

THE SOUTHEAST'S REAL ESTATE SOURCE

# SOUTHEAST REAL ESTATE BUSINESS™

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## RENTAL INVENTORY DWINDES IN A SELLERS' MARKET

*Changes in the multifamily residential  
management industry provide new  
opportunities for property managers.*

Patti Harris

During the last 18 months, the multifamily residential management industry has seen enormous changes. Sales activity of Class A and B rental communities has been unprecedented, with converters paying record prices for multifamily housing developments, especially in superheated markets such as South Florida.

Through April 2005, sales of apartment communities totaled more than \$20 billion nationally, 64 percent ahead of last year's pace, which was a record year. Approximately 30 percent of apartment development sales were to condominium converters across the country.

### SOUTH FLORIDA —

#### A SUPERCHARGED EXAMPLE FOR THE SOUTHEAST

In South Florida, approximately 90 percent of apartment development sales were to condominium converters. These conversions have caused the existing inventory of apartments to drop, with about 37,800 multifamily units removed from the rental pool since 2002. Miami-Dade County, for example, suffered the greatest loss with 12,150 units converted to condos in 2004.

The leading multifamily buyers in South Florida — Monroe, Miami-Dade, Broward and Palm Beach counties — are Crescent Height Investments, The Chetrit Group, Prestige Builders, The Related Companies and The Bradford Group. Leading sellers are Archstone-Smith, Fairfield Residential, Altman Development and the Fifteen Group.

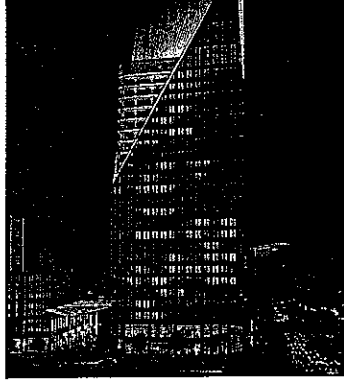
SEE MANAGEMENT, PAGE 68

## SPOTLIGHT ON MIXED-USE

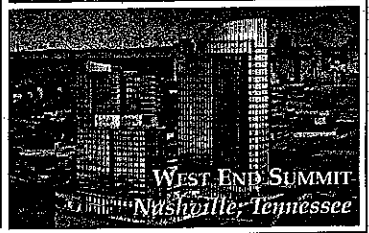
The development of mixed-use projects is a continuing trend across the commercial real estate nation. *Southeast Real Estate Business* takes a look inside some significant mixed-use projects that are affecting the landscape of the Southeast.

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## BREAKING UP IS HARD TO DO

*Thinking about exit strategies at the outset.*

Justin Daniels

Business divorces remain a common feature in today's business landscape. New business partners, like newlyweds, pay scant attention to what might go wrong and how valuable real estate assets or stock might be allocated in a business divorce. In effect, business partners who ignore exit strategies at the outset only find out later that such an oversight often causes tremendous personal stress of dealing with an uncertain situation that could cost him or her hundreds of thousands of dollars in assets or stock built over years of hard work. This article summarizes exit strategy issues that business partners should discuss prior to signing that operating agreement or shareholder agreement.

Management disagreement is usually the main culprit behind most business divorces. A limited liability company operating agreement or corporate shareholder agreement should address what happens when partner/managers cannot resolve a difference of opinion. Resolution strategies can include: (1) a neutral third party the partners trust to make a decision; (2) an outsider who sits on the

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## BREAKING UP IS HARD TO DO

### EXIT STRATEGIES from page 1

board whose vote breaks any deadlock; or (3) a buyout. Most owners should consider a buyout carefully. In situations where a third party determines a policy decision, the partner whose recommendation was not followed does everything in his or her power to sabotage the decision or undercut the support needed to execute it properly.

A Texas shootout buy/sell provision can facilitate a smooth exit strategy instead of the continued participation of a disgruntled partner whose business strategy was not adopted. The provision provides that in the event of deadlock, either partner may offer to buy out the other partner. After such an offer is made, the other partner has the right either to accept the buyout offer or agree to buy out the partner who made the offer pursuant to the terms of that offer. However, this provision can benefit the partner who has the deepest pockets, as he or she can make an offer that the other partner could not afford and is left merely to accept. This risk seems preferable to the continued involvement of a disgruntled partner who is distracting the business.

Partners also should consider what happens upon the death, disability or retirement of a partner. Three major issues arise in these contexts: (i) who will purchase the partner who is no longer with the company's shares; (ii) what is the process for placing a value on those shares; and (iii) what is the process for ensuring funds are available for purchasing the shares. Typically, an operating agreement or shareholder agreement provides that upon termination, death, disability or retirement, the company or the other partner(s) shall purchase the shares. Fair market value determinations can take the form of an agreed upon price that the partners or the board sets each year, a fair market value formula agreed upon by all the partners or the engagement of an appraiser who will determine the fair market value of the shares. Lastly, the agreement may provide that the company purchase insurance on each partner and such proceeds shall be used to purchase the shares upon the partner's disability or death. In the event of termination, death, disability or retirement, the agreement also may provide that a portion of the buyout purchase price be payable in the form a promissory note to ease the financial burden on the company and remaining partners if cash is not available to pay the entire purchase price immediately.

Business partners begin a relationship with the best intentions; however, business divorces will remain a fixture of the present landscape as long as business exists. Those who plan for such contingencies will be rewarded

with an orderly separation that minimizes uncertainty, costs and stress. Those who think that will never happen to them often find the life lesson learned a stressful and financially painful one.

Justin Daniels is a corporate and commercial real estate attorney who practices with the law firm Lamberth, Cifelli, Stokes & Stout, P.A. in Atlanta.

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