

TROUBLED CONDOMINIUMS

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TRANSITION BY DESIGN

- Declarant Control Transition as Units sell
 - 25% of Units - 25% of Board
 - 50% of Units - 33% of Board
 - 75% of Units - New Board
 - 5 years in a non-flexible condo – New Board
 - 7 years in a flexible condo – New Board

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TRANSITION BY DESIGN

- Special Declarant Rights (PA UCA §3103)
 - Rights reserved for the benefit of a declarant to:
 - Complete improvements.
 - Flex flexible real estate: convert, add, subtract
 - Convert a unit into more units and/or common elements.
 - Maintain offices, signs and models.
 - Use easements to make improvements.
 - Merge or submit to another condominium
 - Exercise Declarant Control.

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TRANSITION BY DESIGN

- Other Statutory Declarant Rights
 - Grant Successor Declarant Rights
 - Corrective amendment to the Declaration without Unit Owner vote
 - Postpone common expense assessments
 - Shelf Condominium

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TRANSITION BY DESIGN

- Other Contract Declarant Rights
 - Right of First Refusal
 - Assignment of Limited Common Elements
 - Recharacterization of Common/Limited Common Elements
 - Conversion of Use
 - Unilateral Reflective Amendments
 - Additional Insured

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TRANSITION BY DESIGN

- Other Contract Declarant Rights
 - Unconditional rights of Declarant Units' alteration, subdivision, leasing, sale signs, file amendments
 - Approval rights of Amendments after Termination of Declarant Control
 - No posting of capital reserve until Termination of Declarant Control

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TRANSITION BY DESIGN

- The New Board: Base Line for Liability
 - Data Copies
 - Audit: Outside or Inside Audit, Auditor, Audit Lookback
 - Budget Discrepancies: Estimated, Actuals, Shortfall Loans
 - Old Board violation of Business Judgment Rule: decisions in good faith, best interest, ordinary care

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TRANSITION BY DESIGN

- Amendments to the Declaration: Correcting Inaccuracies
 - Physical Plant
 - Common Element or Limited Common Element

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FRACTURED OR FAILED CONDOMINIUMS

- Terminate the Declaration
 - 80% of Units
 - 51% of Mortgagee's Units
 - Results: Tenants-in-Common and appraised values

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FRACTURED OR FAILED CONDOMINIUMS

- “Abandon” the Declarant Units
 - Surrender to mortgagees

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FRACTURED OR FAILED CONDOMINIUMS

- Postpone the Completion Date or Sales
 - Declarant Control under the Act
 - Interstate Land Sales Full Disclosure Act
 - FNMA, Secondary Market

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FRACTURED OR FAILED CONDOMINIUMS

- Auctions or Fire Sales of Units
 - Community class warfare, discount v. full price owner
 - Valuation and mark-to-market
 - POS: New disclosure of material fact – what is the tipping point

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FRACTURED OR FAILED CONDOMINIUMS

- Convert Units-For-Sale to Units-for-Rent
 - Community class warfare – absentee owners v. owner occupants
 - Tenants not owners
 - Declarant Control

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FRACTURED OR FAILED CONDOMINIUMS

- Bankruptcy
 - Declarant
 - discharge pre-petition assessments, not post-petition
 - Association
 - when deferred maintenance is too expensive for assessments to bear
 - only right to assess – cannot restructure

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TRANSITION BY FORCE

- Successor to Special Declarant Rights
- Purchaser with virtual Declarant Rights

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TRANSITION BY FORCE

- Transfer of Special Declarant Rights
 - Deed
 - All or some – mortgagee wants all
- Transfer of Other Declarant Rights (Act and Contract)

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TRANSITION BY FORCE

- Successor Declarant Duties to Purchasers
 - Statutory liability for predecessor Declarant known misrepresentations
 - Required to disclose all material information in POS
 - Common law and Statutory liabilities (negligence, code violations, ILSA)

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SUCCESSOR DECLARANT POWERS

- Amendments to the POS by Successor Declarant – Correct Misstatements
 - Name
 - Cause
 - Limitation on Warranties

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MORTGAGEE AND SUCCESSOR DECLARANT RIGHTS

- Mortgagee Request for Special Declarant Rights – Declarant Control
- Mortgagee Exculpation from Duties Inhering in Special Declarant Rights – Published custodian
- Transfer of Declarant Control to Mortgagee without other Special Declarant Rights

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LIEN PRIORITY

- Lien Priority Between Mortgage And Declaration – Foreclosure and Divestiture
- Lien Priority Between Mortgage and Assessments
 - Deferred mortgagee payments
 - Association lien foreclosure
 - Deferred special assessment

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