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Specialized Business Condominium Regimes

David Clurman

SPECIALIZED BUSINESS CONDOMINIUM REGIMES‡

DAVID CLURMAN*

MEDICAL, DENTAL AND SCIENCE BUILDINGS

Changes in Medical Practice

The past 25 years have witnessed four important changes in medical practice that have led to the new popularity of centralized professional buildings, a type of building that recently has been developed in condominium form throughout many parts of the United States. Many, if not most, doctors today rarely make house calls, thereby removing the need for neighborhood proximity to patients; swift, modern highways have eased travel for those doctors who regularly or occasionally make house calls. At the same time, the medical profession has splintered into many specialties, often posing the need for several doctors in lieu of the single practitioner who satisfied our grandparents with his amazing breadth of expertise. Third, science practitioners need more space than previously to house large units of advanced equipment and many more kinds of smaller machinery and materials. Moreover, most patients drive or are driven to doctors' offices, substantially raising the requirements for parking space.

Prior to World War II, professional medical buildings were few in number, often not exceeding the typical one-story structure that depended on a limited neighborhood clientele. Investors in the few larger structures suffered considerably during the Depression, in most cases, by rental rates that often fell to one-third or lower, although higher rentals began to emerge with the outbreak of war. It was the return of large numbers of doctors from military service at the end of World War II and the shortage of commercial space that brought an increasing demand for well-located professional buildings concentrating general and specialized aspects of medical practice.

In most instances, professional real estate developers constructed and rented out the new professional buildings. Leases tended to be short-term, to enable higher rentals once the young veterans and other

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* Assistant Attorney General of the State of New York and Director of the Bureau of Securities and Public Financing; Adjunct Professor at the Real Estate Institute of New York University; A.B., New York University, 1949; J.D., Columbia University, 1952.

lessees established lucrative practices or strengthened an initial clientele. Commercial banks issued a large number of loans to doctors that helped procure furnishings, equipment, and sometimes the clientele or patients of retiring practitioners.

Because of an urge for independence and freedom from landlord control, some doctors banded together in joint ventures by partnerships or corporations by which they financed, constructed, and occupied professional buildings themselves, often leaving several units unsubscribed and aimed at bringing in rents that would effectively lessen their own costs of operation and even give surplus income. Sometimes this was done by forming a stock cooperative. In most situations, a group of agreements were entered into among the participating venturers that guaranteed each his space requirements, and that, hopefully, shielded him from unreasonable acts by his associates. Many of these agreements tended to be vague, unresponsive to the long-term needs of the doctors, and not conducive to settlement of mutually important problems that might arise in the future.

Responsibilities Under Past Practices

Before the advent of the American condominium in the 1960's, in partnership or cooperative corporation the dangers of personal losses were broad for doctors associating themselves with such noncondominium ventures for the purpose of securing personal office space, in addition to any income investment that motivated the move.

An ordinary general or limited partnership of doctors financing a professional medical building would be expected to fund the promotion by a single underlying mortgage or group of mortgages secured by the entire property. If the partnership is entirely *general*, then each partner is usually singly and severally liable for all mortgage and other debts as well as the liabilities of other types incurred by the partnership. If some of the partners are *limited*, they may have effectively shielded themselves from general personal liability if all statutory state requirements for filing are met. Nevertheless, a default in payment of the entire mortgage could lead to a foreclosure, wiping out the individual limited partner's interest.

If a corporation were established instead, purportedly a cooperative or not, then mere individual stockholders might be protected from general individual liability for corporate debts and obligations, but, again, the value of their stockholding investment could vanish if the entire building mortgage were not paid and foreclosure followed.

What has been said about mortgages applies similarly to real prop-

erty taxes assessed against the partnership or corporate owner of the entire land and realty improvements encompassing the undertaking. Default in payment of the entire amount levied could lead to a disastrous tax foreclosure, even if any individual doctor has himself regularly paid his share of all amounts he agreed to contribute. The only alternative would be higher payments to make up for deficiencies from defaulting associates.

In many cases, by necessity, such partnership and corporate participation was conditioned by underlying agreements and contractual arrangements governing the building's operation and administration, as well as the rights of the partaking doctors as among themselves. In effect, most such ventures required agreement for cooperative enterprise, especially on commonly used facilities and areas. Accompanying such procedure, however, was the lurking danger of loss of investment if other venturers could not or would not pay their share of total mortgage or real property taxes. In an actual 1973 case, investors lost their entire equity on default by the corporation on a million dollar mortgage; in addition, the withholding taxes owed to the Treasury Department had not been paid. One alleged reason for the disaster was failure by participating doctors to obtain local hospital privileges. Additionally, the promoters overestimated the number of prospective patients who would seek medical services ten times over.

