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## Bulk condo buyers might hurt individual owners

By Marilyn Bowden

In the face of flat sales and defaulting buyers, some developers are entertaining offers from investor groups to buy new condo units in bulk – a move that some experts say could hurt individual unit owners.

Pete Zalewski, principal of the consulting company Condo Vultures, said at least three local condo developers are “actively defaulting” speculators in the hopes of negotiating deals with private equity groups or hedge funds that will buy in bulk at a discount.

“They are defaulting out on buyers because the name of the game is quantity,” he said. “Many funds need a minimum of 100 units or 60% of a project, because that gives them the ability to control the condo association.”

While some of these investors may be “kicking around the idea of turning them around as sales,” Mr. Zalewski said, “it wouldn’t be unusual to see them turn into overnight rentals. Their ability to rent low because of economics of scale will drive speculators into the ground. As other people try to dump their units, they will accumulate them with the ultimate goal to control the building.”

For the developer, he said, a discount deal – often sweetened by such perks as property-management or build-out contracts – offers a way out of spiraling defaults.

While this is a logical outcome of the credit crunch, said Robert Barron, a shareholder at Berger Singerman, there could be unforeseen repercussions all around. “One problem is that whatever the discounted units sell at will become the comparable sales price for the project,” he said, “and that will indirectly affect

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other buyers who have to get financing. So unless they are cash buyers, the developer is messing up their ability to close.”

The developer, Mr. Barron said, could have a problem with his lender. “The lenders have to be thinking that if I let these units be sold in bulk, then wait and close individuals, I may have cut off my nose to spite my face.”

Inexperienced bulk buyers could run amok of state law, he said; unlike single-family homes, condos are heavily regulated.

“A group of high-net-worth individuals pooling their money to buy units could get into a mess of trouble,” he said. “State law defines as a developer anybody who buys more than seven units in a project with more than 70 units, or five units in a building with fewer than 70, and offers those units for sale in a one-year period.”

Regulatory issues include fees, warranties and disclosure requirements, he said.

Jared Beck, an attorney with Beck & Lee Business Trial Lawyers, said his firm is representing “a lot of buyers who are seeking recovery of their deposits under condo purchase agreement. In our experience, more and more developers are rushing to schedule closing dates on very short notice – in some cases, without even complying with the notice requirements provided in the contract. “In addition, we are seeing a lot of developers who are simply refusing to negotiate price concessions with buyers who have not yet closed.

“We think they may be trying to

maximize the number of contractual defaults, allowing the developer to keep the deposit money, including the money held in escrow, and potentially freeing up units for bulk sale to institutional buyers.”

Mr. Beck called this practice unethical, saying it constitutes “a breach of the purchase agreement itself.”

These trends, he said, “pose some enormously harmful consequences.” Buyers who want to close on their units are not being given the notice they need – and

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the notice that is owed to them under their own purchase agreement – as well as the flexibility to line up financing and close on their properties. Such buyers may be placed in default without even knowing about it.

“Moreover, individual buyers who do close on their unit are going to be moving into nearly empty buildings, with banks and institu-

tional investors holding on to the lion’s share of the units for who knows how long, waiting for market conditions to change so that the units can be resold at a hefty profit. Such buildings risk becoming poorly maintained and undesirable places to call home, as the condo associations will be dominated by institutions – not people actually living in the units – who don’t have a real incentive to keep up the common areas.

“Right now, the courts are clogged with buyers bringing lawsuits in order to get out of contracts, but I think in next few years we will see suits from people who moved into buildings that were full of renters or empty.” But David Dabby, principal of the advisory firm The Dabby Group, said institutional buyers will demand good management and keep up common areas to protect their investment.

“They are not going to throw money away or approve frivolous improvements,” he said, “but they will not let it slide.

“This is just a way to resolve a situation over time. The market is going to run its course, and it will not recover until there are real owners and renters occupying the inventory.”

