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PART VII

DISTRESSED CONDOMINIUM RELIEF

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718.701 Short title.—This part may be cited as the “Distressed Condominium Relief Act.”

History.—s. 18, ch. 2010-174.

718.702 Legislative intent.—

(1) The Legislature acknowledges the massive downturn in the condominium market which has occurred throughout the state and the impact of such downturn on developers, lenders, unit owners, and condominium associations. Numerous condominium projects have failed or are in the process of failing such that the condominium has a small percentage of third-party unit owners as compared to the unsold inventory of units. As a result of the inability to find purchasers for this inventory of units, which results in part from the devaluing of real estate in this state, developers are unable to satisfy the requirements of their lenders, leading to defaults on mortgages. Consequently, lenders are faced with the task of finding a solution to the problem in order to receive payment for their investments.

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(2)The Legislature recognizes that all of the factors listed in this section lead to condominiums becoming distressed, resulting in detriment to the unit owners and the condominium association due to the resulting shortage of assessment moneys available for proper maintenance of the condominium. Such shortage and the resulting lack of proper maintenance further erodes property values. The Legislature finds that individuals and entities within this state and in other states have expressed interest in purchasing unsold inventory in one or more condominium projects, but are reticent to do so because of accompanying liabilities inherited from the original developer, which are by definition imputed to the successor purchaser, including a foreclosing mortgagee. This results in the potential successor purchaser having unknown and unquantifiable risks that the potential purchaser is unwilling to accept. As a result, condominium projects stagnate, leaving all parties involved at an impasse and without the ability to find a solution.

(3)The Legislature declares that it is the public policy of this state to protect the interests of developers, lenders, unit owners, and condominium associations with regard to distressed condominiums, and that there is a need for relief from certain provisions of the Florida Condominium Act geared toward enabling economic opportunities for successor purchasers, including foreclosing mortgagees. Such relief would benefit existing unit owners and condominium associations. The Legislature further finds and declares that this situation cannot be open-ended without potentially prejudicing the rights of unit owners and condominium associations, and thereby declares that the provisions of this part may be used by purchasers of condominium inventory for only a specific and defined period.

History.—s. 18, ch. 2010-174.

718.703 Definitions.—As used in this part, the term:

(1)“Bulk assignee” means a person who:

(a)Acquires more than seven condominium parcels as set forth in s. 718.707; and

(b)Receives an assignment of some or all of the rights of the developer as set forth in the declaration of condominium or this chapter by a written instrument recorded as an exhibit to the deed or as a separate instrument in the public records of the county in which the condominium is located.

(2)“Bulk buyer” means a person who acquires more than seven condominium parcels as set forth in s. 718.707, but who does not receive an assignment of developer rights other than the right to conduct sales, leasing, and marketing activities within the condominium; the right to be exempt from the payment of working capital contributions to the condominium association arising out of, or in connection with, the bulk buyer’s acquisition of a bulk number of units; and the right to be exempt from any rights of first refusal which may be held by the condominium association and would otherwise be applicable to subsequent transfers of title from the bulk buyer to a third party purchaser concerning one or more units.

History.—s. 18, ch. 2010-174.

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- Amends the definition of “bulk assignee” and “bulk buyer” to mean a person who acquires more than 7 condominium parcels in “a single condominium”
- Provides that a bulk assignee is not liable for warranties under 718.203(1) or 718.618, except as expressly provided by the bulk assignee in a prospectus or offering circular, or the contract for purchase and sale executed with a purchaser, or for design, construction, development or repair work performed by or on behalf of the bulk

assignee

- Provides that if, at the time the bulk assignee acquires title to the units and receives an assignment of developer rights, the developer has not relinquished control of the board, for purposes of determining the timing of transfer of control, a condominium parcel acquired by the bulk assignee is not deemed to be conveyed to a purchaser, or owned by an owner other than the developer, until the condominium parcel is conveyed to an owner who is not a bulk assignee
- Requires filing with the division and certain disclosures to purchasers and lessees if a bulk assignee or bulk buyer is offering “more than seven units in a single condominium” for sale or for lease for a term exceeding 5 years
- Provides that a bulk assignee or bulk buyer is not required to comply with the filing or disclosure requirements if all of the units owned by the bulk assignee or bulk buyer are offered and conveyed to a single purchaser in a single transaction
- Provides that a person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired on or after July 1, 2010, but before July 1, 2012

