

# Buying and Selling New Construction/ New Development

2 credit hours

**Offered by: RE CREDITS, LLC**

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# New Development Projects (30 minutes)

- Sponsors are obligated to file with the Office of the Attorney General an Offering Plan for new construction projects. The key provisions of the Offering Plan include.
  - 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-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



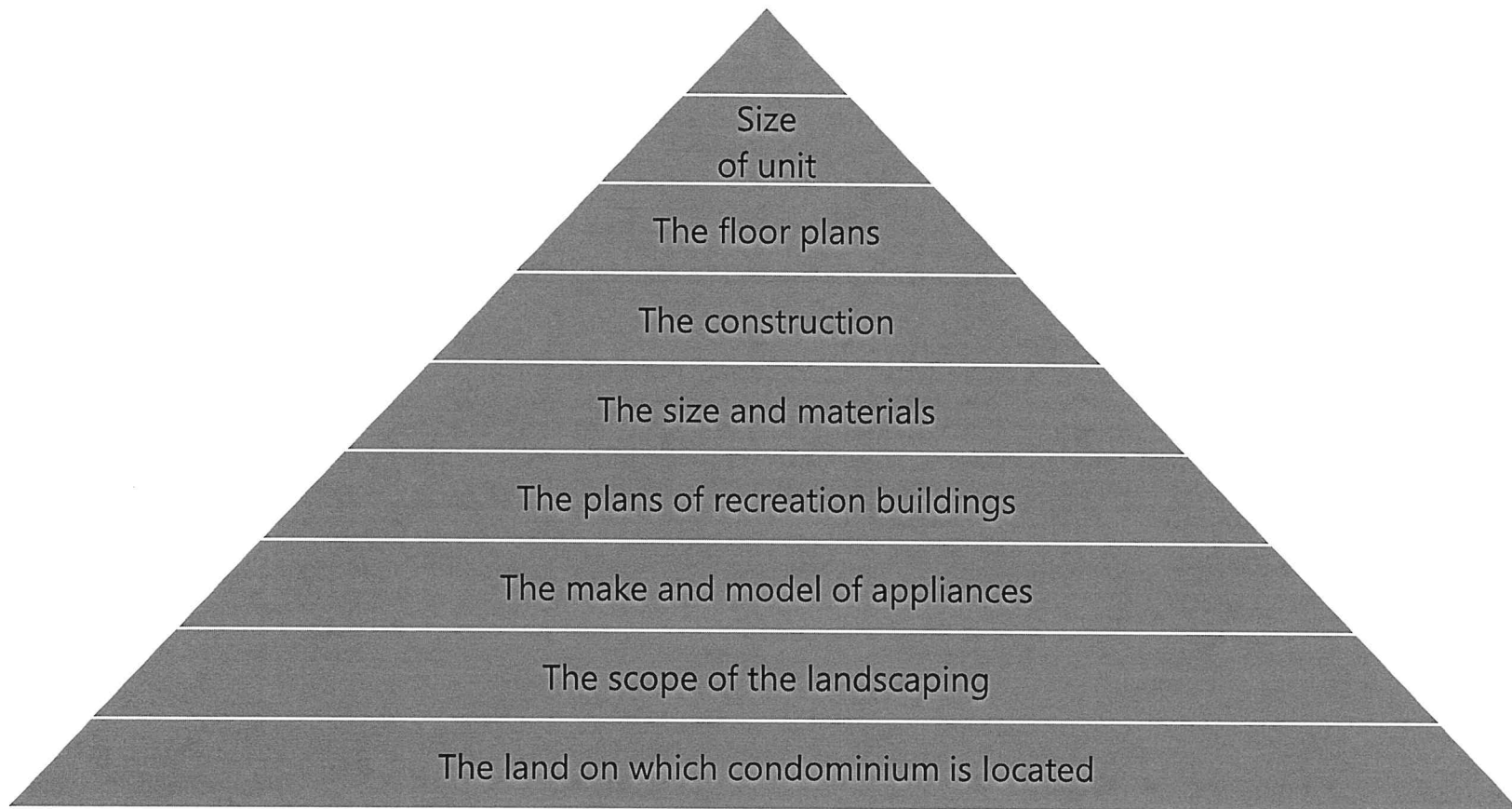
# New Development Projects

- The Condominium has purchase Unit \_\_\_ as the resident manager which purchase was financed 100% on a 5-year term. The financing must be refinanced or paid off at the end of 5 years.
- Sponsor is retaining unused development rights. Sponsor may merge the zoning lot with the adjacent lot and may develop this lot. If Sponsor develops this lot, current views may be obstructed.
- Sponsor retains the right to rent, rather than sell, the units. This may affect your ability to obtain mortgage financing since some lenders have minimum sales requirements.
- No representation is being made with respect to the use of the Commercial Units.
- Certain windows on the east side of the building may be reduced in size or permanently closed if adjoining property is developed. Unit Owners will incur the cost of approximately \$2,000 to seal/reduce any such windows.
- Until 75% of the units in the building are occupied, some services and facilities may not be available.