It is therefore not surprising that the condominium concept looked attractive to doctors interested in purchasing interests in new professional medical buildings, especially those in which they wished to practice. With the condominium form, the cooperative aspect of the venture is more clearly defined and protected by statute, because each investor gets a deed to his own unit entitling him, by statute usually, to mortgage it separately and to be assessed and taxed separately by the local property taxing authority. Thus the worries about the default in payment of a single building mortgage are eliminated because of separate condominium unit mortgages. If another doctor fails to pay his property taxes on his own unit, the other owners are immune from foreclosure on their own units. And, as we shall see, other practical reasons abound for preferring the condominium format in group enterprises of this type.

Use of the Condominium for Medical Buildings

Developers of the condominium format seek to attract not only those doctors who are newly ready to enter practice, but also those now practicing out of their own homes or in rental quarters in nonprofes-

sional buildings, or practicing in rental quarters in professional buildings. Additionally, doctors (and other investors) who now own professional buildings through partnership, corporate vehicles, or singly, whether they practice on the premises or not, may wish to consider conversion of the structures to condominium ownership.

It is a notorious fact that doctors are probably among the most difficult group of tenants for a landlord to satisfy. Rarely will you talk to a doctor whose office is run on a rental basis that you don't listen to a tale of immense dissatisfaction. Among the more specific complaints are allegations of unreasonable increases in rent at the end of leases; problems in getting approval for major electrical and plumbing work that would permit new or better equipment; need for better space partitioning; and inadequate landlord servicing, especially in buildings that are primarily residential. Whereas 20 years ago it was rare for a doctor to move his office (usually because of his heavy dependence on a confined neighborhood clientele), today that is no longer true, especially among younger doctors. This mobility factor, added to general dissatisfaction with renting, creates an immense market for planned, professional, condominium medical complexes.

In this connection, communities experiencing a shortage of doctors should consider giving liberal government loan inducements to encourage doctors to purchase new condominium office units and thereby own a stake in the community, rather than entering on a mere rental basis that would be simple to terminate. State and federal condominium purchase programs should be originated that would give 100 percent financing on liberal interest terms to doctors moving into areas without practitioners. Existence of attractive, fully equipped, new professional buildings able to service a wide area of residents otherwise without adequate medical care may well be aided considerably by the condominium concept. The author has been informed by letter from the U.S. Department of Housing and Urban Development that the condominium form of ownership is not permitted under the Title XI Program for financing group medical practice.

Developers should also be aware that doctors generally like to be associated with members of their own profession engaging in many different specialties. Opportunities for discussion and comments, the flow of patients from recommendations of other doctors, the general benefits of social cordiality among professionals, all are attractive considerations that foster group arrangements. Probably the most important other reasons for medical practitioners to consider the

condominium are the benefits of convenience, independence, and location. Let us look a bit more at each of these factors.

Medical and Dental Condominiums: Convenience

Probably the chief observable difference between medical buildings and ordinary office structures is the degree of intensification of layout. Partitions, partitions, partitions are what we note immediately in the precious confines of most doctor suites.

Intensive partition spacing usually is required in the medical professions for each practitioner to service several patients at one time, usually between two and four. The doctor must therefore have as many separated examining rooms as necessary, in addition to several washrooms for patients and his own convenience, perhaps his own laboratory, and facilities for special examinations and treatments that may have to be set off by walls. Examination of medical buildings shows radically different partitioning for specialties; space for radiologists varies completely from an internist's requirements. Inadequacy in partitioning can be of several sorts:

1. Improper division of space that does not provide adequate room for patient or doctor movement, entrance or exiting.

2. Inadequate ventilation, sound-proofing, and warming and cooling. How many times have we visited professional buildings in the summer months and found insufficient air conditioning in partitioned areas?

3. Inadequate electric and gas power and outlets, including technical requirements for special needs, such as compressed air. Doctors dislike rental terms requiring landlord permission for installation of new equipment or replacement of old, because of the continued likelihood of major rent increases under such circumstances.

Medical buildings examined by the author seem to be built with one of two notions by developers who rent premises to doctors, even if the particular needs of specific tenants are known before renting. In a few cases, especially older buildings, the builder must have thought that the needs of the medical profession were going to remain static for the next fifty years; there is just that little flexibility left from the kind of construction materials used in arranging space divisions and room sizes. The more modern noncondominium builder often goes to the other extreme. He either does not provide adequate space allocations, or he builds flimsy dividing partitions that suffer from one or

all of the inadequacies of partitioning we have discussed above. He seems to be worried as much about later tenants as his current ones.

