

WHITE PAPER

PROPOSED REVISIONS TO PART VII OF CHAPTER 718

I. SUMMARY

The purpose of the proposed changes to Part VII of Chapter 718, the Distressed Condominium Relief Act ("Relief Act"), is to clarify existing ambiguities and inconsistencies in the Relief Act. The proposed changes would clarify the distinction between the two classes of bulk purchasers created by the Relief Act, more fully protect foreclosing lenders, and more clearly address association-related obligations.

II. SITUATION

Effective July 1, 2010, Part VII, the Relief Act, was added to the Florida Condominium Act. The expressed purpose of the Relief Act was to encourage absorption of the large inventory of unsold condominium units resulting from the collapse of the real estate market.

The Relief Act is, in essence, a shield law to protect bulk purchasers or other acquirers of large numbers of condominium units against potential liability for warranty claims and other financial exposure which might be incurred by being categorized as a "developer" under the Condominium Act.

The Relief Act creates two protected classes of buyers: a "bulk assignee," one acquiring an assignment of "some or all" of the developer rights in a condominium project and a "bulk buyer," one who may acquire only certain specified rights. In either case, the purchaser must obtain more than 7 units. Such acquirers may be bulk purchasers of unsold units or lenders acquiring units through foreclosure or by deed in lieu of foreclosure. As part of the legislation establishing the Relief Act, both bulk assignees and bulk buyers were specifically exempted from the definition of "developer" under the Condominium Act.

A bulk assignee will incur certain limited developer obligations but the bulk buyer is treated as any other purchaser of condominium units in almost all respects. In both cases, these acquirers are generally insulated from warranty claims and other liability of the original developer, including obligations owing to the condominium association.

Neither the bulk assignee, nor bulk buyer is exempted from the requirements to file offering materials with the state agency responsible for administering the sale of residential condominiums, the Division of Florida Condominiums, Timeshares and Mobile Homes, in the event they market their units for sale. The offering materials must contain certain specified disclosures indicating the lack of warranties and financial information otherwise available in the sale by the original developer.

The Relief Act contains a sunset provision requiring a bulk assignee or bulk buyer to record its deed for acquired condominium units on or before July 1, 2012 in order to be entitled to its benefits.

III. EFFECT OF PROPOSED CHANGES

The proposed amendments would better distinguish and define the attributes, rights and obligations of a bulk assignee and a bulk buyer and clarify that the Distressed Act is prospective only, applying to acquisition of condominium units occurring only after its effective date. The effect will render more certainty to the application and operation of the Relief Act.

IV. ANALYSIS

The proposed amendments would clarify important issues and be beneficial both for condominium unit owners and business interests by more effectively promoting absorption of the large inventory of unsold condominium units.

SPECIFIC COMMENTS:

1. Section 718.703.

a. The definitions of “bulk assignee” and “bulk buyer” are clarified to indicate the differences between the two classifications of bulk purchaser in a manner consistent with the overall Distressed Condominium Relief Act.

b. A foreclosing lender's status as a bulk assignee or bulk buyer is clarified so as to ensure that the lender's rights obtained in a collateral assignment of developer rights are available to the lenders to the extent that such benefits are expressed in a final judgment of foreclosure or within the certificate of title issued thereafter.

2. Section 718.704.

a. Clarification is made to indicate that (1) a bulk assignee assumes the obligations of a developer only on a prospective basis and that the bulk assignee needs to specify these obligations in any offering materials; (2) a bulk buyer need not assume any obligations of a developer, but if it chooses to do so it must do so in writing; (3) part VII does not apply to transactions before its effective date or to transfers after its effective date to certain related parties; and (4) the assignment of rights establishing bulk assignee status must be recorded in the public records, and the first recorded such assignment shall establish the sole bulk assignee that is permitted in the project.

3. Section 718.705.

a. Clarification is made as to the triggering event pertaining to turnover when a bulk assignee acquires its units in an association not turned over at the time of the bulk acquisition.

4. Section 718.706.

a. Clarifications is made to (1) specific that the offering materials to be provided to prospective purchasers only apply where the offering is being made for more than 7 units in any single condominium; (2) the financial information required to be provided by a bulk assignee or bulk buyer; (3) indicate that a materials apply to sales of more than 7 units in a single condominium and that the sales by a bulk assignee or bulk purchaser are not sales by the initial developer; and (4) indicate that there is no requirement to comply with filing or disclosure obligations if all of the units are offered and conveyed to a single purchaser in a single transaction.

V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal does not have a fiscal impact on state or local governments.

VI. DIRECT IMPACT ON PRIVATE SECTOR

The proposal will provide better clarity for bulk assignees and bulk buyers in connection with the acquisition of distressed condominium units, thereby enabling the distressed projects and property values to stabilize and eventually increase.

VII. CONSTITUTIONAL ISSUES

There are no constitutional issues raised by this proposal.

VIII. OTHER INTERESTED PARTIES

None are known at this time.