718.704 Assignment and assumption of developer rights by bulk assignee; bulk buyer.—

(1) A bulk assignee assumes and is liable for all duties and responsibilities of the developer under the declaration and this chapter, except:

(a) Warranties of the developer under s. 718.203(1) or s. 718.618, except for design, construction, development, or repair work performed by or on behalf of such bulk assignee;

(b) The obligation to:

1. Fund converter reserves under s. 718.618 for a unit that was not acquired by the bulk assignee; or
2. Provide converter warranties on any portion of the condominium property except as expressly provided by the bulk assignee in the contract for purchase and sale executed with a purchaser and pertaining to any design, construction, development, or repair work performed by or on behalf of the bulk assignee;

(c) The requirement to provide the association with a cumulative audit of the association’s finances from the date of formation of the condominium association as required by s. 718.301(4)(c). However, the bulk assignee must provide an audit for the period during which the bulk assignee elects a majority of the members of the board of administration;

(d) Any liability arising out of or in connection with actions taken by the board of administration or the developer-appointed directors before the bulk assignee elects a majority of the members of the board of administration; and

(e) Any liability for or arising out of the developer’s failure to fund previous assessments or to resolve budgetary deficits in relation to a developer’s right to guarantee assessments, except as otherwise provided in subsection (2).

The bulk assignee is also responsible for delivering documents and materials in accordance with s. 718.705(3). A bulk assignee may expressly assume some or all of the obligations of the developer described in paragraphs (a)-(e).

(2) A bulk assignee receiving the assignment of the rights of the developer to guarantee the level of assessments and fund budgetary deficits pursuant to s. 718.116 assumes and is liable for all obligations of the developer with respect to such guarantee, including any applicable funding of reserves to the extent required by law, for as long as the guarantee remains in effect. A bulk assignee not receiving

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such assignment or a bulk buyer does not assume and is not liable for the obligations of the developer with respect to such guarantee, but is responsible for payment of assessments in the same manner as all other owners of condominium parcels.

(3)A bulk buyer is liable for the duties and responsibilities of the developer under the declaration and this chapter only to the extent provided in this part, together with any other duties or responsibilities of the developer expressly assumed in writing by the bulk buyer.

(4)An acquirer of condominium parcels is not a bulk assignee or a bulk buyer if the transfer to such acquirer was made before the effective date of this part with the intent to hinder, delay, or defraud any purchaser, unit owner, or the association, or if the acquirer is a person who would be considered an insider under s. 726.102(7).

(5)An assignment of developer rights to a bulk assignee may be made by the developer, a previous bulk assignee, or a court acting on behalf of the developer or the previous bulk assignee. At any particular time, there may be no more than one bulk assignee within a condominium, but there may be more than one bulk buyer. If more than one acquirer of condominium parcels in the same condominium receives an assignment of developer rights from the same person, the bulk assignee is the acquirer whose instrument of assignment is recorded first.

History.—s. 18, ch. 2010-174.

718.705 Board of administration; transfer of control.—

(1)For purposes of determining the timing for transfer of control of the board of administration of the association to unit owners other than the developer under s. 718.301(1)(a) and (b), if a bulk assignee is entitled to elect a majority of the members of the board, a condominium parcel acquired by the bulk assignee is conveyed to a purchaser, or owned by an owner other than the developer, until the condominium parcel is conveyed to an owner who is not a bulk assignee.

(2)Unless control of the board of administration of the association has already been relinquished pursuant to s. 718.301(1), the bulk assignee must relinquish control of the association pursuant to s. 718.301 and this part, as if the bulk assignee were the developer.