# New Development Projects

- Purchasers will be obligated to pay the New York City Real Property Transfer Tax and the New York State Real Estate Transfer Tax.
  - Schedule “A” – Sets forth specific information for each unit including (i) number of rooms, (ii) offering price, (iii) percentage of common elements, (iv) projected common charges, and (v) projected real estate taxes (see exhibit “3”).
  - Identity of the parties – Disclosures the names of the individuals that comprise the Sponsor together with its attorneys, construction professionals, architects, managing agent and selling agent.
  - Description of the Property and Specifications – includes information such as (i) room dimensions, description of appliances and unit finishes. (See Exhibit “4”).
  - Prerequisite to closing:
    - Offering Plan being declared effective (need at least 15% of the units in contract for new construction. NOTE: under new rent laws, for Condo/Coop conversions, need 51% of tenant in occupancy to sign purchase/subscription agreements)
    - Recording the Condo Declaration
    - Release of the Unit from any liens
    - Issuance of a temporary or permanent certificate of occupancy.
- Be aware of taxable consideration and \$982,250.00

# Offering Plan (30 minutes)



# Offering Plan Amendment: Building Conversion

- NYS law
  - When a developer files an offering plan with the Attorney General to convert an existing building to a condo or co-op, the tenants have a 90-day exclusive right to buy their apartment
- During this period sponsor cannot negotiate separate prices

# Offering Plan Amendment: New Development

- New building and after 90-day tenant's exclusive period in a converted building
- The developer can sell one apartment for \$200,000 and then sell another identical apartment for \$175,000
- sponsor can separately negotiate the price of a particular apartment

# Offering Plan

- Includes declaration and disclosure statement with New York Attorney General's Office
- Once Attorney General accepts prospectus
  - Known as black book or offering plan



# Primary residency vs Subletting issues in the Co-Op (20 minutes)

- Primary resident – owner of co-op
- Subletting discouraged in co-op
  - Shareholders- owners take better care of property than subtenants do
- Shareholder – still responsible for maintenance payments

# Subletting Issues

- Board may limit time tenant shareholder can sublet
- May adopt ceiling on number of sublets permitted

# Sponsor shares, holder of unsold shares and sold shares (10 minutes)

- If sponsor owns shares - may be permitted to sublet or rent unit even though owner can not
- Rules for sponsor subletting generally part of offering plan

# 80-20 Rule Concerning Passive Income Activities (10 minutes)

- Passive investment activity can be rental activity
- For tax benefits at least 80% of co-op's gross revenue must be from shareholders

# New Development (10 minutes)

- Reading offering plan – read “Description of Property” to determine sponsor’s obligations
- Special risks – what sponsors promises not always what purchaser receives
- Real estate tax validation – difficult to validate property taxes unless project completed
- Hidden costs – reading offering plan should determine upgrade
- Delays in construction hold up closing
- Letter of intent – written offer to reserve specific unit under construction
  - Legal issues – clauses may state letter not legally binding obligation
  - Letters of intent forwarded to sponsor; purchaser shows letter to his attorney
- CPS1 phase
  - Cooperative policy statement
  - How developer may test market for new development

# Price Changes

- Offering plan amendments – building conversion
  - Tenants have 90-day exclusive right to buy their apartment
  - During this period sponsor cannot negotiate separate prices
- Offering plan amendments – new development
  - 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 (CO)

- CO documents legal use and/or occupancy of building
- Requirements for obtaining CO
  - When completed work complies with submitted plans and applicable laws
  - Must be final or temporary CO before new building can be legally occupied
- Temporary CO can be issued

# Flipping/Simultaneous Closing – developer's policy

- Flipping – buying property at one price and immediately selling at higher price
- Can drive up prices
- To prevent – sales contract may require investors to live in project before they can rent or sell



# Title issues in the purchase of Condo

- Purchaser receives deed to unit plus undivided interest in common areas
- Needs title insurance policy
- Covenants, conditions and restrictions (CCRs) incorporated in deed
  - CCRs – rights, duties and obligations of unit holders

# Closing costs (10 minutes)

- Buyers concerns –inquires about buyers credentials and bank references before purchase
- Common charges – upkeep, insurance and salaries of building staff
- Real estate taxes – condos assessed for tax purposes; owners responsible for paying real property tax
- Tax deductions – mortgage interest tax-deductible
- Right of first refusal
- Mortgage recording tax
- NYC Real Property Tax – 1% of the Total Consideration if \$500k or less; 1.425% of Total consideration is over \$500k
- NY State Real Estate Transfer Tax – is 0.4% of total consideration if less than \$3 million; 0.65% of total consideration if over \$3 million
- Mansion tax – 1% from buyer who purchased condo
  - Total consideration greater/equal to \$1 million and less than \$2 million= 1.00%
  - Total consideration greater/equal to \$2 million and less than \$3 million = 1.25%
  - Total consideration greater/equal to \$3 million and less than \$5 million = 1.50%
  - Total consideration greater/equal to \$5 million and less than \$10 million = 2.25%
  - Total consideration greater/equal to \$10 million and less than \$15 million=3.25%
  - Total consideration greater/equal to \$15 million and less than \$20 million=3.50%