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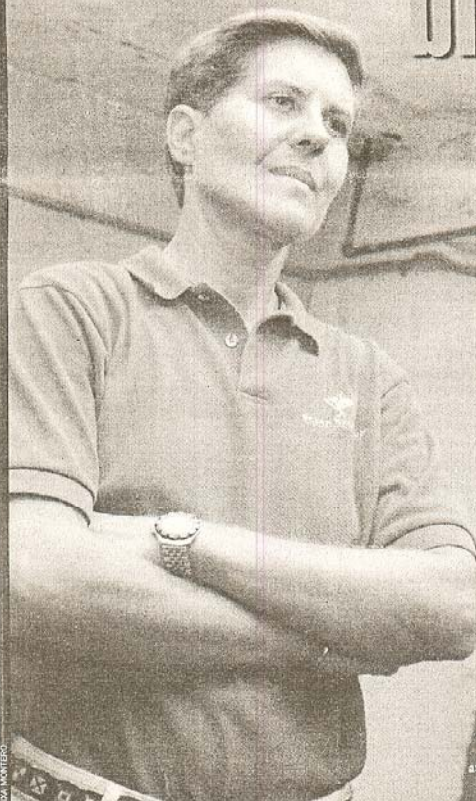
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ALM

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## JUSTICE WATCH

### More DNA tests possible, but deadline nears

Gov. Jeb Bush took a big step toward making sure that another injustice doesn't occur like the one suffered by an innocent Miami man who spent 26 years in prison for a series of rapes he did not commit.



Last week, the governor issued an executive order that requires law enforcement agencies in the state to preserve biological evidence for possible DNA testing in older criminal cases.

Luis Diaz, who was released Aug. 3 after 26 years in prison for the so-called Bird Road rapes, was exonerated by DNA evidence. He was freed two days before Bush issued the order.

But while applauding Bush's order, the Florida Innocence Initiative, legislators and criminal defense attorneys say it has loopholes and doesn't go far enough.

While the order prevents the destruction of biological evidence, it does not extend the Oct. 1 deadline by which applications for DNA tests must be made by inmates.

Bush's order allows for the destruction of evidence after the Oct. 1 deadline, but only after the law enforcement agency holding the evidence gives 90 days' notice to the Florida attorney general, the trial prosecutor, the last defense attorney of record and the defendant.

Jenny Greenberg, executive director of the Florida Innocence Initiative, says the order is a step in the right direction. See Justice Watch, Page A18

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COVER STORY

# Condo conversion blues

State law offers little help for owners associations facing costly repairs

by Paola Iuspa-Abbott

**C** Wallace Hume thought the building looked great when she bought a unit after a condo conversion at the Carlisle Condominium in Surfside.

The freshly painted walls and the new windows gave no hints about the mechanical problems brewing beneath the cosmetic improvements made to the transition the building from rental to condo. But soon after the homeowners association took control from the developer, a new picture unfolded.

"It was like an old broad with a lot of makeup and a lot of problems," Hume said, referring to the 40-year-old building.

When Reinaldo Trujillo paid \$299,500 for his condo at Grandview Palace in North Bay Village, he never imagined the new exterior paint would soon give way to cracks affecting balconies in the 18-year-old tower.

"The builder is not doing any renovation and spending the least money," Trujillo said.

Hume and Trujillo's stories represent the dark side of the sizzling condo conversion market where developers of all types and sizes are gobbling up virtually any apartment building and quickly selling it in pieces as a condo.

In Miami-Dade County, 6,314 apartments were converted last year, up from 1,520 in 2001, according to McCabe Research & Consulting. In Broward, 4,992 were converted, up from 1,241. In Palm Beach County, 5,800 were converted, up from 831.

Converted units are attractive to some buyers because prices are more affordable than new construction and because units often are available for immediate occupancy.

But new condo associations can face hidden structural

problems, discrepancies in developer-established reserve accounts and vague governing documents governing the condominium.

And state law offers little protection for consumers and requires limited accountability of developers.

New owners can negotiate with the developer to make needed repairs, but if informal talks fail, associations may be stuck debating whether to put money into repairs or into a lawsuit.

And heading to court offers no guarantee of either success or satisfaction.

Frequently, converters create limited liability corporations for each project, leaving the corporation with no assets to chase in court, said attorney Andrew C. Demos with Glazer & Associates in Hallandale Beach.

For now, most conflicts are being settled out of court.

