



Construction Law: An attorney discusses the pros and cons of retail condos - by C. Jaye Berger

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Many retail tenants in the past few years have learned the hard way about the vagueries of New York landlords and rental increases. Being able to navigate your own course with regard to rent, subject to the rules and regulations of the board of managers of a condominium, makes retail condominiums attractive to investors and store owners. A lot of the new construction in New York is condominiums, with retail condo units on the ground floor. Condos are also attractive for 1031 exchanges which allow investors to avoid paying capital gains tax at the time of closing, if they invest quickly in commercial real estate.

Owning a condominium unit is much like owning a house. Unlike co-ops, condo boards cannot reject potential buyers. They only have a right of first refusal, which allows the board to offer to buy the unit on the same terms. Also, it is unusual for condo boards to have the financial ability to buy on the same terms, although it can happen. This allows sales to go through with little or no objection, but it also means that buildings know very little about the people buying units in them, especially when they are companies or individuals located in other states. Since unit owners do not have to reside in the state of New York, it is important for the board to require unit owners to provide information on where the entity resides and can be served with process, if need be. They should also provide evidence of insurance naming the condominium and managing agent as an additional insured before moving in.

The same right of first refusal applies to subletting, which is really just leasing. The board can match the same terms. Since the unit owner is the landlord, the board does not have a landlord-tenant relationship with the tenant. To try to address this, some buildings require potential buyers to produce certain financial information and have interviews, even though the board may not really be doing anything special with the information. Boards can make reasonable inquiry about the proposed tenant.

As a general rule, in the past, condos have had fewer rules and regulations than co-ops, but that too is changing with condos having alteration agreements much like co-ops have. This is a common question I am asked by condos I represent, since many problems can arise from a unit owner's project which can affect the entire building.

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