

# MARKETPLACE

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## THE PROPERTY REPORT

### Florida Condo Bust Spurs Commission Suits

*Related Group Wants Brokers to Refund Money After Buyers Walk Away*

BY STEPHANIE CHEN

Last month, the Related Group of Florida, a closely held luxury-condominium developer with 6,500 units valued at \$3.7 billion in South Florida, filed 16 suits in Miami-Dade County seeking the return of hundreds of thousands of dollars in commissions paid to brokers who sold its condos.

Related says various brokers must return the 3% commissions—amounting to between \$15,000 to \$90,000 for each of the 24 condos in dispute in its 389-unit Hallandale Beach Club Tower III property—because the deals never closed, says David Rothstein, attorney for the Related Group. In most cases, buyers walked away from their purchase contracts after the value of the condos plunged.

Real-estate experts say a wave of similar disputes is likely in the next year as condo sales dwindle and more buyers bail on contracts already in place.

"We're definitely going to see more cases like this," says Austin MacMullan, a partner at Real Estate Research Corp., a Chicago-based organization that studies housing trends. "This is just one of the side effects of the glut that I don't think anyone could have anticipated."

During the peak of the condo craze in Florida from 2002 to 2005, heated competition led developers to offer bro-

#### Buyers' Market

Median condo price in Florida, 2007



Source: Florida Association of Realtors

kers increasingly extravagant perks for steering buyers to their properties. Some gave agents new BMW cars and free trips to Tahiti. Developers also were increasingly willing to pay higher commissions to brokers or pay in advance, as soon as a contract was signed, rather than when the building was completed months or years later.

Now, as some of those buyers forfeit their deposits and disappear without every completing the transaction, developers are becoming more aggressive about trying to force brokers to give back their commissions.

Related, which is based in Miami, says the brokers are explicitly obligated to pay back the advance under terms of the sales agreements, many of which were signed in 2005 for condominiums to be completed last year. But some brokers contend developers and overbuild-



Beach Club property, Hallandale Beach, Fla.

ing are to blame for the markets' troubles, and it's unfair for them to have to take the hit for sales that fell apart. Ed Roberts, the owner of Beachfront Realty Inc., a defendant in one of the suits, says the contracts are also faulty because they don't specify what would happen if the purchase fell apart.

"We didn't think that if buyer defaulted we would be asked to give back our commission," he says. What's more, Mr. Roberts says, much of the money went to individual broker-agents who left their companies long ago.

Related says it has given out advance commissions to brokers since the company began selling condos in 1995. "The brokers are your lifeline," says Matthew Allen, executive vice president and chief operating officer at Related. "You want them to bring in clients to buy your units. If I didn't [pay commissions in ad-

vance] then most brokers wouldn't bring us the clients."

He says Related will continue to pay commissions in advance, despite the poor outlook for the condo market in South Florida, because he believes most brokers are unlikely to default.

But other experts say the practice of advance commissions may spawn even more legal conflict. Brad Hunter, director of the South Florida region for Metrostudy, a consulting firm specializing in residential markets, says he expects more defaults as thousands of additional units come on the market soon.

Metrostudy found 5,320 new units expected to open in the Brickell Avenue submarket in Miami and 11,551 units expected to finish in the Miami downtown area this year. "That is an enormous number compared to any past development period and far more than the market can absorb in a short amount of time," he says. In one recent study, the fall in real-estate values was worse in Miami than any other U.S. market, falling down 15% over a year earlier.

Mr. Hunter expects to see more lawsuits occur between buyers and developers. He says some buyers will try to get out of their purchase contracts—and retrieve their deposits—by claiming developers didn't complete their condo as promised.

Attorney Jeffrey Ostrow of the Kopelowitz Ostrow Firm, P.A. in Fort Lauderdale, Fla., says he's been involved in several lawsuits between developers and brokers, and about 20 in which buyers tried to cancel purchase contracts and get back their deposits.