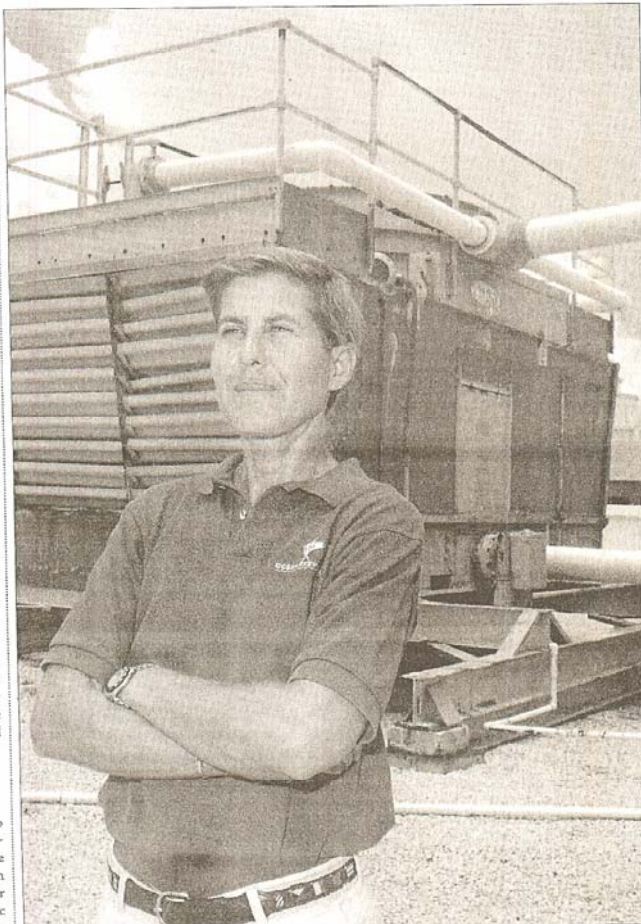
Converters oversee the accounting and property maintenance until buyers close on 90 percent of the units. At that point, developers must transfer those responsibilities to a new, elected board of directors. The turnover process takes about 60 days. That's when new condo boards controlled by residents are likely to stumble into structural and financial problems.

### Expensive surprises

Some developers seeking to maximize profits invest mostly in upgrading the look of the building and stay away from electrical, mechanical or plumbing systems in chronic need of repair.

That leaves some of the costliest repairs for new owners to deal with.

"Conversion is the wave of the future," said state Rep. Julio Robaina, a Miami Republican who advocates stricter regulations. "But we don't have enough laws on our books to protect condo buyers



Carlisle unit owner C. Wallace Hume discovered soon after the owners association took over that the building 'was like an old broad with a lot of makeup and a lot of problems.'

from condo converters."

Some buyers are making their decisions unaware that converters are not required by state law to bring older buildings up to code or fix problems caused by age. Developers are

only required to correct code violations, said attorney Harold L. Lewis, a partner in the Miami law firm Pathman Lewis.

Disputes between developers and buyers are fueled in

part by a gap in laws governing accountability and enforcement when things go wrong, Robaina said. "Condo converters should be made accountable for the safety of the units they sell."

AVANTAGE

## COVER STORY

But Lewis said developers are not required to deliver buildings in impeccable condition. As the head of his firm's real estate department, Lewis helps developers navigate the conversion process.

"Condo conversion is not about the condition of the building," Lewis said. "It is not about making improvements. It is about disclosure."

State law requires converters to hire a licensed architect or engineer and write a condo conversion inspection report to show buyers the age, estimated life expectancy, current replacement cost and the functional soundness of the roof, structure, fireproofing, fire protection systems, elevators, heating and cooling systems, swimming pools, seawalls, pavement, parking areas and drainage systems.

Developers must provide the inspection report together with the condo documents to the state to be able to create a condominium.

The report is more about format than substance, said attorney Gerald Greenspoon, a partner with Greenspoon Marder in Cypress Creek.

"No one else checks the content," he said, noting that typically nobody verifies the accuracy of information provided by the engineer or architect.

Greenspoon has helped converters for several years, and his office's workload has more than tripled in the last couple of years. His firm currently handles about five conversions a month, up from two a month in 2003.

## Costs excluded

Critics contend the information state law requires developers to provide in the inspection report is inadequate.

While it provides expected life expectancy for major building components, it excludes maintenance costs until these systems need replacing.

