

PURCHASING IN A NEW DEVELOPMENT 2 CREDIT HOURS

New Development Projects (1 HOUR)

- “Sponsor” – Owner or Developer
- Offering Plan (“OP”), a/k/a Black Book or Prospectus
 - Filed with the Office of the Attorney General
 - Includes declaration and disclosure statement with New York Attorney General’s Office
 - Special Risks
 - “For a period of time following your closing, continuing work conditions may create a noisy and disruptive condition in the building and there may be a disruption in certain services and building systems.”
 - “The real estate taxes are subject to a 421 421-a abatement and will be fully assessed after ten (10) years will periodic phase in increase during this ten (10) year period. There is no assurance that such exemption and/or abatement will become effective.”
 - **NO FINANCING CONTINGENCY**
 - Resident Manager’s Unit
 - Purchase must be financed by unit owners by certain period of time (usually five years)
 - Sponsor retaining unused development rights
 - Ex. Sponsor merge zoning lot with adjacent lot to develop that lot
 - In this scenario, views may be obstructed
 - Sponsor retains right to rent rather than sell
 - Affects ability of purchasers to obtain financing
 - No representation with respect to use of Commercial Units
 - Lot Line Windows
 - Minimum occupancy requirements
 - Some services and amenities not available until certain percentage of building occupied

Building Conversions (20 MINUTES)

- Developer can file Offering Plan to develop existing building and form new Condominium or Coop
 - Condominium vs. Coop Apartments
 - Cooperative Apartment
 - Cooperative Corporation
 - Owns Real Estate (land, buildings, property rights and all interests)
 - Title to Property is in the name of Corporation
 - Managed by Board of comprised of shareholders
 - Control of building operations may not be ceded from Sponsor immediately, see SPECIAL RISKS
 - Ownership interest in a Coop Corp. is evidenced by shares of stock
 - Stock Certificate
 - Proprietary Lease
 - Rights and obligations of lessee (shareholder) and lessor (Coop Corp.)

- Long term lease of estate of years
 - By-Laws
 - House Rules
 - Leasehold Coops (Coops with Ground Lease)
- Sponsor usually retains certain rights and privileges via the Offering Plan not granted to the Coop shareholders
 - Subletting without Board approval
 - Selling Units without Board approval
 - Holder of Unsold Shares
 - 80/20 Rule concerning passive income activity
 - Passive income activity can be rental activity
 - For tax benefits, at least 80% of Coop's gross revenue must be from shareholders
- Condominium
 - Fee Simple Ownership Interest in Real Estate
 - Deed
 - Real Estate Tax Bill
 - Mortgage
 - Title Insurance
 - Condominium Declaration
 - Establishes separate tax lots for each Unit
 - Units possess % common interest
 - Common elements and common charges
 - **Must be recorded prior to first sale in building**
 - Use subject to By-Laws of Condominium
 - Waiver of Right of First Refusal

Price Changes (10 MINUTES)

- Building Conversion
 - NYS law mandates when development files an OP with the Attorney General to convert and existing building to a Condominium or Coop, the tenants must be granted a 90-day exclusive right to buy
 - During this period, Sponsor cannot negotiate separate prices
- New Construction
 - Sponsor can separately negotiate price of apartment
- Why and When Developers Raise Prices
 - Developers sell few apartments at once; if units sell quickly, developer raises prices
- Current Market Practice
 - Price increases in new buildings when units initially marketed

Certificate of Occupancy (10 MINUTES)

- Certificate of Occupancy ("CO") documents legal use and/or occupancy of building
- Requirements for obtaining:
 - When completed work complied with submitted plans and applicable laws
 - Must be final or temporary CO ("TCO") before new building can be legally occupied
 - TCO can be renewed but no closings can occur when the TCO has lapsed

Flipping/Simultaneous Closing (10 MINUTES)

- Flipping occurs when investor buys property at one price and immediately selling at higher price
 - Can inflate purchase prices
 - Investor may be in Contract for
- To prevent flipping, Purchase Agreement may require investors to live in project before they can rent or sell
- Offering Plan may prevent advertising or listing the unit for a certain amount of time post-Closing

Closing Costs (10 MINUTES)

- Inquire about buyer credentials and bank references before purchase
- Common Charges for upkeep, insurance and salaries of building staff
- Adjustments
- Resident Manager's Unit
- Legal Fees (Buyer's attorney and Sponsor's attorney)
- Fees to defray cost of forming Condominium
- Real Estate Taxes – unit owners responsible for paying real property tax
 - Tax Abatements and Exceptions
 - Sponsor may apply for abatements/exceptions (ex. 421A) but eligibility and approval are not guaranteed
 - Buyers risk paying significantly more in taxes if estimates are prepared with abatement/exception but abatement/exception not granted
- NYS and NYC Transfer Taxes
 - Seller pays by statute, but some Sponsors may require Purchasers to pay
 - Buyer beware: counts as additional taxable consideration when calculating NYS Mansion Tax
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