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Fla. Bill To Help Condo Owners Could Make Buyers Wary

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Law360, Miami (March 30, 2015, 7:17 PM ET) -- Florida lawmakers are mulling legislation that would force bulk buyers of condominium complexes to pay a premium to holdout owners who don't want to dissolve the association, and experts say the bills could have bulk buyers thinking twice about investing in distressed projects.

Both houses of the Florida Legislature are considering amending the condominium association termination statute to force bulk buyers that want to dissolve an association and turn it into rentals to pay holdout owners the greater of 110 percent of the purchase price or 110 percent of fair market value.

The proposed legislation, S.B. 1172 and H.B. 643, also would allow unit owners to stay in their units for some time and calls for a relocation payment of 1 percent of the termination proceeds allocated to the unit.

The measures are a response to several well-publicized instances where bulk buyers terminated associations and unit owners who had bought at the height of the real estate boom were forced to sell their properties for less than they had paid.

But the 110 percent provision could create a windfall for holdouts and discourage bulk buyers from taking on distressed projects, according to William Sklar of [Carlton Fields Jorden Burt LLP](#).

"Should someone be able to benefit to be a holdout and stop the process? If one says yes, then you won't have any terminations," Sklar said.

Having to pay dissenters significantly more than bulk buyers would otherwise have to pay could make them think twice about investing in particular projects, according to Jason Kellogg of Levine Kellogg Lehman Schneider & Grossman LLP.

"That's going to change the outlook of their investment," Kellogg said. "There has been backlash in past efforts to get this law done, and I expect there will be now."

But he pointed out that the situation will occur only in a scenario where 80 percent of the owners are voting yes and the naysayers amount to less than 10 percent.

“There just aren’t that many people who can jump on the dissenter side,” he said. “It may cause the developers to pay off a significant number of those people or negotiate a better deal for everybody.”

Still, Kellogg said he has seen or heard of at least eight instances in which this problem has occurred.

“Even if it isn’t endemic, there’s something about any homeowner being forced to sell their home at a loss that seems so unfair,” Kellogg said. “It always gets a lot of play in the media, and rightly so.”

At a subcommittee meeting in the Florida House of Representatives on March 11, social worker Liana Dean told legislators that she had been fighting termination of her condominium association in Palm Harbor, Florida, for four years. A bulk buyer has been rewriting the condominium documents and could force her out, which would leave her in financial ruin, she said.

“Termination is going to force me into a short sale for my homesteaded property,” Dean said. “My credit, which is currently rated as excellent, is going to be destroyed. In addition to this, I will lose all of the equity in my home, all of the savings that I put into it, and the \$7,000 that I’ve invested in improving it. This is going to leave me financially devastated.”

The condominium association termination statute was substantially amended in 2007 after the busy hurricane seasons of 2004 and 2005 left many of the state’s condominium developments in dire straits.

The state Legislature removed the provision requiring 100 percent approval for the termination of a condominium association and instead adopted the “80-10 rule,” which states that an association can be terminated if 80 percent of owners approve of it and no more than 10 percent of owners vote against it. The legislators also added a partial termination provision that has been employed in distressed condominium projects.

The 80-10 provision has helped developers and other bulk buyers pull condominium projects out of financial ruin, according to Sklar. He used the example of a planned 200-unit building that was only half

sold when the real estate market tanked. A partial termination was used to break up the land and stabilize the projects, which allowed prospective buyers to get financing for units.

Kellogg noted that the statute is frequently used by bulk buyers in older buildings that are most in need of capital improvements and where bulk buyers can enter more cheaply. The bulk buyer purchases enough units to be able to request dissolution of the association, and after the association has been terminated, the building can be converted to rentals. Once the market is more favorable for selling the units rather than renting them, the building can again revert to a condominium.

“If you had the expertise to go in there and fix it up and do the kind of fixes that will allow you to sell the units for higher than you put in, that's the target,” Kellogg said. “A lot of times, these projects are sitting on the beach and in nice locations.”

Yeline Goin of [Becker & Poliakoff PA](#) said that bulk buyers do not always buy up units in a project with the intent of dissolving the association. They often purchase units in dying or troubled associations, rehabilitate them and sell them for a profit without ever converting the building to rentals, according to Goin.

Sklar said that with almost 40 percent of Florida's population living in properties with community associations — whether homeowners association or condominium associations — conflicts over how to regulate these organizations will only increase.

“Condos are highly regulated in Florida, which is a good thing, but we may be overregulated in certain areas,” he said. “They're here to stay, but the concept of a bulk buyer or terminating a condominium is not always a bad or terrible thing.”

--Editing by Kat Laskowski and Mark Lebetkin.