Even after reading the reports for their buildings, buyers like Hume and Trujillo believe they were misled about the building conditions and now face thousands of dollars in repairs.

"If a developer represents that something has been fixed, it has to be fixed well," Hume said. "Or if they represent the

life expectancy of something is for a certain amount of years, they have to be right."

Hume, president of the Carlisle's board of directors, said her building's converter determined the heating, ventilation and air-conditioning systems were in working condition.

But when she became president in January and went to the roof, she found a 6-foot by 4-foot hole in the stainless steel cooling tower on the HVAC system.

"Water was coming out of the hole like a waterfall," she said.

Replacement estimates came in at \$155,000, said Hume, who paid \$241,000 for her 860-square-foot condo in December 2003.

American InvSCO, which bills itself as the nation's leading condo developer, did the conversion. "Our legal department advised us not to comment," said company spokesman Alex Karras. The Chicago company's Miami attorney, Greenberg Traurig shareholder Candace Duff, did not return several calls seeking comment.

A lawyer by training, Hume said she read the condo documents and the inspection conversion report before buying, but had no way to inspect the roof.

"What do you get from the report? Not very much," said condo attorney Helio De La Torre of Siegfried Rivera Lerner De La Torre & Sobel in Coral Gables. "You can use it as toilet paper."

De La Torre is working with Hume's board to reach an agreement with American InvSCO.

Some building problems develop as a result of the conversion and after engineers write their reports.

When Hume bought her condo, she loved the new high-impact windows. A few months later, she said the window frames began to leak.

Her board is hiring an engineer to inspect each component of the property and write a new survey to help the association get a better picture of the building's condition and prioritize repairs. The survey alone could take up to six months. Hume plans to send a copy to the developer with a request that it pay for repairs.

"They can choose to do nothings," Hume said. "And



U.S. Immigration Judge Lilliana Torre-Bayouth and her son at the Miami Beach condo where she owns two units. The hotel-condo relationship, she says, is 'sucking [owners] dry.'

we may have to file a lawsuit."

## Lawyered up

Some associations commission a turnover engineering surveys to get an independent assessment of buildings. Some use the report to establish reserve funds for long-range replacement or repairs on big-ticket items such as roofs, elevators and pools.

Grandview Palace owners have several problems with their converter.

Trujillo and other neighbors have hired a lawyer in anticipation of suing the developer, but he declined to detail the owners' demands.

First Equitable Realty III began selling the condos in 2003 and has closed 78 percent of the units so far. The developer is still in control of the board.

Charles Edwards, a principal with First Equitable, said he has spent \$9.7 million on building improvements since he acquired the 532-unit tower in 1995. He has repaired balconies, replaced air-conditioning units, installed new elevator motors and more.

"They have no ground for a lawsuit," he said.

Trujillo also owns two units at 17.5-acre Nirvana, a troubled condo conversion on Biscayne Boulevard and Northeast 62nd Street.

Residents are paying maintenance fees for a pool, gym and driveway gate that have yet to be built, said Nirvana unit owner Kevin Morris.

Morris, Trujillo and about 30 other residents hired attorney Andrew Dickman, a Miami Shores solo practitioner, to pressure Nirvana's developer to complete the promised work. The completion date for amenities in common areas has been extended several times, Morris said.

"They don't think they have an obligation to respond fast," Dickman said.

Some investors bought units planning to rent them out for enough money to cover their monthly expenses, but they are charging less because of ongoing work on unit interiors, Morris said.

"Our perception is the developer's attention is in other projects nearby and are neglecting us," he said.

Miami-based Samuel & Co. and New York-based Midtown Equities partnered in 2003 to buy and convert Nirvana. Nearby, the partners

are building the 18-block mixed-use Midtown Miami.

Michael Samuel, one of the principals behind Nirvana, said supply shortages and the permitting process have delayed the conversion. He hopes to finish by October.

Nirvana will have five associations, and Samuel's company is in the process of turning over one building to the first elected board. Sales have been slower at the other buildings, making turnover likely for later this year, Samuel said.

## Implied warranties

When condo converters complete a project, the law requires one of two things: a warranty on the air-conditioning system, plumbing and roof or a reserve account for capital expenditures and deferred maintenance.

If no reserve is created, owners automatically get implied warranties for structures, roofs, fireproofing, fire protection systems and the mechanical, electrical and plumbing systems. Under state law, board members have up to a year after taking control of the association to enforce implied warranties or three years after the developer records the declaration to convert to condominium.

