

Are Condominium Documents Screwing Up Your Workout?

A failed condo project often ends up in the hands of receivers and mortgage lenders.

The condominium documents may impose impediments to an orderly liquidation. These can include:

- Cumbersome amendment procedures.
- Prohibitions on leasing of units.
- Undefined boundaries between units and common elements.
- The developer's past failure to follow statutory-ordered turnover of control to association members.

We have helped mortgagees, buyers and associations fix such problems. Here are some examples.

1. Unsold units held by a mortgagee of a failed condominium were subject to an owner occupancy requirement imposed both by the documents and by local zoning. We helped the mortgagee convince both the association and the municipality to loosen the owner-occupancy restriction to allow for rentals during the current economic slowdown. This made the units marketable to a prospective bulk buyer. Note: last Friday, March 27, the Wisconsin Supreme Court, in *Apple Valley Gardens v. MacHutta*, upheld the right of condominium associations to enact bylaws imposing rental restrictions. Both the majority and dissenting opinions cited Ishikawa and Mullins, *Drafter's Guide to Wisconsin Condominium Documents*, on [InsideTrack](#).
2. Two condominiums were under common management. One association was under developer control; the other wasn't. Both condominiums needed to have their declarations amended to implement a new marketing plan. Rather than go through the cumbersome process of amending two separate declarations (which

POSTED:

Mar 30, 2009

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was "iffy" in the case of the condominium no longer controlled by the developer), we merged the two condominiums. (It takes fewer votes to merge condominiums than to amend their declarations.) The developer then had sufficient control of the merged condominium to enact the amendment.

3. An association in a completed condominium had been assessing maintenance, repair and replacement costs among all units on a square-footage basis. An owner discovered that the measurements used by the association over a 20-year period were incorrect. We devised a solution that was accepted by the association that did not require going back to re-adjust past assessments.
4. A condominium that was partially developed failed. A purchaser acquired the remaining units at a foreclosure sale. The original developer had failed to deed over to the condominium certain features that had been represented to buyers as part of the common elements. Furthermore, the condominium was out of compliance with local zoning and land division ordinances. We assisted the association in resolving these problems to the satisfaction of the association and the municipality.

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