The condominium developer's approach seems to be quite different in a large number of instances of newly constructed medical professional buildings. To attract purchasers developers usually spend considerable sums obtaining optimum architectural layouts to suit purchasers. More versatility is generally permitted purchasers for a rather obvious reason. *The builder does not have to worry about different space requirements of subsequent tenants,* because he is finished with the venture once it is sold to the doctors.

Doctors dream of the perfect locations someday, just as every professional in the scientific field does who must deal with the public. Selling a doctor a condominium office unit presupposes attention to this factor, to create conveniences that are not available elsewhere and that are tailored to the needs of his profession. The placement of good clinical laboratories and pharmacies in the same building sometimes can be helpful, because of difficulties of some localities in attracting strategically located enterprises of these types that must service the medical profession and its patients. In one nine-story medical condominium in western Florida, the ground floor contained a clinical laboratory, a physical therapy laboratory, and a pharmacy. Interestingly, the company managing the building owned as a unit the entire floor involved, which it leased to a single service company. The sharing of such buildings with unit owners engaging in other scientific professional occupations such as dentist, and optician, provides a built-in, noncost advertising factor because patients of each will note the existence and specialty of the doctors on the premises.

Many conveniences are possible by condominium sharing of common areas. For example, a children's supervised playroom may be provided to service all unit owners' patients. The cost of such facility, including employee salaries, could be made a common expense. The use of such a facility can remove some of the overcrowding of individual unit waiting rooms resulting from groups of children accompanying parents. Commonly owned space could house expensive technical equipment that can be conveniently shared by all or several unit owners, under condominium arrangements we have already discussed in our coverage of condominium regime management techniques. Doctors need not engage in group practice to derive these benefits, if the flexible condominium format is employed.

The condominium form only permits such conveniences. Doctors must examine each offering presented to be assured that real quality

at reasonable cost is actually being offered to them, and that the developer is not providing the same old problems under a new name.

Medical and Dental Condominiums: Independence

Many doctors, irrespective of location, have found it necessary to practice in two- or three-man partnerships. One underlying reason is recognition by medical and dental professionals that they also need vacations, a few restful weekends each month, a full night sleep on a regular basis, and substitutes when illness strikes them. Yet, the partnership mechanism means loss of independence on many levels such as decisions on selection and purchase of equipment, rental of space, regular days off, vacation periods, insurance on the partner's life, and many other matters.

The condominium does not present a panacea for all these problems. Nevertheless, a careful set of bylaws can provide for such matters as emergency substitute services among doctors, cooperative services during vacation periods and other problems that can plague a doctor when he practices alone and wishes to take a vacation or must be absent for other reasons. With the condominium concept, these problems can be solved without the doctor's having to sacrifice his independence on vital matters for the entire year by way of a partnership with others. In addition, practitioners generally are most sensitive about the confidentiality of income information; the latter information can be safeguarded with independent condominium ownership, but certainly not when engaging in a partnership practice. When the doctor is away from his unit, condominium management can provide janitorial and security services and telephone and mail conveniences.

The author has known of medical and dental practitioners in partnership who in later years became quite argumentative when one wished to go into semiretirement and work only two or three days a week. By partnership agreement they each shared specific percentages of total income, creating an immediate problem among the participants. Often it is in the later years of practice that such problems arise, from age, illness, or just plain differences in temperament. The independent condominium unit practitioner could, in similar circumstances, rent his unit for one or more days per week, receiving income thereby, subject to the requirements in condominium bylaws. But the latter should not be an obstacle of proportion if the original regime documentation has been expertly drawn with a view toward future eventualities.

Let us assume, as has happened, that a young member of a general

practice dental partnership wishes to study orthodontia work on his days off, hoping to switch to such specialty. A hide-bound partnership agreement may require the consent of his partners. The dentist who independently owns his condominium unit would ordinarily not be faced with such a formidable obstacle that might endanger his career for many years.

Medical and Dental Condominiums: Location

The following factors would seem fundamental in evaluating the present or contemplated location of a condominium medical building:

1. Accessibility.
2. Nearness to hospitals.
3. Proximity to other services.
4. Distance from medical and dental schools.
5. Parking facilities available.

In many areas of the country, medical professional buildings are best placed away from the heaviest business center of a community, but on a well-located key traffic route. Thus land costs may be reduced without suffering from inconvenience in reaching the area. The building should be constantly visible to the public when shopping, commuting, or just passing by. The potential patient coverage estimates should be made by experts, not imaginative builders.

