


Buying Out an Existing Condominium is Harder than it Looks

By Seth G. Weissman

As our region runs out of land in close-in locations, some developers have started eyeing older existing condominium developments as possible buy out opportunities for redevelopment. In some cases, particularly when units were built at low densities, the land on which these condominiums sit is worth a lot more than the condominiums themselves.

How hard is it to do a buyout? The answer is harder than you may think. The Georgia Condominium Act does not allow a condominium to be terminated except upon the agreement “of owners of units to which 4/5 of the votes in the association pertain and all mortgagees of such units.” Whether this is insurmountable likely depends on how much of a premium over the fair market value of the units is being paid to the owners. Even when a large premium over fair market value is being offered, there will be some owners who prefer to stay put and not sell. While in some cases they are simply resistant to change, in other cases the cost of replacement housing is just as much as the premium price being offered to them.

Even if the requisite vote to terminate the condominium regime can be obtained, this is just the beginning of the process. After a yes vote, the owners then own the entire condominium as tenants in common. This means that they are all partners and have to agree on an ultimate sale. Agreement of all owners is often an impossibility and usually results in the owners having to file a partition action to force the sale of the property. To avoid this, the developer interested in a buyout usually tries to obtain a power of attorney from everyone interested in a sale that is conditioned upon: (1) a sale at a certain minimum price; and (2) no owner getting any more than another owner.

While condominiums have been around since the late 1960s, there have only been a couple of successful buyouts. These were normally achieved in smaller condominiums where the developer patiently bought units one at a time until the developer owned all or most of the units in the condominium. To our knowledge, there has still not been an example of a situation where the owners, in response to a buyout offer, have voted to terminate the condominium and then sell the property.
