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Certain techniques are helping stabilize markets for commercial and residential condo units

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I am confident and optimistic that the worst is over. In this article, I will describe how certain techniques are helping to stabilize real estate markets both for commercial and residential condominium units.

Auctions

An auction is a good exit strategy in this market. A lawyer for the seller should prepare the purchase and sale agreements and attend the auction to get the agreements signed by each winning bidder. There should be no negotiations over the Purchase and Sale Agreement which should be made available to prospective buyers prior to the auction. Title insurance should be available. The condominium documents should also be available prior to the auction, including the master deed, condominium trust, proposed form of unit deed, as well as the budget, plans and information on parking and storage. The sales should be "as is". The auction can determine the market prices for the units not sold at the auction.

Our experience with auctions includes all the legal work for Folio Boston in the financial district at 80 Broad St. in Boston. We were able to get thirty-four purchase and sale agreements signed at the auction in under three hours. Such an auction shows the market value of condominium units. It does not further depress prices. If anything, an auction may stabilize prices at the levels bid at the auction. It is better also for values to fill up a building. An auction is not a fire sale. It is merely a tool in the current market.

Once the word is out that there may be an auction, buyers hold back, waiting for the auction. Clients have called me, for example, about Longwood Towers in Brookline. They have not purchased because the word was out that there would be an auction. While an auction can be positive, the mere rumors of an auction can chill sales.

Once the auction is held, the market is established and the post-auction sales can be brisk. As a result, it is sometimes the lender who pushes the developer to hold an auction.

There are certain legal questions that come up repeatedly at auctions. For example, buyers ask about rescission rights. A buyer at an auction does not have any rescission rights.

There are situations when a real estate auction may not work. For example, I can not see it working for an age restricted condominium development. An auction limited to buyers over fifty-five years of age will eliminate a large segment of the market. For an age restricted condominium development, a

price reduction may achieve a better result than an auction. Also, the developer could lower prices dramatically and retain some residual rights such as a share in the equity in the event of a resale when the market recovers. This could be a light at the end of the tunnel for a developer.

Bulk Sales of

Condominium Units

Bulk sales are also becoming a common exit strategy. This is a win-win situation. The seller is able to dispose of units that are not selling individually. The buyer is able to buy units in bulk at a very attractive price. The holder of the mortgage on the seller's units is able to get paid most if not all of the outstanding balance owed by the seller. Finally, real estate lawyers are kept busy as the buyer resells or rents the units.

There are many legal concerns common to a bulk sale. These include the rights and liabilities of the successor developer, the need to amend the condominium documents, and the turn over of control to the unit owners. The bulk buyer wants to be protected by a purchase and sale agreement which provides for due diligence and a right to terminate. The bulk seller does not want any liability continuing after the sale. The bulk sales of distressed condominium units can be a good exit strategy in the current market, but it must be documented properly to protect all parties.

Renting the Units

The rental market is still strong. A building that can not be sold as condominium units could be attractive as a rental. The owner may want to terminate the condominium which is easily done if no units have been sold, pursuant to Chapter 183A, Section 19, of the Massachusetts General Laws. Another approach would be for an owner of a building to master lease the entire building to a single tenant who will in turn lease the apartments to tenants.

Legal Fees

I have been keeping time records and billing by the hour for my entire professional life. However, I do believe that billing on an hourly basis may not make sense in a difficult real estate market. Clients need to know what their legal costs are going to be. A fixed fee for a closing and/or a project may well be the way to charge legal fees. Lawyers have to be willing to work with their clients in tough times.

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