



“It’s Complicated- Dealing with ground leases, condominiums and other non-traditional real property collateral arrangements.”

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# CONDOMINIUM REGIMES (Generally)

- Kentucky Horizontal Property Law (1962) v. Kentucky Condominium Act (2010)
  - Characteristics of Old Regime.
  - New Regime Characteristics.
  - Developer's Rights.
  - Amendments to Condominium Master Deed (old v. new).
- Commercial v. Residential
- Mixed Use Developments
- Setting up the Condominium Association.
- Determining Common Elements.

# FINANCING COMMERCIAL CONDOMINIUM REGIMES (or Commercial Units)

- Who controls the condominium association?
  - Budget/operating expenses.
  - Master insurance policy.
  - Veto/blocking rights for Amendments.
- Who holds casualty/condemnation proceeds?
  - Insurance Trustee?
  - Rating requirements for Insurance Trustee?
- Mortgagee Protections
  - Delinquent Assessments Subordinate?
  - Threshold for modification without mortgage consent.

# CONDOMINIUM DUE DILIGENCE/COMMON ISSUES

- Working/Capital Reserves.
- Delinquent Assessments?
- Board member disputes/defect disputes?
- Right of First Refusal (in favor of Board)
- Restrictions on sales/leasing without Board consent.
- Mixed-Use Condominium Issues
  - No Autonomous Commercial Board
  - Commercial Board out-voted by Master Association.
- Recordation of mylars to establish units.
- Title Insurance for Condominiums.

# Reciprocal Easement Agreements (REA's) (Generally)

- Allocation of common area maintenance (CAM) expenses.
- Liens for failure to pay CAM.
- Parking
  - What counts for zoning?
  - REA or Leases control?
- Subordinate Mortgage?
- Rights of Mortgagees?
- Insurance
- Ingress/egress easements blocked for maintenance.

## REA DUE DILIGENCE/COMMON ISSUES

- Use Restrictions.
- Conflict between REA and Recorded Leases.
- Title Coverage.
- Rights of first refusal/options to purchase.
- Restrictions on assignment/subleasing.
- Application of Insurance Proceeds.
- Affiliated counterparties.

# OTHER NON-TRADITIONAL REAL PROPERTY COLLATERAL

- Marinas
  - All collateral real property?
  - Registered vessel collateral?
  - KY Dept. of Fish and Wildlife Rules and Regulations.
- Air Rights Parcels
  - Lease or fee?
  - Subdivision Requirements