LEGAL OPINION

BUILD-TO-RENT AND PLANNED COMMUNITIES: MAKING THE Match

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“Build-to-Rent” (“B2R”) product, that is the construction of homes in a community intended to be leased, as opposed to sold, is an emerging sub-product within planned communities. B2R product is similar to a multifamily rental project in that a single owner owns, operates and maintains homes leased to residents. B2R projects provide tenants the benefits of a planned community, including access to community amenities and a “neighborhood feel.”

But what differentiates B2R product from typical home rentals from a planned community perspective? The primary difference lies in the B2R product’s single ownership, and a single owner that is, or will usually be, different than the master developer of the community. Also, the B2R product is, in itself, a type of “community within a community,” as opposed to individual home rentals spread among an entire planned community.

If the master planned community developer and the B2R operator are unrelated parties, their interests and expectations may not always align. As an example, in a master planned community where for-sale and B2R product will co-exist, a threshold consideration is recognizing that community residential use requirements are designed to be enforced against a single homeowner, not a sophisticated commercial B2R operator. In other words, the covenant enforcement dynamic between the master developer/community association and the homeowner is different for the B2R operator/owner. That’s one example, and what follows are a few more to think about.

HOME AND LOT MAINTENANCE

Typical community covenants will require owners to maintain their residence and yard areas, while the B2R operator will most likely implement programmatic home and lot maintenance. The obvious difference is that the B2R operator is running a business and expects to make a profit, and overall maintenance costs affect profit. There is at least the possibility that maintenance standards may be lowered as the B2R operator manages profit expectations. In essence, the standard good condition and repair standard seen in most community covenant documents, which are intended for individual homeowners, may not work. Some thought should be given to whether specific standards are required for the B2R homes and landscaped areas or if landscaped areas within the B2R project with high community visibility should be maintained by the community association.

ASSOCIATION VOTING AND ASSESSMENTS

In the for-sale planned community, usually each lot owner receives one vote in community association matters, and all lot owners pay the same community association monthly assessments. The B2R project will include multiple lots (or condominium units) and will very likely be owned and operated by a single owner. If the same system of allocating votes on for-sale lots is used for the B2R lots, the master developer needs to recognize that the B2R votes, if cast, will be cast as a block of votes which could affect board elections, assessment increases and amendments to the community’s documents. A workaround to this issue is usually only needed where the B2R lots represent a significant portion of the lots in the overall community. If block voting by the B2R owner might be a problem, a different voting allocation can be used for the B2R lots (at least while operated as rentals), or other protections can be added to the community documents to protect for-sale owner participation in association decisions, e.g., board members elected and amendments approved by membership class.

Note that the allocation of votes to the B2R lots translates to greater B2R owner rights relative to a single homeowner. The allocation of assessments translates to greater B2R owner obligations. A larger portion of the community association’s overall budget will be assigned to a single owner which means that failure to pay results in more pain. A different collection policy, hyper-diligent collection oversite and/or a requirement that such amounts be paid in quarterly or annual assessments, are some ways to mitigate the risk. There may also be some tension to allocate a lesser amount of assessments to the B2R project, but any reduction should be scrutinized especially if the B2R tenants will have access to the same amenities as the for-sale owner.

THE OTHER STUFF

B2R property insurance requirements, the B2R trend to structure projects to allow conversion to for-sale, differences in rental restrictions relative to for-sale, signage, tenant covenant violations and fines, are just a few other areas that will need to be considered. The moral of this short story is that to make the match between the planned community and the B2R requires thought and may also require some community document reassembly. ★

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