Fundamentals and Current Issues in Vertical Subdivisions

Description: Learn about the latest issues impacting vertical subdivisions.

Vertically subdividing a building into individual air rights parcels are becoming more common for a number of reasons, including necessitated by redevelopment and reuse, by marketability of the parts being worth more than the whole and by an increased specialization of property owners. The vertical subdivision process can be very complex, requiring the balancing of a number of contravening interests, including defining common areas, common costs and expenses, allocation of control, use restrictions, construction standards and limits, services provided to each parcel owner and delineation of each owner’s responsibility. This topic will review the means by which a party can vertically subdivide a building into sectioned air rights parcels. This topic will discuss the issues that arise when drafting the governing reciprocal easement agreement for a vertically subdivided building. Any party that desires to vertically subdivide a building or that will own, lease or hold a mortgage or other interest in a vertically divided air rights parcel will benefit from this information.

Learning Objectives:

- You will be able to describe a properly structured vertical subdivision so that each air rights parcel properly coexists with each other.
- You will be able to identify how to draft a reciprocal easement agreement for a vertically divided air rights parcel.
- You will be able to recognize issues in the development, ownership and operation of a vertically divided parcel.
- You will be able to review how to prepare a checklist to review the issues that arise when vertically subdividing a property.

Contents:

- Structure of Ownership and Control
  - Central Building Operator
  - Not for Profit Association
  - Condominium
  - Parcel Independence vs. Control
  - Advocacy for the "Declarant"

- Easements
  - Structural Support
  - Ingress and Egress
  - Utilities/Mechanicals
  - Signage
  - Roof Access

- Common Services and Maintenance
  - Common Provider vs. Individual Responsibility
  - Cost Structure and Metering
  - Delineation of Common and Limited Common Elements
  - Damage to Common Areas/Elements
  - Insurance

- Alterations and Construction
  - Standards for Consent
  - Arbitration of Disputes
  - Permits and Zoning Issues

- Enforcement

- Issues Unique to Each Use
  - Residential Uses
- Retail Uses
- Office Uses
- Hotel Uses

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