



Distressed Condo Relief Act a Sales Stimulus

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Today's column continues our review of SB 1196, which became effective July 1, 2010. Today's article focuses on the "Distressed Condominium Relief Act", which is a new law intended to stimulate the acquisition and sell-out of the many distressed condominium projects which exist because of the recent melt-down in Florida's real estate economy.

The Distressed Condominium Relief Act was actually adopted by the Legislature in 2009, but the Bill in which the Act was contained was vetoed by Governor Charlie Crist, for unrelated reasons (the Governor vetoed the 2009 statute because of his stated concerns regarding provisions of the Bill that dealt with opting out of fire sprinkler retrofitting in certain high-rise condominium buildings). The Distressed Condominium Relief Act was carried over to the 2010 statute, and is now law.

The statute contains some remarkably blunt and far-reaching legislative findings. For example, the new law specifically states that the "Legislature acknowledges the massive downturn in the condominium market which has occurred throughout the State and the impact of such downturn on developers, lenders, unit owners, and condominium associations." The statute goes on to say that numerous condominium projects "have failed or are in the process of failing" and due to

the inability to find purchasers of inventory units in distressed projects, developers are defaulting to lenders, and lenders "are faced with the task of finding a solution to the problem in order to receive payment for their investments."

The legislative findings go on to state that investors exist who are willing to buy the remaining inventory units in these projects, and then sell them to end purchasers, but such investors "are reticent to do so because of accompanying liabilities inherited from the original developer". According to the legislative findings, these uncertainties result in "unquantifiable risks that the potential purchaser is unwilling to accept." As a result, or so the Florida Legislature says, condominium projects stagnate, "leaving all parties involved at an impasse and without the ability to find a solution."

The new law distinguishes between two types of bulk purchasers. The first is a "bulk assignee", which is a person who acquires more than seven condominium units and who receives a written, recorded assignment of the previous developer's rights. Under the new law, a bulk assignee assumes and is liable for all duties and responsibilities of the developer, except most warranties for pre-existing construction, certain pre-turnover auditing requirements, liabilities arising from actions of the board appointed by the

previous developer, and the previous developer's failure to fund assessments or fund deficits. These are very significant exceptions.

However, a bulk assignee who receives an assignment of the rights of the developer to guarantee assessments (and who is therefore excused from having to pay assessments) is liable for obligations of the previous developer with respect to the budget guarantee. A bulk assignee who does not receive an assignment of guarantee rights is not liable for the previous developer's guarantee funding failures, but does become liable to pay assessments on its units in the same manner as all other unit owners.

A "bulk buyer" (as opposed to a "bulk assignee") is defined as a person who acquires more than seven condominium units but who does not receive an assignment of developer rights. However, a "bulk buyer" can still be exempt from capital contribution obligations, exempt from an association's right of first refusal, and can be granted certain marketing rights, without losing "bulk buyer" status. "Bulk buyers" appear to have substantially less liability under the new law than "bulk assignees."

In general, a bulk buyer is liable for the duties and responsibilities of the previous developer only to the extent specifically provided in the new law, which is generally limited to filing updated offering documents with the Division of Florida Condominiums, Timeshares, and Mobile Homes, updating financial information (with a provision for excusal when the financial records cannot be readily reconstructed), and updating certain other records of the association.

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Although the law is not entirely clear on the point, it appears that when units are transferred to a "bulk assignee", such transfers do not count in triggering transition of control of the association to unit owners other than the developer (commonly called "turnover"). However, it appears that if units are transferred to a "bulk buyer", those units are considered in the calculation of the triggering event for calling the turnover meeting.

Clearly, the new law is intended to impose substantially less liability than existed under previous law on purchasers of blocks of units who have historically been referred to as "successor developers." This is especially true in the areas of construction warranties and pre-turnover financial obligations.

Proponents of the new law will argue that the Act is a necessary evil to stimulate absorption of the substantial backlog of inventory units that still exist in many projects. Detractors will argue that those who already have been harmed the most by the crash of the real estate market (existing unit owners who are meeting their obligations to the association, but have seen their property values plummet) will now be left holding a heavier bag. Time will tell. The law "sunset" (ceases to be law) on July 1, 2012, although I suspect we may see efforts to extend its life if current economic conditions continue.

Next week, we will shift gears and review some of the provisions in SB 1196 that apply exclusively to homeowners' associations.