
Governor Crist Enacts SB 1196: Distressed Condominium Relief Act

The meltdown in the Florida economy has affected all segments of the Florida real estate market—developers, lenders, associations, and owners—but particularly condominium developments. As a result, the condominium market has fallen through the floor. The Florida Legislature and Governor Crist recognized these problems and took steps to help the Florida real estate and condominium industry to recover. Senate Bill 1196 (the "Legislation") was signed into law by the Governor on June 1, 2010, and will take effect on July 1, 2010.

The Legislation creates the Distressed Condominium Relief Act and provides associations with the ability to collect monies from tenants where the owner is not paying assessments and to collect a larger portion of past due assessments in foreclosure situations. The Legislation also contains a variety of other changes for condominiums, cooperatives, and homeowners associations. A summary of the Legislation's highlights is below.

I. Distressed Condominium Relief Act. The Legislation, based upon the determination that successor purchasers of bulk units (including foreclosing mortgagees) should be granted relief from certain provisions of the Florida Condominium Act, creates the Distressed Condominium Relief Act for the purpose of creating economic opportunities for successor purchasers that would benefit existing unit owners and condominium associations. The Legislation creates two new classifications of bulk purchasers: (1) a "bulk assignee," and (2) a "bulk buyer," both of which are specifically excluded from being defined as "developer." A bulk assignee (a) acquires more than 7 condominium parcels, and (b) receives an assignment of some or all of the rights of the developer. A "bulk buyer" acquires more than 7 condominium parcels but does *not* receive an assignment of developer rights other than (i) the right to conduct sales, leasing, and marketing activities; (ii) the right to be exempt from the payment of working capital contributions to the condominium association; and (iii) the right to be exempt from any rights of first refusal that may be held by the condominium association.

Generally, liability following a bulk purchase will be as follows: the original developer's liability is essentially unchanged; a bulk assignee assumes all liability of an original developer, unless excluded by statute (exclusions pertain to warranties, the turnover audit, liability for developer actions while in control of the board, and requirements to fund deficits; note also that a bulk assignee will have warranty liability if it undertakes design, construction, development or repair work, and there are other responsibilities for the period where the bulk assignee controls the condominium association) or otherwise specifically assumed; and a bulk buyer has no liability unless expressly assumed or provided by statute.

There are important differences between a bulk assignee and a bulk buyer and their respective implications. Applicability and suitability for a specific purchaser of condominium units in bulk must be determined on a case-by-case basis under the particular facts of the involved project. It is also important to note that to qualify as a bulk assignee or bulk buyer, a purchaser must acquire title on or

after July 1, 2010, but before July 1, 2012. The sunset provision is limited, however, to qualification as a bulk assignee or bulk buyer; the remainder of the Distressed Condominium Relief Act provisions will remain in effect after the July 1, 2012 sunset date.

II. Association Collection of Rent from Tenants. The Legislation establishes a process by which the association (be it for a condominium, cooperative, or homeowners association) may seek payment from the tenant of an owner in the event that the owner is delinquent in paying any monetary obligation to the association. If the association follows the required procedures, the tenant must begin paying rent to the association in the amount up to the monetary obligations due from the unit owner. A tenant's obligation to the association may not exceed the amount due from the tenant to the tenant's landlord. A tenant is not liable for any increase in monetary obligations of the property unless the tenant received written notice of the increase at least 10 days before the rent was due. A tenant will get credit for prepaid rent, and the landlord must give the tenant a credit for amounts paid to the association. The association does not become a landlord under Chapter 83 by collecting rent from the tenant, but the association may issue notices and take action to evict as though a landlord.

III. Increased Liability for Condominium Unit Assessments in Foreclosures. The amount of liability for certain first mortgagees or their successors or assigns may be determined by the amount of unpaid assessments during a particular period. The length of that period has been extended from 6 months to 12 months (which is now consistent with the provisions pertaining to homeowners associations). This will enable associations to recover funds that are needed for association operations and will improve cash flow. The period during which a claim of lien secures unpaid assessments now runs through the entry of a final judgment, rather than a certificate of title.

The Legislation also contains a variety of other changes that provide enhanced protections and disclosures to owners and the operation of condominiums, cooperatives, and homeowners associations. Changes include modifications involving fire safety and alternative power for elevators; fire sprinkler retrofitting; termination of condominium regimes; insurance in condominiums; condominium association official records, financial reporting and elections; condominium unit deposits prior to completion of construction; transfer of control of the condominium association; lien rights of cooperative associations; homeowners association's reserve accounts, meetings, elections and enforcement rights for nonpayment of assessments; conversion of certain fines into liens; restrictions on the ability to have special assessments prior to turnover of control of a homeowners association; and a homeowners association's ability to purchase recreational leaseholds.

For a through review of all aspects of the Legislation, **please review our [comprehensive memorandum](#)**.

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