Hospitals should be easily reached from the condominium building. Many doctors must have access to hospitals for their patients, as well as advanced equipment not otherwise available. Millions of Americans carry some form of hospital cost insurance that insures for procedures that would not be covered if conducted at a professional building center not qualifying as a hospital. Moreover, patients would soon shy away from doctors, especially specialists, if they were not attached to nearby hospitals. Although patients could be taken on long trips to other hospitals, many would not wish to be out of easy visiting range of their families and friends. One of the first professional office condominiums in New Jersey was a twelve-suite building directly across the street from a hospital.

Depending on the type of community involved, doctors may require buildings close to certain supporting specialties. In a cosmopolitan large city one can assume the existence of many pharmacies, clinical laboratories, and dental mechanics. In smaller areas, long trips may be necessary to reach the services that supply doctors as well as patients

with needed materials. Close proximity to such nonmedical professions must be considered as adding additional value to the particular location.

Many doctors, notably more advanced practitioners, find it stimulating or even essential to be connected with training programs in medical or dental schools, either by serving on the faculty or by keeping afresh of new developments by attending regular or special lectures. If a professional medical building can be located within a reasonable distance to major schools, this is certainly an additional factor of substantial worth that enhances the financial value of the condominium and could attract specialists of greater prestige.

A location should be chosen where adequate parking can be provided. There are usually four kinds of parking to be considered when reviewing adequacy in a medical professional building. The same considerations may well exist for many other kinds of office facilities serving the public.

1. Adequate parking for patients means enough locations set apart. Too many professional buildings cater mainly to doctor and staff cars with grossly insufficient space left for patients. Patient parking should be immediately adjacent to the facility, with ramps for wheelchair cases. Preferably the parking area should be on the entrance level, easily entered and marked accordingly so that this information is visible to street traffic.

2. Full-time and part-time supporting staff, nurses, secretaries, clerks, technicians, and so on, should have their own parking area. This probably need not be conveniently located at entrance level or immediately adjacent to the condominium building.

3. Doctors should have space reserved close to the building, at a convenient level, preferably near an entrance permitting prompt arrival and departure. Practitioners may prefer entrances different from that used by the general public, and the location of their parking spaces should be reviewed in that connection.

4. Delivery and other commercial trucking vehicles should be provided with adequate space if possible. Typically they are not, and are left to park any which way that suits the moment, often blocking traffic in the parking lot or taking spaces reserved for professional staff. The adequacy of parking overall depends on the number of staff members and the number of patients they service, and planning that really comprehends the aforementioned group of needs.

In some localities it is important also that the building be located close to public transportation.

Medical and Dental Condominiums: Mixed Bags

Not only can developers offer units for outright condominium unit sale, but also they can offer straight rentals, or rental terms containing options to purchase. Sometimes this is done as a speculation by the builders in future rentals or sales. Sometimes such procedures evidence difficulty in selling.

Prospective purchasers should have their attorneys thoroughly evaluate the condominium documents to determine what will remain of lingering builder controls on operation and management, and whether the right of first refusal or approval is to be applied in a reasonable way as to future purchasers or renters selected by the builder or his assignees. Many of the benefits of condominium ownership might be lost if a large number of occupants are solely in a direct lease arrangement with the developer, even if options to purchase are contained in their leases. If a builder sells units to nonscience occupants, prospective doctor purchasers should be aware that condominium government decisions will in the future have to cope with the business requirements of such occupants as well.

Evaluating Condominium Units for Dentists

Condominium developers should be acquainted with some interesting attitudes and preferences affecting the dentistry profession that may not be obvious to the layman. Dentists are much less apt than M.D.'s to accept space in buildings housing other general practitioners, especially in smaller communities. The dental profession still seems to depend more on close neighborhood clientele than medical practitioners. (One possible reason could be that children often visit the dentist alone for continued treatment and must be within easy walking distance.) A concentration of general practitioners might stir the fear of immediate competition, which is not to the liking of many dentists.

Dentists participating in new professional building complexes tend to be younger on the average than their medical counterparts. It is not often that an older dentist relocates a considerable distance from his previous location, probably demonstrating concern for possible difficulties and handicaps in starting a new practice or one that might begin with only a small nucleus of former patients.

It is generally easier to sell an entire dental practice with a high percentage of patients choosing to remain as patients with the incoming practitioner than would be the case if an M.D. sought to do the same. For this reason established dentists often take advantage of constancy of patient buildup by fully subleasing rented premises to other dental

professionals; in the case of condominiums, the opportunity to sell their unit at a higher price is increased by the extent their practice has thrived. Dentists owning their own offices who build practices to the maximum sometimes have subdivided their space and entered partnership or special agreements giving themselves preferential dentistry income and managerial authority as well as full rental income as the property owner.

