

Fla. Gov. Signs Condo Termination Rule Changes Into Law

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Law360, Miami -- Florida Gov. Rick Scott on Tuesday signed into law a bill that modifies conditions for terminating condominium associations with the aim of protecting owners' assets, but which some experts have said could have the side effect of chilling potential buyers of distressed projects.

H.B. 643, sponsored by Rep. Chris Sprowls, R-Palm Harbor, and others, passed unanimously in both the House and Senate. Lawmakers took up the issue to force bulk buyers that want to dissolve an association and turn it into rentals to give a premium to holdout owners who object.

"The legislation could help the already flourishing condo market even more by renewing confidence and giving potential condominium unit buyers confidence and peace of mind that if the market declines, they won't be left in a lurch provided they make their mortgage payments and condominium association assessment payments – they will not be forced out of their condominium units without the ability to be compensated and made whole," said Jeffrey Margolis, a partner in the real estate practice at [Berger Singerman LLP](#).

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 Florida Legislature at that time 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, which is maintained in H.B. 643, has helped developers and other bulk buyers pull condominium projects out of financial ruin, according to experts, with the statute most often used by bulk buyers who invest in older buildings that are most in need of capital improvements and where bulk buyers can enter more cheaply.

Under that scenario, 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.

The biggest changes in H.B. 643 come in modifications to compensation required for unit owners, particularly those who object to condo association terminations. These initiatives came as response to real estate investors and developers that "bought unsold condominium units in bulk, took control of the condominium association, and then voted to terminate the condominiums, ousting other condominium units owners who were not fully compensated for their units," Margolis said.

In cases where there is a bulk owner, unit owners other than the bulk owner must be paid at least 100 percent of the fair market value of their units. Dissenting owners who were original purchasers from the developer must be paid at least the original purchase price that was paid for their units, even if that is greater than the current fair market value. The outstanding first mortgages of all unit owners must be satisfied as well.

Unit owners who held a Homestead exemption must also be paid a relocation payment of 1 percent of the termination proceeds allocated to the unit.

In cases where the units are to be rented after the termination, the owners occupying their unit must be given the option to lease their former unit and maintain possession for at least 12 months on the same terms they will be rented to the public.

Bulk owners who own at least 50 percent of a project's units must be identified in a notice along with their purchase and sale history, and the termination must also be approved by a board consisting of at least one-third of members who were elected by the unit owners other than the bulk owner, according to legislative documents.

Several modifications also apply generally to the statute even in cases where there is not a bulk owner. Among those, condominiums formed by conversions cannot be terminated for five years, unless unopposed, and when more than 10 percent of voting interests have rejected a termination, another proposed termination may not be considered for 18 months.

Experts have **warned** that the increased compensation costs may make potential bulk buyers think twice about these investments, which can help revive distressed properties, especially when the economy softens. Earlier in the legislative process, lawmakers were considering requiring holdout owners to receive the greater of 110 percent of the purchase price or 110 percent of fair market value, before backing off somewhat on those goals, Margolis noted.

But the experts also acknowledge the other side of the equation. As Jason Kellogg of [Levine Kellogg Lehman Schneider & Grossman LLP](#) told Law360 while the bill was moving through the committee process, “There's something about any homeowner being forced to sell their home at a loss that seems so unfair. 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.”

--Editing by Emily Kokoll.