

TOP 10 ISSUES FOR EXISTING MIXED-USE PROJECTS

While they were once the exception, mixed-use projects are increasingly the norm in urban and town center areas across the country.

Mixed-use projects typically take the form of ground-floor retail with upper floors of office or residential space, but there is no cookie-cutter formula for a successful mixed-use project. These projects enjoy success because of the marriage of different uses at the same site. To keep the marriage happy, however, owners, tenants and property managers should be aware of the following issues.

- 1. Know the structure.** Some mixed-use projects take the form of condominiums; others exist pursuant to complex reciprocal easement agreements. Day-to-day management issues should be handled in accordance with the applicable documents, so it is imperative to understand all of the documents that govern the relationships among the various components of the mixed-use project.
- 2. Keep the documents up-to-date.** If the governing documents are outdated because of changes in the mixed-use project or operational practices that vary from the governing documents, the documents should be amended before significant issues arise. Amending the documents when all parties are in agreement is much easier and less expensive than trying to resolve a serious disagreement under outdated documents.
- 3. Shared maintenance.** Shared maintenance items may include the roof, exterior walls, structural components, entrance features, courtyards and any other areas designated by the governing documents. It is critical to be aware of who is responsible for maintenance; who has self-help rights; what easement rights exist; and what notice or approval requirements must be satisfied.
- 4. Cost-sharing.** Cost-sharing among multiple owners should be addressed in the governing documents, and may require preparation of annual budgets or approval of certain significant maintenance projects. For office/retail mixed-use projects, attention should be paid to common area maintenance (CAM) allocations among the different uses.
- 5. Noise and odors.** Although residents of mixed-use projects are typically provided with a disclosure for potential noise and odor transmissions, complaints of noise and odors are common. When complaints arise, communication is key—but there is no substitute for clear documents

that define each party's rights and obligations. Noise control is especially important in residential over retail projects where, for example, the need for early morning deliveries can conflict with the residents' need for quiet.

- 6. Access.** While it all comes back to the terms of the governing documents, owners, tenants and property managers should have a clear understanding as to who has access to what portions of the project and when. Are there dedicated entrances, elevators, loading docks or parking? If the practical uses of these areas do not match the governing documents, problems could be brewing.
- 7. Use restrictions.** If provided in the mixed-use project structure, retail uses may be limited to prevent the retail space from being used in a manner that is undesirable to the residents (e.g., no adult entertainment establishments). Additionally, the retail users may want comfort as to the exclusivity of their uses (so that, for example, two drug stores do not open in adjacent retail spaces of the same project).
- 8. Energy efficiency.** Newer mixed-use projects often include various energy-efficiency components, and older projects are increasingly being retrofitted to minimize their energy consumption. Depending on the structure of the mixed-use project, true energy-efficiency improvements may require cooperation and cost-sharing by the various owners and uses.
- 9. Architectural controls.** It is important for the mixed-use project to have a unified appearance. Often, governing documents include detailed architectural requirements and procedures for approval of any modifications that alter the exterior appearance of the project.
- 10. Estoppels.** Pursuant to a sale or refinancing, one owner may seek an estoppel from other owners or an association as to compliance with the terms of the relevant governing documents. The governing documents should address estoppel requirements, and they should be followed. ■

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ABOUT THE AUTHORS: Desmond Connall and Katherine Noonan are members of the Real Estate Practice at Ballard Spahr LLP in Washington, D.C. For more information, visit www.ballardspahr.com.