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Planning and Sales Considerations for Condominiums & Planned Communities

Presented by:

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Roadmap

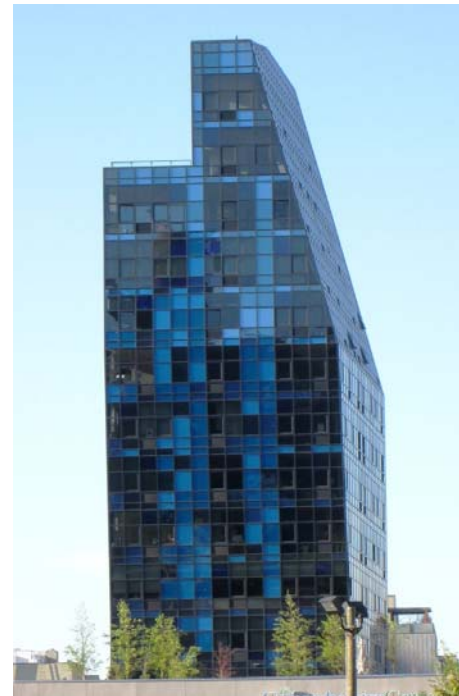
- Definitions
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Definitions

- Condominium
 - Real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.



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Definitions

- Planned Community

- Real estate with respect to which a person, by virtue of ownership of an interest in any portion of the real estate, is or may become obligated by covenant, easement or agreement imposed on the owner's interest to pay any amount for real property taxes, insurance, maintenance, repair, improvement, management, administration or regulation of any part of the real estate other than the portion or interest owned solely by the person.
- The term excludes a cooperative and a condominium, but a condominium or cooperative may be part of a planned community.



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Differences

- Condominiums - Unit Owner owns his unit and an undivided interest (% interest) in the Common Element(s)
 - Common elements typically consist of lobby, restrooms, roof, foundation, etc. or in case of site condo, access ways or parking
- Planned Community - Unit Owner owns his unit, but the Common Facilities are owned by the Unit Owners Association
 - Common Facilities can be the Recreation Building or Pool/Workout
 - Controlled Facilities – part of unit but maintained by Association (detention basin on a unit)
 - Common Elements – consist of Common Facilities or Controlled Facilities

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Creation

- Declaration
 - Declarant (as the owner of the property) submits property to Condominium or Planned Community Act
 - Recorded in every county where property exists
- Plats and Plans
 - Shows the units and common elements and controlled facilities
 - Can be recorded separately from Declaration or as an exhibit to the Declaration
 - Surveyor / Architect certify plats and plans
- Both Acts lists the requirements of contents of Declaration and Plats and Plans
- For Residential, need Public Offering Statement



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Types

- Commercial/Industrial
- Residential
 - Special requirements in Act to protect purchasers
- Mixed Use
- Conversion
 - Existing building
- Site Condo
- Leasehold



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Associations

- Manage the business of the condominium or planned community
- Formation
 - no later than 1st transfer of unit
 - unincorporated association, for profit corporation or nonprofit corporation
- Members - All unit owners and is governed by bylaws which must be adopted when the association is created.
- Powers - Broadly stated
- Maintain Common Elements
- Own controlled facilities for planned communities



"Does 'high-rise' refer to the building or the budget?"

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Associations

Powers

- Adopt and amend bylaws and rules and regulations
- Adopt and amend budgets
- Hire managers and other employee
- Institute, defend or intervene in litigation, make contracts,
- Cause additional improvements to be made to the common elements, and
- Make assessments and capital improvement fees
- Place liens on Units
 - One of the association's most powerful tools is to place a lien against a unit when the unit owner fails to pay assessments and the association then has the right to foreclose on this lien by judicial sale of the unit



**A LOOK
at the
BUDGET**

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Associations

- Executive Board
 - Unit Owners elect Directors
 - Directors elect officers
- Meetings
 - Annual meetings for Association
 - Regular meetings for Board
 - Special meetings for both
- Bylaws
 - Explain procedures for electing directors, officers and holding meetings



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PLANNING CONSIDERATIONS

Flexible Condominium or Planned Community

- Withdrawable real estate
 - Can be withdrawn – no longer part of condo or planned community
 - Needs to be a separately subdivided real estate
- Convertible real estate
 - Convert real estate into units
- Additional real estate
 - Not originally part of project, but can be added later
- Flexibility to develop a project in phases
- Must be designated as a special declarant right and specifically reserved in the declaration



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Flexible Condominium or Planned Community

