

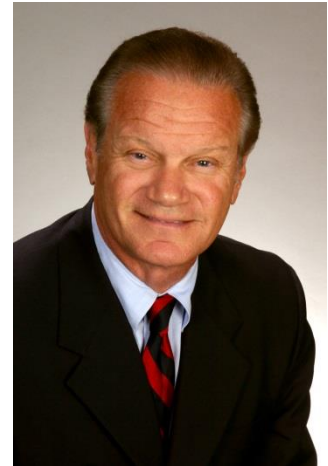


A Condo Termination Bill That Could Satisfy Public Outcry

Law360, New York (February 03, 2015, 11:10 AM ET) --The Florida Legislature will consider a new bill in March or April that amends Section 718.117 of the Condominium Act. Specifically, this amendment deals with the termination of condominiums.

Before delving into the new bill, one must understand its origins. Indeed, in order to understand where we are going, we need to understand the past. Only then can we appreciate the future.

There has been much debate recently regarding the termination of condominiums and its effect on the everyday lives of many Floridians. Termination of a condominium is sometimes the most feasible alternative, especially when dealing with older condominiums needing significant repairs to meet city codes and regulations. In some instances, the repairs are too expensive, costing more than the value of the units. What can be done to address this problem? How can the law meet the needs of unit owners and, at the same time, encourage potential buyers who wish to come to the aid of dying condominiums?



Understanding the Past

Before 2007, Florida's Condominium Act provided that unless the declaration of condominium held otherwise, a 100 percent vote of unit owners in a condominium was required to terminate the condominium. Many older declarations did not provide otherwise and, accordingly, a 100 percent vote of the owners was needed to terminate those condominiums.

When was the last time a group of individuals agreed to do something with a 100 percent vote? We are not dealing with one, two, 10, or even 20 individuals. Condominiums often have 100 or more owners. Recognizing this issue of improbability of total agreement, and in order to help condominiums when, for example, a building becomes obsolete, the Florida Legislature in 2007 amended the applicable section of the Condominium Act.

In addition, and as noted by the Legislature, certain owners were "extracting an excessive portion of the termination proceeds at the expense of the other unit owners." [1] A few unit owners (and even one) were capable of halting the termination process. The law before 2007 allowed one or more unit owners to withhold approval until they received more money; in essence, permitting owners to hold the entire condominium for ransom. The Legislature took steps to resolve this problem. To strike balance, the 2007 change in the law provided that a vote of 80 percent of the unit owners could terminate the condominium unless more than 10 percent objected.

In 2008, the real estate economy in Florida began a terrible recession. In the year before the recession hit, many condominiums were created but only a small percentage of the units in some
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of those condominiums sold. Once the recession hit, everyone was affected.

The Legislature acknowledged “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.”[2] Further, “numerous condominium projects have failed or are in the process of failing such that the condominium has a small percentage of thirdparty unit owners as compared to the unsold inventory of units.”[3] Indeed, the inventory of many condominium units, prior to 2008, remained unsold during the recession. No one was willing to rescue these condominiums, “which results in part from the devaluing of real estate in this state.”[4] Developers were unable to satisfy the lender requirements, resulting in defaults on their mortgages.

These developers went bankrupt. Neither the lenders nor potential buyers wanted to touch the property. The potential buyers feared being classified as a “developer” under Florida Statute § 718. This statute provides for warranties to each purchaser of a unit, and makes the developer responsible for funding reserves, association accounts, etc. As a result, the unsold condominium units were just sitting with their allocated assessments being unpaid. The owners of the sold units could not afford to pay for the insurance on the condominium buildings nor all of the other expenses necessary to maintain the buildings. The condominiums needed help. Alas, the times were ripe for the birth of the Distress Condominium Relief Act in 2010.

Understanding the Present

The Distressed Condominium Relief Act protected bulk purchasers of condominium units from being considered the “developer” of the condominium. The goal was to increase condominium unit sales and to decrease the number of idle, unoccupied, nonpaying condominium units. However, this fix was meant to be temporary, only to get condominiums through the recession. Indeed, a bulk buyer may only qualify as such if the closing of the purchase of the condominium parcels occur between July 1, 2010, and June 30, 2016.[5]

Specifically, this act provided that “[a] bulk buyer is liable for the duties and responsibilities of a developer under the declaration and this chapter only to the extent that such duties or responsibilities are expressly assumed in writing by the bulk buyer.”[6] A “bulk buyer” is someone who “acquires more than seven condominium parcels in a single condominium,” but does not receive any developer rights or only certain rights.[7] It is worth noting that “[a]n assignment of developer rights to a bulk assignee or bulk buyer does not release the original developer from liabilities under the declaration or this chapter.”[8]

As a result of the Distressed Condominium Relief Act, these bulk purchasers acquired 80 percent or more of the units in many condominiums and saved the other unit owners from a complete collapse of the condominium. These bulk purchasers later realized that there was greater value in terminating the condominium and converting the buildings into pure rental projects and, therefore, the bulk owners used the 2007 changes in the Condominium Law to their advantage.

This is when many problems arose. Indeed, there were new concerns as a result of many condominiums being terminated. Some owners were losing their homestead. Not only were they losing their homes, but owners were only getting paid the current fair market value, which often was a fraction of the units' purchase price (for those who purchased at the height of the market). Many owners joined together and attempted to meet the 10 percent threshold to stop a termination, but were unsuccessful. As a result, many owners complained to their representatives in the Legislature.

Appreciating the Future

Where are we going? The new proposed bill, which in these authors' opinion would equitably deal with the situation, will be presented to the Legislature in March or April. Amongst other changes, the bill declares that, if a bulk purchaser owns at least 80 percent of the voting interest and no sale of the condominium property as a whole to an unrelated third party is contemplated, then two conditions must be met for termination of the condominium.

First, if the units are offered for lease to the public, the unit owners who lose title to their units may lease his/her own unit for 12 months, under the same conditions offered to the public. Second, if the unit qualifies as homestead, the unit owner will be paid a relocation payment in an amount equal to 1 percent of the termination proceeds allocated to the owner's former unit. This of course is in addition to the allocation of sales proceeds, determined by an appraisal based on the fair market value of all units and the value of the common elements.

Additionally, all unit owners who lose title to their units must be compensated at least 100 percent of the fair market value of their units. Importantly, the purchase price of units acquired in bulk following foreclosure or bankruptcy of the developer will not be considered in determining fair market value. Finally, if the court determines that the termination plan was not properly approved, it may void the plan or grant other relief deemed just and proper.

Condominium living is not for everyone. It is a unique style of living with greater degree of restrictions when compared to single-family homes. This style of living, as with everything, has its pros and cons. Those who chose to venture into condominium living should understand all aspects of what they are purchasing.

The proposed legislative changes are fair and equitable to all parties involved. We cannot go backwards and require 100 percent vote to terminate a condominium, as some advocate. This would halt forward progress and plunge us into the past where there was a disincentive to rescue distressed condominiums. Instead, this new amendment will better protect the interest of the unit owners, while still making purchases of distressed condominium units attractive to bulk buyers when Florida experiences its next real estate recession.

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[1] Florida Staff Analysis, S.B. 314, 3/29/2007.

[2] Fla. Stat. § 718.702.

[3] Id.

[4] Id.

[5] Fla. Stat. § 718.707.

[6] Fla. Stat. § 718.704.

[7] Fla. Stat. § 718.703

[8] Fla. Stat. § 718.708.

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