

How New SEC Focus Will Affect South Florida Real Estate Private Equity

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South Florida real estate private equity funds: take note of a recent speech by Marc Wyatt, **SEC** Director of Compliance, following up on previous concerns expressed regarding fees and expenses for private equity funds. In his speech, the Director disclosed the SEC was expanding its focus beyond traditional buyout private equity funds into real estate and other nontraditional private equity funds.

As part of this increased scrutiny on real estate private equity funds, the SEC will focus on fees paid (in addition to the investment management fee) by real estate funds to the fund's manager and its affiliates for property management, construction or development management and leasing services.

In addition, Wyatt discussed the practice of real estate fund managers charging back the costs of asset/property managers and in-house attorneys to real estate funds. Understandably, real estate fund managers feel they should be reimbursed for providing these services, because the real estate fund would otherwise be required to engage and pay third parties to perform these services.

The Director stressed real estate funds need to disclose these fees in advance, so each investor is aware of them when making investments into the real estate fund. In addition, because most managers state the fees charged by the manager and its affiliates will be at or below market rates, the manager needs to gather, maintain and periodically test the market to ensure this continues to be correct.

Wyatt also discussed how the SEC is reviewing private equity fund allocation and disclosure of co-investment opportunities. Funds need to make full disclosure of their co-investment policies to investors. Co-investments do not need to be offered equally to all investors, and certain investors may be given a preference with co-investments. However, the SEC stated that the order of priority and any preference must be disclosed to all investors. If certain investors are going to be given priority with respect to co-investments, then the funds need to disclose this preference to its investors.

With private equity funds filling gaps in the Miami real estate cycle by increasingly putting capital into projects, South Florida real estate funds will need to pay close attention to this shift in policy to avoid SEC sanctions interfering with their growth.

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