

JAMES A. GRAASKAMP COLLECTION OF TEACHING MATERIALS

V. INDUSTRY SEMINARS AND SPEECHES - SHORT TERM

I. Other Presentations In Which Either The Date And /
Or Sponsoring Organization Is Missing

3. Development Topics

- k. "HOA (Home Owners Association) or
Condo?", no date

HOA or Condo?
(Home Owners Association)

- I. Residential condominiums are often actually an automatic membership association. Anyone purchasing a lot or a home automatically, through the covenants, becomes a member of a non-profit corporation which holds to all common areas and the owner is liable for assessments to support the non-profit corporation.
 - A. The basic distinction between a homes association and a condominium is that in an HOA the home owner has an interest in personal property, i.e., a membership in an association, while in a condominium he has a real estate interest as a tenant in common owning an indivisible interest in the common areas.
 - B. From the home owners standpoint the distinction is meaningless except for two items:
 1. He can deduct his pro rata share of real estate taxes for his condominium common property interest while there is some doubt that he can do so for his assessments from the homes association.
 2. There is some possibility that for the condominium owner there is a slightly greater exposure to public liability for condominium property where there is no corporate structure to limit the catastrophe loss.
 - C. However, for the developer the industry may be over infatuated with condominiums as the homes association may be the wiser choice where all of the units have their own pad of ground on which to stand. Where dwelling units encroach on one another will require a condominium filing. So would a townhouse project where local zoning does not permit minimum lot sizes, zero side yards, etc. Occasionally local practice will permit single utility connections with a master meter and discount rates which would not be permitted on individual lots.
- II. In other cases, however, the HOA offers numerous advantages to the developer in cost and time or otherwise ^{overly} complicating the sale and marketing of the project.
 - A. In financing the developer will need to educate his money sources who will generally be conservative and often require a high number of pre-sold units following the FHA example.
 - B. If government insured FHA and VA financing is desired the homes association will be the better choice even at a sacrifice in density or what have you. Homes Associations fall under FHA section 203, including party wall structures. Consominiums under Section 234 are classified as multi-family and must meet apartment house standards, require cost certification, comply with prevailing wage requirements and require 80% of units be pre-sold before FHA will foreclose on the first permanent loan. The VA will process single family application independely of FHA but handles multi-family only in tandem with FHA!
Michigan,
 - C. IN several states such as New York, Florida, Viginia, and Hawaii condominium projects of any type are regarded as securities . A prospectus must be registered and qualified before the developer commences a marketing program while no such requirement exists for homes associations.

- D. To reduce the impact of the 80% pre-sold as well as to stage the project, condominium would require a proliferation would require a small incremental condominium projects within a larger development. Most versions of the horizontal property act provide that once the percentage of interest is fixed on the original declaration such percentage "shall be a permanent character" and cannot be changed without unanimous consent.
1. Staging would change the percentage while small incremental clusters means duplication of bookkeeping efforts, plat recording costs, etc.
 2. Many separate enclaves undermines a sense of community necessary to create that special extra dimension of "neighborhood" to a project.
 3. If the developer fixes percentages anticipating future construction of additional units he is locked in to the mix and prices long before he knows what his market will be.
 4. HOA framework can establish automatic membership for not only the original plat but reserve the right to extend the scheme of those covenants to future encumbrances if, as, and when they are constructed by filing a simple supplementary declaration.
- E. A condominium plat consists of a floor by floor three dimensional plan of the building and without any uniform standard recording authorities are uncertain as to what to accept with the result that survey costs run at least an additional \$100 per unit just for recording documents.
- F. The consumer is generally better informed than homes associations rather than condominiums. Moreover several studies by the U. of Michigan indicate PUD buyers are more educated, more liberal and more comfortable with new ideas. With relatively few children they regard an overall environment as a more compelling reason to buy than schools which is the number one purchase reason for single family home buyer.
- III. In selling any planned unit development master plan the developer wants to show his concern for details without misrepresenting that which could be changed in his future planning.
- A. Any planner model not representing recorded lots or fixed plan should carry a sign indicating it is a general use plan subject to modification pending further economic engineering or designing studies "intended to insure a superior residential development".
 - B. For undeveloped areas use generalized language such as "medium density" instead of apartments, "recreation area" instead of swimming pool and "park" instead of playground. Graphics should be generalized using curved thick lines to denote an area for medium density as straight lines or dots and dashes are interpreted as boundaries.
 - C. On the other hand in areas which are already on the market all details should be shown such as lot lines and walk-ways as play space is not the most popular neighbor. One developer had not specified his intent found the equipment moved by the residents into a distant and adjoining woodland.

- D. Where the homes association has a delayed take-over of mechanical systems like pools and water plants, paved areas or other common elements the developer may need to protect himself by providing inspection reports by outside experts as to their condition and suitability under current codes. These transfer documents should also identify warranties provided by manufacturers.
 - E. FHA 's require an information brochure which answers all of the following in some detail:
 - 1. What is the organizational structure of the association?
 - 2. What are the membership and voting rights of owners and the developer?
 - 3. What are the requirements for annexation, merger and dissolution?
 - 4. What is the maximum amount of assessment, the method of enforcement and the assessment lien?
 - 5. Can the maximum assessment be changed?
 - 6. Will there be any user fees?
 - 7. What exactly is meant by Common Area?
 - 8. What services are provided by the Association?
 - 9. Will the Association provide for the exterior maintenance of individual lots or dwellings?
 - 10. What are the Architectural Controls? How are they administered?
 - F. Mismanagement of a homes association can expose the directors to a class action in certain liability which may discourage home owners from serving, thus the by-laws and insurance program should protect the directors from everything but self dealing.
- IV. An HOA requires considerable planning on three fronts - legal structure, financial structure, and operating structure, and the last two are most difficult.
- A. The financial structure depends on the source and application of funding. The funds required depend on the services to be provided and the timing for their provision in terms of staging and whether they are created by the developer or later promoted by the residents.
 - B. The developer may have to subsidize services that are created up front as sales features but then it is useful to involve residents as quickly as possible in the association by giving them some discretion on further programs, policies, newsletters, etc.
 - C. Assessments are difficult problems of equity where you have different types of households in the same project and different patterns of use for various amenities. It is possible to have:
 - 1. General assessments for all members for certain types of services
 - 2. Special area assessments for streets or neighborhoods or facilities benefitting a limited number of residents.
 - 3. User charges for expensive facilities such as golf, indoor pools and tennis courts, etc. which may be used by only a limited number of residents.

- D. Assessments are very sensitive to design decisions on exterior materials, landscaping treatment, as well as specifications of various kinds of maintenance or vandalism prone items. For example, assume homes have a rough sawn wood finish. If opaque tones are chosen the maintenance cycle will be from 3 to 5 years. If wash stains are used the maintenance cycle may be from 7 to 9 years and the difference will amount to 2 or \$3 per month per household assessment.