase a condominium unit and reclaim their hefty deposits.

The claims brought by the contract purchasers ranged from breach of contract to violation of the federal Interstate Land Sales Full Disclosure Act (ILSA), and they frequently included claims against third parties, such as the escrow agents for these transactions. Carlton Fields' real property litigation team successfully defended many of these lawsuits for our developer and title underwriter clients.

Of course, the real estate market, and especially the condominium market, eventually made a spectacular comeback. In South Florida alone, more than 50,000 condominium units have been constructed, approved, or proposed since 2011. Because some felt that the previous model of contracting to purchase with 20% down and a financing contingency — which was in place in 2008 — was risky, developers started asking for larger deposits of 40%, 50%, and even up to 80% of the purchase price during construction. The result is hundreds of millions of dollars in escrow or in these projects already, much of it from overseas investors.

With Zillow and many others already predicting the next housing recession, and as many condominium projects are nearing completion and closing notices are being sent, some buyers are

again seeking legal or factual excuses to cancel their contracts and recoup their deposits. Lawsuits are now being filed or planned, which will threaten the completion of many condominium projects. Now is the time to anticipate and prepare for this new litigation.

Carlton Fields has an unparalleled team of condominium and real property litigators with deep experience in defending these types of claims. We are already currently defending developer clients and their condominium development projects against the claims brought by contract purchasers. We can provide guidance, advice, and defense in navigating these contract purchaser claims.

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