- Ownership/Maintenance
 - Owned and maintained by Declarant
 - Taxes for property to be paid by Declarant
- Timing
 - Right to withdraw, convert or add lasts only for 10 years after recording of Declaration
 - Important to consider if any subdivision or land development approvals are necessary
 - If do not withdraw or convert within time frame, then real estate becomes common element
- Completion
 - Prepare an amendment to declaration to identify any new units and change percentage interest and voting rights
 - Prepare an amendment to plats and plans to show new units



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Master Associations

- Both Acts permit the creation of Master Associations
- Must be specifically reserved/mentioned in the Declaration
- Allows one umbrella organization to exercise powers on behalf of one or more condominiums or planned communities
 - Applicable in large-scale projects where may have planned community of townhomes, building condominium in another area, and single-family housing planned community in another area, each with their own association, but each delegate certain powers to master association to maintain and operate the larger portion of the property (such as the private roads and amenities)

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SALDO Considerations

- Subdivision and Land Development
 - Both Acts provide that municipal ordinances may not prohibit the condominium or planned community form of ownership or impose any requirement upon it which would not impose upon a physically identical development under a different form of ownership
 - Acts go on to provide that the creation of a condominium or planned community out of an entire lot, parcel or tract of real estate shall not, in and of itself, constitute a subdivision or plan development
- BUT Municipalities Planning Code
 - Defines “land development” to include “the division or allocation of land or space, whether initially or cumulatively, between or among two or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, condominiums, building groups or other features”
- Conflict??



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SALDO Consideration

- So is Subdivision Approval Required?
 - Lack of consistency regarding whether a condominium or planned community had to be submitted to a municipality for subdivision approval
 - Most practitioners (albeit those representing developers) took position that although a project may be subject to land development approval, there was no need to submit a proposed development for subdivision approval
- Shaffer Case - The Closing of a Loophole
 - Frank N. Shaffer Family Limited Partnership and Kevin and Kendra Shaffer v. Zoning Hearing Board of Chanceford Township - The York County Court of Common Pleas held that the dividing and deeding out of land as part of a planned community constituted a land development and subdivision and therefore such approvals from the Township, which were not obtained
 - 25 acre tract of land made subject to a planned community declaration. The plat which was recorded with the declaration showed that the entire parcel had been split into three pieces - a unit consisting of one acre upon which Shaffer had already built a home, a unit consisting of 22 acres of vacant land, and common open space consisting of two acres
 - Common Pleas Court decision affirmed by the Pennsylvania Commonwealth Court in October, 2008; the Commonwealth Court decision was affirmed (without opinion) by the Pennsylvania Supreme Court in January, 2010.
 - Still Good Law, But ...

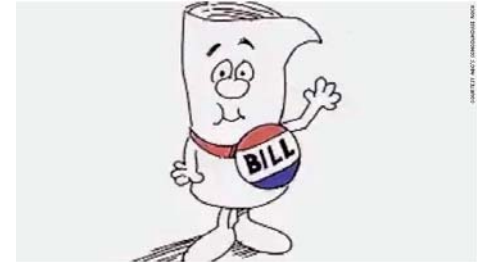
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SALDO Considerations

- Legislative Reaction to Schaffer Case
 - Act 2015-37 - amends Planned Community Act
 - Act 2015-38 - amends Condominium Act
 - “The creation of a [planned community/condominium] ... out of an entire lot, parcel or tract of real estate which has previously received approval for land development or subdivision, as those terms are defined in ... the Pennsylvania Municipalities Planning Code, or the conveyance of units in the [planned community/condominium], shall not, in and of itself, constitute a subdivision or land development for the purpose of subdivision, land development or other laws, ordinances and regulations”
 - Purpose of these Acts:
 - to resolve any conflict that no municipal approvals are necessary where there are existing lands and existing buildings
 - To ensure validity of existing condominiums and planned communities

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SALDO Considerations



- Legislative Reaction to Schaffer Case
 - However, if creating a condo or planned community out of any vacant parcel or tract of real estate which has not been subject to prior subdivision or land development approval, then need to submit a copy of the declaration and the plat and plan to municipality
 - unless the creation of the planned community is for an estate planning purpose of conveying units to family members or an entity controlled by family members so that the conveyance would not be subject to realty transfer taxes (“Shaffer exception”)
 - Either way, construction of any structure or building on any unit or common facility still subject to zoning, subdivision, or land development ordinances or building codes

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Leasehold

- Why Leasehold?
 - Declarant owner may not be ready to sell outright the real estate for tax purposes (recognition of gain for tax purposes)
 - Declarant may want to generate income from land
- Acts have separate requirements for declaration content



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Leasehold



- Ground continues to be owned by Declarant
- Declarant leases land to unit owner who typically will build and own the improvements
 - Ground Lease should state that tenant owns improvements
 - Sometimes deed of improvements or airspace deed is given
- Typically found with residential planned communities
 - From financing perspective, mortgage is on leasehold interest and airspace deed
 - Lender will want notice of any defaults in order to cure and preserve interest
- Long Term Ground lease (typically 99 years plus)
 - Pay realty transfer taxes on land

