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Taming Transient Turmoil

Managing Renters in Condos

By Keith Loria

While the New York City housing market has not suffered as much as in other parts of the country, there are some new construction condominiums that hadn't sold as much as the developer had hoped. That's why a recent trend in condos in the Big Apple has been to convert portions of these developments into rental properties.

"In this scenario, the sponsor is having difficulty in selling, so in the meantime they are renting out apartments until the market stabilizes," says Aaron Shmulewitz, a partner with the law firm of Manhattan-based Belkin Burden Wenig & Goldman, LLP. "In a new construction condo, the tenants are leasing apartments at the sufferance of the sponsor, so they are not generally rent-stabilized tenants, they are certainly not pre-existing rent stabilized tenants, and the sponsor is free to put whatever he wants into the leases because those tenants are not protected by rent regulatory laws."



When a development with no owner-occupied units converts to rental, it's not such a big deal—after all, no units sold means no unit owners are affected. But sometimes, rental conversions take place in buildings where a handful or more units have been purchased—meaning that new unit owners are living side-by-side with rental tenants, or that unit owners are renting out their apartments as income properties.

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"Since the sponsors aren't selling and now need to rent out the remaining units, the impact on those poor souls who have bought into the condo could be huge," says Ron Kremnitzer, co-chair of Pryor Cashman's Real Estate Group in Manhattan. "If it's a small amount, it's not that big a deal but if 20 to 30 percent have been sold and the rest are becoming rentals, it becomes about quality-of-life issues, plus it's going to be hard to finance."

Under new FHA rules, at least 50 percent of the units of a project must be owner-occupied or sold to owners who intend to occupy the units. And, no more than 10 percent of the units may be owned by one investor. This will apply to developers/builders that subsequently rent vacant and unsold units.

Each property is different, but in general, the rental tenants have most of the same rights as those who own.

"All residents receive the same rights as per the rules and regulations of the property but that isn't always fair to those living there," says Carmelo Milio, president of Milio Realty Corp. "One thing that is different is that owners are able to do renovations to their unit where renters must get permission from the owner first."

Problems Abound

As more rental tenants come into a building the ramifications can be catastrophic.

Rental tenants simply do not have the same level of investment in the property as owners do, and this can be a source of friction between building residents, as well as board members and property managers.

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Consider this: Owners have a large investment and they want to make sure their apartment is maintained and all common areas, such as elevators, lobby and hallway are maintained by the condo board for resale value purposes. Therefore, if an owner moves stuff inside the building and elevator, he's going to be careful not to scratch the walls or floors.

If a renter does the same, Milio says, he won't have the vested interest in the building and more likely not to report something like that. They will be out in a year or two so why pay for it voluntarily?

"It's a real problem if you are an individual owner because your neighbors don't have a vested interest and don't care if they scuff the walls," Kremnitzer says. "Issues come up with noise, damage, smoking, and what recourse does an owner really have? It can be disastrous."

Sure, rental tenants can be evicted, but even that threat is often not enough to stop any so-called problematic behavior.

"Again, it comes down to quality of life. Tenants don't care as much as owners do," Shmulewitz says. "Owners comply with house rules on noise, odors, smoking, alterations, much more stringently than renters do. Renters will live life the way they want."

The real problem with all this is financial. The more apartments not owner occupied, the worse it is for owners of the building who want to sell or refinance.

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"Banks have increasingly stringent requirements on the owner occupancy level," Shmulewitz says. "Years ago, banks were all loosey goosey about it and so if 25 percent were owner occupied, they were happy to lend. Nowadays, it's the opposite. Some banks want 70 or 80 percent before they agree to lend on any apartments in a building."

Chain of Command

When it comes to the day-to-day concerns of the renter, just like an owner, he or she should reach out to the managing agent.

"Under state law, the managing agent of a condo has to manage any unsold apartments as well," Shmulewitz says. "Sometimes, not in a sponsor situation, an investor buys a block of apartments and rents to rent-regulated tenants, and they will sometimes hire their own agent to manage those tenants and handle issues."

"Rental tenants pay to the owner of their unit. The owner can be the developer or an individual that purchased the unit," Milio says. "The owner of the unit also handles their tenant's requests. The owner then relays it to management depending on the situation. Management is the direct contact for all owners, not the board."

Luxury Living

When it comes to rentals, Shmulewitz says the sponsor has the upper hand because he or she can screen prospective tenants a lot more strictly and can pick and choose from the crème de la crème.

"These tenants can do whatever the leases say they can do, but their rights are constrained," Shmulewitz says. "They don't have the super rights that rent-regulated tenants have. By the same token, the sponsor knows they are only going to be there for a short while and some sponsors may be somewhat liberal with regard to appliances and music and access to the gym and roof garden and stuff like that."

Community amenities are a big concern with owners. Many have purchased the condo with the idea that they would have things like a roof garden or gym at their disposal and don't feel it's fair to share these with rental tenants, who didn't pay extra for the lifestyle.

"The problem becomes worse when the sponsor still controls the board," Kremnitzer says. "The sponsor won't want to do anything that will limit the use and availability of amenities to people renting because it will affect the price."

A smart sponsor doesn't want to upset those who have bought apartments from them and create a bad reputation in the industry.

"Generally speaking, most will not allow rental tenants to use the amenities because of this," Shmulewitz says. "However, if you're living side by side and 7A is an owner who can use the gym and 7B is a renter who can't, it's going to cause problems. It's perfectly legal and if it's so important for 7B to use the gym in the building, he can buy the condo."

A developer who had planned on selling out his or her condo unit obviously was going to attract buyers with top-of-the-line amenities and fixtures, but for those units that switched to rentals, a decision to keep them or not had to be made. The problem with keeping them is the renters might not treat them as well as they should.

“While it’s true that some may just warehouse the premium appliances and install more downmarket stuff, that’s not the case for every developer and may not be worth the trouble,” Milio says. “In order to get a high-end rental rate, you must still offer the same type of amenities. All developers are different but in order to get high rents you must offer a good product.”

Living by the Law

Legally, every condo allows unit owners the right to rent subject to the condo board’s right of refusal or right of consent. If an owner wants to rent, he simply has to comply with the bylaws and either get the board to waive the right of first refusal or consent to leasing the apartment.

“A sponsor who has sold 50 percent of the apartments and wants to wait out the market, he has a right to lease always,” Kremnitzer says. “He can tell the broker or selling agent to rent them out. Nothing needs to be done because the offering plan says the sponsor has the right.”

A New Wave of Condo Conversions

Kremnitzer says that things like this happen in cycles and New York has been through a similar wave back 30-35 years ago when sponsors were doing co-op conversions and were renting those that didn’t sell.

“I’m seeing a tremendous amount of this today,” he says. “I started doing co-op conversions in the late ’70s, and in those days when you converted buildings you had eviction plans when people didn’t buy. They changed the laws because of protection for senior citizens and the disabled.”

He believes that a trend in residential conversions is happening again. “In 2007, I converted 11 buildings on Riverside Drive to condominiums and there’s been a lull but in the last 45 days I have submitted two buildings to convert to condos,” he says. “I am seeing it as a trend again and hoping to do another dozen this year.”

Sense of Community

Milio feels a great way to promote a sense of community and have owners and rentals living side-by-side in harmony is to involve all residents in building functions such as holiday parties or community gatherings.

“You don’t want to leave anyone out and create a reason for gripes and bad feelings,” he says. “Something as simple as this can help friendships develop and bring about a more positive living environment for everyone involved.”

Keith Loria is a freelance writer and a frequent contributor to The Cooperator.

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