

RESIDENTIAL AND COMMERCIAL REAL ESTATE BOARD OF CONTRIBUTORS

BILL WOULD PROTECT CONDO OWNERS AGAINST BULK-BUYING ABUSE

by Jason Kellogg

jk@lklsg.com

Lawmakers were primed to finally address one of the more highly publicized consumer crises facing Floridians during the Great Recession.

For years, condominium owners and consumer advocates have loudly criticized a law that allows bulk buyers with a large stake in a condo to terminate the condo and, in certain relatively common scenarios, force the building's other owners to sell their units for less than what they paid.

A bill passed by the Legislature and sent to Gov. Rick Scott could provide many of those owners with significant protection against that nightmarish scenario, which has played out repeatedly across the state over the past seven years. Perhaps as important, the bill accomplishes its goal in a way that should not scare off bulk-buying investors, who have become an



important part of the state's condo market recovery.

Under the current law, Fla. Stat. §718.117(3), a condo may be terminated if more than 80 percent of a building's voting interests agree to terminate and less than 10 percent dissent. That formula was enacted in 2007 in response to inefficiencies in the previous law, which required the assent of every single unit owner and made termination nearly impossible.

But new issues arose when the recession hit in 2008. Condos purchased during the bubble of the mid-2000s experienced large drops in value, causing a high percentage of condos to be worth less than their mortgages. Many of those units were abandoned to foreclosure, creating opportunities for bulk-buying investors to buy into a condo, take control, terminate the condo and either sell the building or convert it to rental apartments.

These investments proved crucial to preventing a total collapse of the condo market. But the process of terminating the condo causes what most see as a fundamental inequity. Unit owners whose mortgages are underwater but who honorably continue to pay their mortgages must sell their units at a loss. In many instances, the results are financially devastating and result in scores of bankruptcies.

FAIR MARKET VALUE

The bill, House Bill 643, aims to fix that inequity. The law would apply to condos in which a bulk buyer owns 80 percent or more of the building's voting interests. On termination of the condo, all other unit owners who are current on their mortgage payments and association fees would receive fair market value for their unit. Most important, they would receive a satisfaction of their first mortgage even if the mortgage balance exceeds the fair market value of their unit.

The proposal is even more forgiving to those unit owners who purchased their unit from the original developer, pay their mortgage on time and maintain the unit as a homestead. Those unit owners would receive their original purchase price if it exceeds

the current fair market value.

These provisions reflect some fairly substantial compromises. Early drafts of the bill proposed the payment of original purchase prices (and in some scenarios 110 percent of original purchase prices) to all underwater unit owners. That proposal would have significantly chilled the activities of bulk-buying investors.

The bill that came out of the Legislature, by contrast, gives consumers what they want most—protection from financial ruin—without requiring bulk buyers to foot the entire bill. Much of that burden remains with lenders, whose mortgages will be satisfied with less than full payment.

CONCESSION TO LENDERS

But the bill does give lenders at least one important concession. Unit owners who fail to pay their mortgages or association fees will not receive a satisfaction of mortgage, allowing lenders to pursue deficiencies against that group, which remains a not insignificant portion of all condo owners.

The bill also contains other important provisions. It gives unit owners the ability to rent back their unit from the bulk buyer for a period of 12 months after termination. And it provides

a 1 percent relocation fee to homesteaded unit owners who choose to move out of the building.

Although the bill has been widely applauded, the acclaim has not been universal. Some have criticized a provision that subjects disputes arising out of the termination to nonbinding arbitration. Others have noted that the bill's consumer protections only apply to scenarios where the bulk buyer owns more than 80 percent of the voting interests.

Those critics suggest that bulk buyers may game the system by avoiding the 80 percent threshold and joining forces (or buying the support of) unrelated unit owners who are receptive to a termination. That criticism requires a cynical view. Then again, this is Florida, where the outlandish is routine.

For the most part, HB 643 hits the mark. By protecting consumers without too harshly impacting bulk-buying investors, it may very well keep the condo market moving in a positive direction

Jason Kellogg is a partner at Levine Kellogg Lehman Schneider + Grossman in Miami, where he practices complex commercial litigation. He can be reached at jk@lklsg.com.