



# LOOK BEFORE >> YOU LEAP

## ACQUIRING MULTIPLE UNITS IN A DISTRESSED CONDOMINIUM PROJECT



*“Where there is chaos, there is opportunity.”  
“Where there is opportunity, there is risk.”  
Both are true when considering the bulk acquisition of units in a distressed condominium project – and whether the transaction will make the acquirer a “successor developer.”*

The Condominium Act defines a successor developer as one who acquires title to the lesser of ten units or 75% of the units in a condominium project. The “acquisition” may occur by purchase, foreclosure, deed in lieu of foreclosure or “similar transaction.”

The number of distressed condominium projects has grown rapidly over the past several years. Developers have been pushed to either sell units in bulk or see their projects foreclosed due to a combination of fewer purchasers, failure to achieve sales milestones, the maturity of their debt, and the inability to close replacement financing. Bulk purchasers and foreclosing lenders might see opportunity in taking title to numerous units in a single transaction at pennies on the dollar. But there are risks.

The Condominium Act imposes certain requirements that successor developers cannot avoid. For example, with the exception of certain limited circumstances, successor developers must comply with the procedures and restrictions that govern the sale of units from a developer (including the nine-day withdrawal period, escrow requirements, arbitration and disclosure requirements). Successor developers must also “assume all written and contractual warranty obligations for defects in workmanship and materials” of the predecessor developer (unless certain insurance policies exist, escrow accounts are established, or other exceptions apply). In addition,

aggressive unit owners and/or municipalities may attempt to exploit the developer status of the acquirer and attempt to compel successor developers to honor commitments of the original developer such as site plan approval conditions, establishment of amenities (walking trails, tennis courts, etc.), and paying the developer’s share of assessments.

There are times when a bulk purchaser or a foreclosing lender might want to be treated as the “developer.” Having developer status may simplify or expedite desired amendments to the condominium documents and/or grant control of a condominium association or architectural control committee to the successor developer. It may also “exempt” the developer from certain restrictions or requirements. To ensure the successor developer realizes these benefits, an assignment of the original developer’s rights should be executed at the time of the acquisition.



The benefits and detriments of being a successor developer should be carefully thought through before closing on the bulk purchase or foreclosure of condominium units. In many cases, these transactions can be structured to avoid successor

developer treatment or to mitigate more stringent requirements. For example, a foreclosing lender may have the option of having a receiver appointed and avoid taking title altogether.

In any case, the question of whether an acquirer wants to be, or should be, a successor developer should be carefully considered and analyzed when structuring such transactions. Call the author if you’d like some help.

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