



Cooperative Mobile Home Park Buyouts

Navigating the Process

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1

Current Trends

Big money invested

2

Current Trends...

- Attractive investment for reliable passive income
- Ownership consolidation by private operators, REITS, private equity, insurance and pension funds
- Significant increase in value as a result

3

Current Trends...

- Demand for acquisitions outpaces supply
- Mobile Home Cooperatives are the last untapped market for acquisitions

4

In the beginning ...

- Sale of a mobile home park is governed by Fla Stat. §723.071
 - (1)(a) If a mobile home park owner offers a park for sale, she or he shall notify the officers of the homeowners' association ... of the offer, stating the price and terms and conditions of sale.
 - (1)(b) The mobile home owners, by and through the association ... shall have the right to purchase the park, provided the home owners meet the price terms and conditions ... by executing a contract ... within 45 days.
- The cooperative form of ownership was the preferred legal structure for resident purchases

5

The Cooperative Act

Chapter 719

6

The Cooperative Act

Fla. Stat. § 719.103(12) defines “cooperative”

- “...that form of ownership of real property wherein legal title is vested in a corporation or other legal entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.”

The Cooperative Documents

- Articles of Incorporation
- Bylaws
- Master Form Proprietary Lease

Master Form Proprietary Lease

A “blank” instrument.

- Fla. Stat. § 695.02 authorizes the recording of a master or blank instrument the terms of which can be incorporated by reference into an individual proprietary lease
- Memorandum of Proprietary Lease vs. Assignment of Proprietary Lease

9

The Unit

The unit is an “interest in real property”

- Can be conveyed via assignment
- Can be mortgaged via a leasehold mortgage
- Can be devised by will or trust or descend via intestacy
- Can be homestead
- Is subject to ad valorem tax and non ad valorem assessments

10

The Termination Process

11

The Letter of Intent

- Price per share!
- Payoff of Mortgage?
- Association's attorney's fees and costs?
- Terms of post-closing occupancy?
- A restrictive covenant?
- Social funds and capital improvements?

12

Shareholder and Board votes

The two primary votes:

- Dissolving the Cooperative association
- Terminating the Master Form Proprietary Lease

13

Dissolution and Wind Up

- The Cooperative Act provides no guidance
- Look to the Florida Not For Profit Corporation Act, Fla. Stat. §617.1402

14

Dissolution and Wind Up

Fla. Stat. § 617.1402(1)

- If the corporation has members entitled to vote on a resolution to dissolve ... the board of directors must adopt a resolution recommending that the corporation be dissolved and directing that the question ... be submitted to a vote at a meeting of the members.
- A resolution to dissolve shall be adopted upon receiving a majority of the votes of the members present or voting by proxy.

15

Dissolution and Wind Up

- Fla. Stat. § 617.1402
- (2) If ... its members are not entitled to vote on a resolution to dissolve, the dissolution ... may be authorized at a meeting of the board of directors by a majority vote of the directors....
- Practice Pointer – have the members vote!

16

Terminating the Master Form Proprietary Lease

- A sample clause:

If at any time the Corporation shall determine to terminate all proprietary leases upon: (i) the affirmative vote of two-thirds (2/3) of its then Board of Directors at a meeting such Directors duly called for the purpose, and (ii) the affirmative vote of the record holders of at least eighty percent (80%) of its then Membership Certificates at a meeting duly called for that purpose;

17

The Purchase and Sale Agreement

- A Representation and Warranty that all Board and Shareholder votes have been obtained
- Deadlines to agree to the form of the
 - Prospectus and Lot Rental Agreement
 - Post-closing Capital Improvements Agreement
 - Restrictive Covenant
- Deadline to address all of Seller's title requirements

18

Title Requirements

- They may be voluminous!
 - Fee simple level
 - Park level
 - Unit level

19

At the park level...

In addition to “standard” requirements:

- A Resolution evidencing approval of the sale, approval of the termination, and approval of the dissolution of the corporate entity
- Termination of the Master Form Proprietary Lease
- Proof that each unit owner signed a new lot rental agreement to address post-closing occupancy

20

At the unit level...

- Termination of Proprietary Lease for **EACH** Unit
- Satisfaction of any Leasehold mortgages
- Satisfaction of any shareholder judgments
- Probate and estate requirements
- Notices of Commencement and Construction Liens
- Etc.

21

Time is not on our side...

Depending on the size of the community, it:

- May take several months for the examiner to prepare the Commitment
- May take several months to prepare and obtain instruments/documents to address each shareholder title requirement

22

Recording Practice Pointers

Pre-closing recordings to ease the burden:

- Death Certificates and supporting affidavits
- Notices of Termination of Notices of Commencement
- Any other “irreversible” title documents

23

Recording Practice Pointers

- Termination of Master Form Proprietary Lease and individual Terminations as a *single* instrument
- But first confirm the Clerk’s capacity for recording (page count and file size)

24

The Closing Statement

(Not your standard Closing Statement)

- Use a spreadsheet
- Start ahead of time
- Use a recording cost escrow

25

The Closing Statement

(Charges to consider)

In addition to the standard charges, for *each* unit:

- Tax prorations
- Past due taxes, if any
- Payoff of leasehold mortgages
- Payoff of shareholder liens and judgments
- FIRPTA withholdings

26

Post-Closing

- Pro rata distribution to the unit owners
- Requires a unit-by-unit accounting
- Account for setoffs for taxes, mortgages, judgments, past due assessments, FIRPTA withholdings, etc.

27

Practice Pointers – Use Spreadsheets

- To track progress working through the title commitment
- To track required mortgage and judgment payoffs
- To calculate the closing statement charges and prorations
- To calculate shareholder disbursements

28

Post-Closing Housekeeping

Fla. Stat. § 719.104(12)

- When the board of directors intends to dissolve or merge the cooperative association, the board shall so notify the [DBPR] before taking any action to dissolve or merge the cooperative association.

Fla. Stat. § 617.1403

- At any time after dissolution is authorized, the corporation may dissolve by delivering to the Department of State for filing articles of dissolution ...

29



Thank you

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30