In the condominium containing dental units, one may expect later requests to the board to subdivide units or to lease portions thereof to other dentists. Bylaws should contemplate such problems, either by a clear prohibition, if this would be the majority outlook, or by provisions specially tailored to permit dentists to maximize profits by sharing space in a wide variety of ways. Dentists should be wary of purchasing a condominium unit in which later profit opportunities will be curtailed by rigorous bylaws.

Dental surgeons and other specialists do sometimes concentrate in particular buildings or neighborhoods in which the surrounding population and general dental practitioners can support their activities. It would seem best to attempt to obtain dental specialists as well as general practitioners in the same condominium, to provide a full-service building, although this depends on the area and population being served.

Research Center Condominiums

There have already been a few instances in which condominiums have been organized primarily for occupants engaged in professional scientific research. For example, a group of universities in one case pooled together to form a scientific research center in which at least one structure was a condominium office building. It can be expected that different categories of university and business research will, in the near future, be widely organized and administered on a condominium basis.

There are several reasons why the condominium concept may become important in this area of development. Most of these reasons relate to the central and overriding pressures of massive expenditure impositions if any person, college, or business firm wishes singly to attempt to build an adequately equipped scientific research center to meet their own requirements.

Computer technology has become an absolute essential for any modern scientific research program. Access to sharing of computer equipment is almost taken for granted when developing such buildings.

In the years to come the miniaturization of technical equipment will enable scientific and research business personnel to make immediate, complex testing operations on site, if adequately connected to a larger centralized facility based on computer technology. Even medical practitioners may be expected regularly to conduct comprehensive examinations of patients by quick hookups of miniature electronic and chemical equipment that will be tied into a central mechanical artery system that will immediately respond to the data fed by doctor and patient.

Many scientific buildings will require connecting corridors leading to essential facilities that are necessary during operating procedures, with such corridors being common areas utilized by many participants, just as computer areas and connecting terminals and wiring will be commonly used.

Scientific buildings will present additional challenges. Differing specialists will require facilities taking up quite varying volumes of space. Ordinarily accepted space standards for offices cannot be taken for granted as satisfactory for research specialties that have to use equipment of unusual sizes. One of the problems flowing from this fact is the potential effect on resale value and leasing if the condominium unit purchaser wishes to sell or lease an unusually sized unit that has been uniquely structured to his special requisites.

Another distinguishing feature of research buildings is the need for protective covering, vents, and insulating materials so that dangerous or odoriferous research products or by-products do not contaminate areas within or outside the building complex. This latter factor can be an expensive burden at the time of construction and heighten maintenance costs. The condominium developer must determine how much of such material often built into walls should be made part of the unit itself and thus be the responsibility of the unit owner rather than the common regime. There will be situations in which it will be advisable to establish that certain insulated materials and protective vents are a common responsibility of all unit owners to be maintained by the board of managers as common expenses.

In constructing scientific buildings it has already been shown by experience that prospective occupants are interested in such prospects as:

1. Access to scientific libraries within the building complex or close by (with libraries jointly owned and maintained by common expense probably a future development).

2. Access to other scientific facilities, including those at the university level near the condominium building.
3. Adequate janitorial services and sanitation programs keyed to the special needs of participants.
4. The nearness of universities that may offer part-time teaching and other positions to unit owners, as well as providing students for research center employment and training programs.
5. Centralized stenographic and typing services, which may not be needed on a regular, permanent basis but which may be required at special times for the issuance of reports and the maintenance of records.
6. Security for confidential research by sturdy physical division of units and an adequate security force on premises during regular working hours and after hours.
7. On-site warehouse facilities for storage of materials and equipment.

Most of the foregoing matters could be conveniently handled by a condominium regime developed for the purpose of catering to scientific research specialties. Past experience with such developments leads us to conclude that a substantial segment of the funding of the financial burden of construction and mortgage lending will be supported by universities and foundations, and by direct government assistance grants to create such centers. Investments of this type made on a condominium basis may enable a maximum use of premises, with little wasting of space, effective centralized management, and avoidance of duplication in scientific testing procedures, all of which are potentially possible by condominium ownership.

Tremendous opportunities loom for independent companies to reduce expenditures, and yet gain valuable opportunities to accomplish necessary research in a fully equipped environment. Most importantly, the independent structuring and operation of such research can be retained. With the efficient development of such procedures, many smaller- and middle-sized companies will be enabled to compete more effectively with more heavily funded, research-minded competitors.