

Condominium Hotels

Andrew Robins, Esq.
The Leisure and Resorts Group at
Gunster Yoakley & Stewart, P.A.
(954) 468-1323
Arobins@gunster.com

What Is It?

- Designed like traditional hotel except that units are sometimes larger.
- Units may be designed with multiple bedroom and “lockout” configurations.
- Design elements such as galley kitchens, small closets and a lack of washers and dryers discourage longer term residential occupancy.

Stakeholders

Developer

- motivated by condominium sales proceeds

3

© Gunster Yoakley & Stewart, P.A. 2004

Stakeholders (cont.)

Hotel Operator:

- Motivated by enhanced brand distribution and fee income
- Risks:
 - product control
 - hotel room inventory
 - Claims and litigation

4

© Gunster Yoakley & Stewart, P.A. 2004

Stakeholders (cont.)

Hotel Operator (cont.)

- Product Control:
 - Real estate structure can control most issues.
- Rooms Inventory:
 - Minimum base management fees provide some protection to operator.
 - Can there be enough inventory stability for a group oriented hotel?
 - Owner occupancy reservation policies.

5

© Gunster Yoakley & Stewart, P.A. 2004

Stakeholders (cont.)

Condominium unit purchaser:

- Right to owner usage at reduced expense.
- Ability to invest in appreciating asset in strong markets.
- Ego Play. Desire to “own” a part of a hotel.

6

© Gunster Yoakley & Stewart, P.A. 2004

Stakeholders (cont.)

Condominium Unit Purchaser (cont.)

- Imperfect information by virtue of securities laws (primarily impacts income side).
- What is the investment per key? Effect of a real estate bubble. Relationship between price of real estate and ADR.
- Expense Side. Responsibility for shared facilities expenses.

The Issues

- Securities
- Economic Structure and Pitfalls
- Real Estate Structure
- Other Operator Concerns
- Contractual/Legal Issues

Securities Issues

- **Obstacles to Registration**
 - Use of Deposits
 - Brokerage Activities
 - Advertising
 - Secondary Offerings

Securities Issues (cont.)

- **Avoiding Registration Requirement**
 - SEC Release and No Action Letters
 - No “Pooling”
 - Not sold as “investment”
 - No restriction on usage

Economic Structure and Pitfalls

- Does the hotel work?
- Impact of other project components.
- Level of condominium assessments.
- What costs are attributed to all condominiums and which costs to rental program participants only?
- What expenses are allocated to the Hotel Lot Owner?

Real Estate Structure

- No common elements
- Little condominium association involvement
- The Hotel Lot and Shared Facilities

Budgeting

- Development budget
- Project operating budget
- Allocation among stakeholders
- Shared facilities budget
- Condominium budget

13

© Gunster Yoakley & Stewart, P.A. 2004

Operator Concerns

- Property management – control over facility
- Inventory
- Dispute avoidance

14

© Gunster Yoakley & Stewart, P.A. 2004

Inventory

- Practical Considerations
- Minimum Management Fees

Dispute Avoidance

- Understand the economics to condominium unit owners.
- Statutory restrictions on budget increases.
- Minimize likelihood of securities claims.
- Construction defect issues.

Contractual/Legal Issues

- **Hotel Management Agreement**
 - Hotel Lot Owner has financial responsibility to Operator.
 - Operator performs obligations under governance regime documents.
 - What supports the Hotel Lot Owner's obligations?
 - Casualty and condemnation.
 - Opening date and pre-opening operations.

17

© Gunster Yoakley & Stewart, P.A. 2004

Contractual/Legal Issues (cont.)

- **Hotel Management Agreement (cont.)**
 - Approval of governance documents.
 - Fee structure. Matching fees to rental program participants.
 - Radius restrictions – interplay with fractional product.
 - ADA compliance.

18

© Gunster Yoakley & Stewart, P.A. 2004

Contractual/Legal Issues (cont.)

- **Condominium Association Management Agreement:**
 - Probably cannot prevent termination but it may not matter.
 - Party may be Operator or Hotel Lot Owner (with assignment of rights and obligations to Operator).
 - Fees.

Contractual/Legal Issues (cont.)

- **Rental Program Agreement:**
 - Practical considerations driving participation.
 - Rental program splits.

Contractual/Legal Issues (cont.)

- Rental Program Agreement:
 - Owner occupancy:
 - Sublimits and blackout periods.
 - Excess occupancy arrangements.
 - Termination rights:
 - Impairment of licenses.
 - Termination on sale.
 - Control over cash flow.

Pre-Development Process

- Design
- Legal:
 - General Structure
 - Governance Regime (condominium and master regimes)
 - Rental Program
 - Management, License and Technical Services Agreements

Pre-Development Process (cont.)

- Surveying
- Budgeting

Thank You!

The Leisure and Resorts Group at
Gunster Yoakley & Stewart, P.A.

Andrew Robins, Esq.

(954) 468-1323

Arobins@gunster.com