American InvSCO established reserve accounts, but the board is still trying to hold the company accountable for some building problems not covered by the state law, Hume said.

Warranties often make more sense to well-established developers because they send their employees to make repairs at a relatively low cost, said condo converter Jeffrey Lagomacini, vice president of operations at Miami-based Prestige Builders Partners. His company is converting at least 6,000 units in 24 Florida communities, including the 969-unit Las Vistas at Doral and 317-unit Paradise Cove in West Palm Beach.

Prestige has been converting rentals to condos for 14 years, and so far it has not had any dissatisfied associations, Lagomacini said.

"Prestige ... knock on wood ... has been very fortunate to have none of these problems," he said.

Troubled projects may be the result of less experienced

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converters pursuing quick profits, Lagomacini said. Conversions are attractive to investors because they are inexpensive and normally have a quick turnover. Developers with a track record and a reputation to protect will try to keep their customers happy.

"At the end of the day, it is an ethical issue and about doing the right thing," Lagomacini said.

### Read the fine print

It seems some developers don't share Lagomacini views. Tony Diaz, president of the board of directors of the Yacht Club of Aventura, sued American Invsco to get its attention.

The 431-unit rental complex was converted in 1996 and turned over the association in 2001. The new board claimed the developer had underfunded the reserves and demanded the reimbursement of association money. The two sides settled. Diaz declined to give details.

"The first thing an association has to do is to hire an attorney, an engineer and an accountant to do a forensic accounting study," said Diaz, who owns two units at the Yacht Club and has invested in more than 20 condos nationally in the past 15 years. "The accounting study will tell you if they ran the association fairly and equitably as it is required by law."

Buyers need to read the condo documents to protect themselves, he said.

Condo docs include plat and



Hallandale Beach lawyers Eric Glazer, left, and Andrew C. Demos, who notes that converters can create a limited liability corporation for each project, leaving the corporation with no assets to chase in court.

plans, the by-laws of the complex and the condominium declaration. The papers specify responsibilities for repairs and maintenance, outline provisions for occupancy and use, list common expenses and owners' interest in the common elements, and detail each owner's percentage share of the common expenses.

"They can tell you whatever you want to hear to sell but, if it is not in the condo docs, you can't enforce it," Diaz said. "If they say they will refurbish the pool, make sure it is in the condo docs."

### 'Big-time abuse'

But understanding condo

docs is no simple task, said U.S. Immigration Judge Lilliana Torre-Bayouth, who owns two units at Miami Beach's Casablanca Condominium.

"Most people don't read the condo docs," she said. "They are like a phone book and hard to read. I am a judge and still could not understand the condo docs."

The 180-unit building operated as a hotel from 1948 to the early 1990s. Miami-based Crescent Heights converted the rooms to condos and sold most of the common areas to a hotel operator.

More than a third of the owners have signed agreements allowing their units to be rented as hotel rooms. Torre-Bayouth bought her units in 2003 because her 7-year-old son loves the beach; she is not part of the rental program.

As president of the Casablanca condominium association, Torre-Bayouth said she is fighting an uphill battle to prevent the hotel operator, Casablanca Rental Services in Hollywood, from using association money to subsidize the hotel.

"The hotel is sucking us dry," she said. "We pay \$30,000 a year in gas for the operation of a restaurant owned by the hotel and that none of us uses."

The Casablanca board inherited the problem from Crescent Heights, which

drafted the condo docs.

A different entity owns the Casablanca's laundry, but the association pays for the water and the electricity without sharing in the revenues, Torre-Bayouth said. The garage, lobby, elevators and other public areas are owned by the hotel but maintained by the association.

"The association hired a valet parking company," she said. "The hotel gets to charge its customers for the service and keeps the revenues. We get nothing. This is a big-time abuse."

Torre-Bayouth bought Casablanca a few months after the association settled a lawsuit with Crescent Heights in 2002. The board claimed the converter had done a poor job building beach cabanas, which were shut down by the city.

"We settled for less than it cost to fix them because it was going to be a costly battle," she said.

As more conversions take place, more problems will emerge unless condo laws become more restrictive and enforceable, said state lawmaker Robaina.

"Conversions are happening at a fast pace, and we are not doing enough to keep up with it," he said. ♦

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Greenspoon



De La Torre

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