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Site Condominiums

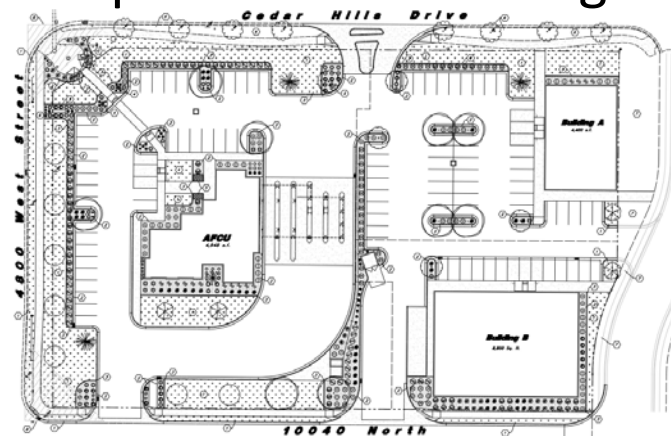
- Common interest ownership projects in which the units consist of land and air space rather than a building or a portion of a building
- Enables the owner of the unit to hold fee simple title to the property instead of merely a leasehold interest
- Common in shopping centers where large anchor store wants to own instead of leasing
- Also useful with related ownership but need for different financing packages



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Site Condominiums

- Condominium units consist of defined portions of the real estate
 - often consisting of the building footprint of the building
 - but can be larger for building expansion purposes
 - Consider common elements to be access ways, driveways, walkways, parking areas – depends on size of unit



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Site Condominiums

- Owner of the unit is then free to construct its building (subject to any restrictions in the declaration) and finance it independently as a separate parcel of real estate
 - Target stores typically want ownership of building and land but stores are in shopping centers so site condos works best for Target
- Locally, fair number of commercial site condos
 - Red Rose Commons, Shoppes at Kissel Hill (Lititz), Covered Bridge Market Place (Target on Lincoln Highway)
- Subdivision Approval?
 - If vacant land/new construction, and already getting land development approval, then best to advise municipality of condo structure (municipality may or may not want to review condo documents)
 - If existing buildings (for financing or separate ownership), most likely no, but best to confirm with municipality (they will eventually find out about condo structure due to new tax maps/bills)



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Building Conversions

- All types of possibilities
 - Hotel or Apartments to residential condo units
 - Can be mixed use with lower level being retail units
 - Leased office space to commercial condo units
 - Warehouse building to loft condo units (mixed use)
 - Method of liquidating investment or adaptive reuse of existing buildings
- Special considerations
 - Need report by independent registered architect or professional engineer and independent licensed exterminating company
 - Need statements in the public offering statement
 - Extensive renovations if building needs partitions for separate units or repair of code violations (need to report to prospective residential purchasers)
 - Notices to existing tenants and tenant meetings (open to public)
 - Consider any requirements to meeting building codes and zoning
 - Lender approvals for conversion and release of units



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SALES CONSIDERATIONS

Documents for Purchaser

- Delivery of Documents
 - Declaration, plats and plans, association bylaws, rules and regulations, budget, and resale certificate (if residential sale from other than declarant) or public offering statement (for residential first time buyers)
- Public Offering Statement
 - Required for first time residential buyers – Act lists requirements of Statement
 - Description of condo or planned community, total # of units, balance sheet/budget for association, copies of related documents
 - Declarant prepares



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Documents for Purchaser



- Resale Certificate

- Required for residential buyers after 1st sale – Act states requirements of certificate
 - Homeowners Association prepares / Seller usually pays for fee to prepare
- Some purchasers/title companies may still want a modified resale certificate for commercial unit
 - Statements regarding litigation, copy of budget, waiver of any right of first refusal, etc.

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Agreements of Sale

- Identify Unit appropriately
 - Include identifying number of unit (tax parcel ID #), % interest of ownership in common elements
 - Include name of condominium or planned community
- PAR forms
 - Check off appropriate box
 - May need to attach an addendum for more detailed description of unit
- Time frame for Buyer to review documents and right to cancel under Acts
 - Public offering statement - buyer can terminate agreement of sale (before conveyance) within 7 days of receipt of POS if planned community and within 15 days of receipt of POS if condominium
 - Resale Certificate – agreement of sale is voidable by buyer until certificate has been provided and for 5 days thereafter or until conveyance, whichever is first
- Have buyer of non-residential unit waive Chapter 34 of Act (protects purchaser)
 - such as requirement of public offering statement, resale certificate, warranty against structural defects of improvements built by declarant



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Questions?



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