



HindmanSanchez

CONDO AND LOFT CONVERSIONS THE KEYS TO SUCCESSFUL CONVERSIONS

HindmanSanchez P.C. Attorneys at Law • Denver & Fort Collins

5610 Ward Road., Suite 300, Arvada, Colorado 80002-1310 Tel 303.432.9999 Free 800.809.5242 Fax 303.432.0999 www.hindmansanchez.com

{05237297.DOC;1}



HindmanSanchez

CONDO AND LOFT CONVERSIONS THE KEYS TO SUCCESSFUL CONVERSIONS

A condominium or loft conversion is a change in an existing form of ownership to a multiple form of ownership, which may or may not be accompanied by a change in usage. Because Colorado real estate values have appreciated in the 90's, conversions are again providing opportunities for developers and buyers. Today's combination of acquisition cost, expenditures for physical upgrading of the property, Colorado's flexible law, the Colorado Common Interest Ownership Act (CCIOA), and a growing buyer marketplace has resulted in the re-emergence of conversions. Popular projects today include residential condominium conversions, warehouse conversions to loft units, and other opportunities presented by unique properties.

The evaluation of the suitability of a property for conversion involves the consideration of many factors. Many areas should be evaluated and developed by a team. The project team should include the developer, engineer, architect, marketing agent, sales agent and attorney. The team should consider location of the community, size of the community, phasing considerations, building design, upgrades or renovation, community and unit layout, and tenant sales in evaluating suitability for conversion.

Once the decision has been made to proceed with a conversion project, the drafting of the legal documentation should begin. The legal documents may be necessary to secure project financing and may be required to contain provisions to comply with secondary mortgage market standards. The same analysis and legal documentation to create a conversion community are used as in creating new condominium or planned communities. The documents include the Articles of Incorporation of the owners association, the Bylaws of the owners association, a Declaration of Covenants, Conditions and Restrictions of the Community and a map or plat.

Ordinarily, there would be little distinction between the Articles and Bylaws of a newly built project to a converted project. However, with respect to the declaration and map or plat for a conversion, some special features should be identified. The three most significant areas to which attention must be given in the Declaration for a conversion are: (a) definitions of common elements and limited common elements; (b) establishment and maintenance of an adequate reserve fund, and (c) disclaimer of warranties.

During the preparation of the Declaration and map or plat, the developer, engineer, land surveyor, and attorney should, on a cooperative basis, carefully consider the identification description and classification of all of the features of the buildings which do not fall into the traditional categories of common elements or limited common elements. These types of features or areas would include boiler rooms, building and maintenance rooms and storage areas, manager's offices, trash chutes, exhaust fans and ducts and any other unique features. Since limited common elements are those areas or features which are reserved for use by a specific unit or owners and common elements are for the use and enjoyment of all unit owners these, areas could be given distinct status, as they do not comfortably fit into either category. It is the responsibility of the engineer and/or land surveyor to identify and technically describe these features, while the attorney defines the legal status to be disclosed in both the map or plat and in the Declaration. These architectural and mechanical features could be considered "Restricted Common Elements" with clear conditions of their use and access set forth in the Declaration.

HindmanSanchez P.C. Attorneys at Law • Denver & Fort Collins

5610 Ward Road., Suite 300, Arvada, Colorado 80002-1310 Tel 303.432.9999 Free 800.809.5242 Fax 303.432.0999 www.hindmansanchez.com

{05237297.DOC;1}

Depending upon the age and condition of the property, the likelihood of expensive repairs, and the necessity of maintenance and component replacement in the near future, the developer should carefully consider establishing an adequate reserve fund. This fund would be in addition to the conventional working capital account funded at closing by unit owners. The reserve fund should be the quid pro quo if the developer is conveying the units on an "as is" basis. Although Colorado courts (as well as the courts in other jurisdictions) have not extended the implied warranties to conversions, both the Declaration and all sales contracts should clearly disclaim warranties to fitness, merchandise and habitability of the units, buildings, plumbing and electrical and mechanical systems. In conversions where substantial rehabilitation has occurred, an argument could be made that the building became "new" construction by virtue of the extensive remodeling. This might give rise to the implied warranties, with potentially expensive consequences for the developer. A frequent line of attack on warranty disclaimers is that the purchaser never received any consideration for his waiver and therefore, since the disclaimer was not "bargained for," it should be void. This argument could be avoided by the developer providing consideration in the form of additional reserve funds.

In drafting the legal documents for a conversion applicable Colorado law and local ordinances should be considered. By law the developer is required to notify renters of landlord's intent to convert a property to condominiums. Conversion notices are typically not required in a conversion to a planned community but may be desirable. The Colorado Condominium Ownership Act requires, among other things, that after the recording of the Condominium Declaration (a) each renter shall be notified of the conversion; (b) the notice will constitute notice of termination of the lease except that the lease may not be terminated before the original expiration date or 90 days after mailing of the notice, whichever occurs later; (c) renters who execute leases after recording of the Declaration must be notified of the conversion, and such leases may provide for termination in less than 90 days if such provision is conspicuously disclosed in the lease. Local ordinances may provide additional notice or restrictions on conversions, but not in a manner so as to impose additional building code or monetary costs on the developer. In addition to the notice requirements to renters outlined above, CCIOA mandates that the developer notify the county assessor's office of the conversion.

Another regulatory entity which is of concern to the conversion developer is the Colorado Real Estate Commission. The Commission has taken the position that developers who convert 20 or more units must register with the Commission as a subdivider, unless the project is exempt from regulation under state statutes. The registration application requires the applicant to provide such information as personal and business information concerning the applicant; the location and name of the project; copies of all project documentation, including deeds and sales contracts, copies of existing deeds of trust, liens and other encumbrances; a statement regarding availability and access for water, sewer, gas and electric utilities; a statement that surveys have been prepared for each unit; and a statement that if installment sales or land contracts are employed there will be no prohibition of the recording of each contract.

High-density community living can be an efficient type of housing, in terms of land use, energy use and environmental attractiveness. In considering those efficiencies, the consumer demand for convenient residences and the expense of new construction, the conversion of existing properties to condominiums or planned communities makes economic sense. The key to successful conversions is the team approach of the developer, an engineer, architect, marketing agent and an attorney.