



June 8, 2010

GOVERNOR SIGNS LEGISLATION WHICH INCLUDES "DISTRESSED CONDOMINIUM RELIEF ACT"

On June 1, 2010, Governor Crist signed CS/CS/CS/SB's 1196 & 1222 (the "Bill"). This Bill, which also makes numerous changes to the Florida Statutes governing Condominiums, Cooperatives and Homeowner Associations, is effective on July 1, 2010.

At 103 pages, the Bill addresses many issues which will be of interest to owners, developers, lenders and associations. A complete analysis is beyond the focus of this article and other portions of the Bill will be addressed in future memoranda. The topic of this article, The Distressed Condominium Relief Act (the "Act"), is an important part of the Bill.

The Act is set forth in new section VII. (Sections 718.701 - 708) of the Condominium Statute and is set out in Laws of Florida Chapter 2010-174.

The Act is a result of a legislative finding that, due to the uncertainty in the prior statutes, regulations and case law, potential purchasers of distressed condominium units have been reluctant to accept the risk of the bulk purchase of condominiums, due to potential liability related to the original developer, primarily the risk of being liable for the statutory warranties of fitness and merchantability of the condominium property.

Definitions

The Act creates two new classifications: A "bulk assignee" acquires more than seven (7) units in a condominium, and also receives an assignment of some or substantially all of the rights of the developer, which can be set forth as an exhibit to the deed from the original developer, or as a separate instrument. The assignment is to be recorded in the public records of the county where the property is located.

A "bulk buyer" is also a party who acquires more than seven (7) units, but does not receive an assignment of developer rights other than the right to:

1. Conduct sales, leasing and marketing activities within the condominium.
2. Be exempt from making working capital contributions as a result of the bulk purchase, and
3. Be exempt from any rights or first refusal held by the association and otherwise applicable to subsequent transfers of title from the bulk owner.

Bulk assignee liability obligations: assumed and not assumed.

Section 718.704 provides a bulk assignee assumes all duties and responsibilities of the original developer except:

1. Statutory developer warranties.
2. The obligation to fund converter reserves for units not acquired by the assignee.
3. Obligation to provide converter warranties.
4. Providing the association with a cumulative audit of association's finances from the date of

formation, and

5. The developer's failure to fund previous assessments or resolve budget deficits (however, the assignee must provide new audit for the period when the assignee elects the majority of the board except when the assignee receives an assignment rights of the developer to guarantee assessment levels and fund budget deficits).

Note, if it chooses, the bulk assignee can assume some or all of the above.

Bulk buyer liability and obligations.

The bulk buyer is only liable under the declaration of condominium and the Florida Condominium statutes to the extent provided in the Act or which are expressly assumed.

Documents and materials to be delivered by bulk assignee.

The bulk assignee is obligated to deliver documents and materials required by the statute for non-developer disclosures before offering for sale or for a lease (to be subject to the Act, a lease must exceed 5 years).

Guaranty of assessments and budget deficits.

Unless it agrees to do so in the assignment from the developer, the bulk assignee is not obligated to guarantee the level of assessments and to fund budgetary deficits. A bulk buyer, by definition, would not have any obligations for such amounts. However, both are responsible for the ongoing payments of assessments similar to the other unit owners (except as to bulk assignees who have agreed to fulfill the requirements of funding the associations's deficit).

Filing requirements by bulk assignee and bulk buyer prior to offering the sale or lease of units.

The Act also requires that the bulk assignee or bulk buyer must file the following documents with the Division of Florida Condominiums, Timeshares and Mobile Homes (the "Division"), and provide documents to the prospective purchasers and tenants, as follows:

1. Updated prospectus, offering circular or supplement which must include a form of the contract for sale of purchase or lease.
2. Updated Frequently Asked Questions and Answer Sheet.
3. Executed escrow agreement, if required.
4. Financial information required under Section 718.111(13) (Association's financial report for the preceding fiscal year end) unless the report does not exist for the fiscal year and has not been able to be obtained despite good faith effort.

Additional filing requirements of bulk assignee.

Prior to the sale or lease of units, the bulk assignee must provide, and file with the Division, a Disclosure Statement that includes, but is not limited to, the following:

1. Description of any rights of the developer assigned to the bulk assignee or bulk buyer.
2. A statement relating to the seller's limited liability for warranties of the developer, and
3. If the condominium is subject to conversion, a statement related to the seller's limited obligation to fund converters reserve and provide converter warranties.

The format and content of these disclosures are specified.

Other requirements and obligations.

1. The Act prohibits waivers of reserves or reduction of reserve funding and the use of

reserve expenditures for any other purposes unless approved by a majority of the voting interest not under control of the developer, the bulk assignee or the bulk buyer.

2. The bulk assignee in control of the association must comply with the requirements imposed on developers to transfer control of the association as required under Section 718.301.

3. The bulk assignee or bulk buyer must comply with the requirements of Section 718.301 regarding contracts entered into by the association during the period the assignee or buyer maintains control over the association. In addition, unit owners must be afforded all protections contained in Section 718.302 regarding certain agreements.

4. The bulk buyer must comply with the requirements of the declaration regarding the transfer of any unit by sale, lease or sublease. No exemption afforded to the developer regarding the sale, lease or sublease or transfer the unit or afforded to a bulk buyer.

Remaining obligations.

1. The bill also creates Section 718.708, to provide that an assignment of developer rights does not release the original developer of any liabilities under the declaration or Chapter 718 and is not limited for claims brought by unit owners, bulk assignees or bulk buyers for violation of Chapter 718 unless specifically included.

2. The Act provides that nothing in it waives releases, compromises or limits liability established under Chapter 718, except as provided for the Act.

Finally, the Act will only apply to units acquired by July 1, 2012.

While the Bill is welcome assistance to the real estate industry, it has been two years in development. Therefore, it remains to be seen whether it will result in a significant increase in condominium sales. Surprisingly, a large number of units have already been sold over the last year, primarily as a result of the extraordinary price reductions seen in the market. Many, if not most of the 'bulk' sales prior to the Act have been purchased for cash, by foreign buyers. While the Act has certain provisions that may need revision, it should provide comfort for purchasers who have been reluctant to act. If so, associations which have not been able to pay the necessary costs to operate and maintain their properties may see increased assessment collections. Also, lenders will be better able to move their troubled assets off their books. If such occurs, then the Act will have served its purpose.

For more information on this topic or others, contact the GrayRobinson [Real Estate](#) law team or:

[Terence "Terry" J. Delahunty, Jr.](#)

301 East Pine Street, Suite 1400

Orlando, FL 32801

Phone: 407-244-5669

terry.delahunty@gray-robinson.com

[Paul S. Quinn, Jr.](#)

301 East Pine Street, Suite 1400

Orlando, FL 32801

Phone: 407-843-8880

paul.quinn@gray-robinson.com