(3)If a bulk assignee relinquishes control of the board of administration as set forth in s. 718.301, the bulk assignee must deliver all of those items required by s. 718.301(4). However, the bulk assignee is not required to deliver items and documents not in the possession of the bulk assignee during the period during which the bulk assignee was entitled to elect at least a majority of the members of the board of administration. In conjunction with acquisition of condominium parcels, a bulk assignee shall undertake a good faith effort to obtain the documents and materials that must be provided to the association pursuant to s. 718.301(4). If the bulk assignee is not able to obtain all of such documents and materials, the bulk assignee must certify in writing to the association the names or descriptions of the documents and materials that were not obtainable by the bulk assignee. Delivery of the certificate relieves the bulk assignee of responsibility for delivering the documents and materials referenced in the certificate as otherwise required under ss. 718.112 and 718.301 and this part. The responsibility of the bulk assignee for the audit required by s. 718.301(4) commences as of the date on which the bulk assignee elected a majority of the members of the board of administration.

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(4) If a conflict arises between the provisions or application of this section and s. 718.301, this section prevails.

(5) Failure of a bulk assignee or bulk buyer to substantially comply with all the requirements in this part results in the loss of any and all protections or exemptions provided under this part.

History.—s. 18, ch. 2010-174.

718.706 Specific provisions pertaining to offering of units by a bulk assignee or bulk buyer.—

(1) Before offering any units for sale or for lease for a term exceeding 5 years, a bulk assignee or a bulk buyer must file the following documents with the division and provide such documents to a prospective purchaser or tenant:

(a) An updated prospectus or offering circular, or a supplement to the prospectus or offering circular, filed by the original developer prepared in accordance with s. 718.504, which must include the form of contract for sale and for lease in compliance with s. 718.503(2);

(b) An updated Frequently Asked Questions and Answers sheet;

(c) The executed escrow agreement if required under s. 718.202; and

(d) The financial information required by s. 718.111(13). However, if a financial information report does not exist for the fiscal year before acquisition of title by the bulk assignee or bulk buyer, or accounting records cannot be obtained in good faith by the bulk assignee or the bulk buyer which would permit preparation of the required financial information report, the bulk assignee or bulk buyer is excused from the requirement of this paragraph. However, the bulk assignee or bulk buyer must include in the purchase contract the following statement in conspicuous type:

THE FINANCIAL INFORMATION REPORT REQUIRED UNDER S. 718.111(13) FOR THE IMMEDIATELY PRECEDING FISCAL YEAR OF THE ASSOCIATION IS NOT AVAILABLE OR CANNOT BE CREATED BY THE SELLER DUE TO THE INSUFFICIENT ACCOUNTING RECORDS OF THE ASSOCIATION.

(2) Before offering any units for sale or for lease for a term exceeding 5 years, a bulk assignee must file with the division and provide to a prospective purchaser a disclosure statement that includes, but is not limited to:

(a) A description of any rights of the developer which have been assigned to the bulk assignee or bulk buyer;

(b) The following statement in conspicuous type:

THE SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE DEVELOPER UNDER S. 718.203(1) OR S. 718.618, AS APPLICABLE, EXCEPT FOR DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON BEHALF OF SELLER; and

(c) If the condominium is a conversion subject to part VI, the following statement in conspicuous type:

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THE SELLER HAS NO OBLIGATION TO FUND CONVERTER RESERVES OR TO PROVIDE CONVERTER WARRANTIES UNDER S. 718.618 ON ANY PORTION OF THE CONDOMINIUM PROPERTY EXCEPT AS MAY BE EXPRESSLY REQUIRED OF THE SELLER IN THE CONTRACT FOR PURCHASE AND SALE EXECUTED BY THE SELLER AND THE PREVIOUS DEVELOPER AND PERTAINING TO ANY DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON BEHALF OF THE SELLER.

(3)A bulk assignee, while it is in control of the board of administration of the association, may not authorize, on behalf of the association:

(a)The waiver of reserves or the reduction of funding of the reserves pursuant to s. 718.112(2)(f)2., unless approved by a majority of the voting interests not controlled by the developer, bulk assignee, and bulk buyer; or

(b)The use of reserve expenditures for other purposes pursuant to s. 718.112(2)(f)3., unless approved by a majority of the voting interests not controlled by the developer, bulk assignee, and bulk buyer.

(4)A bulk assignee or a bulk buyer must comply with all the requirements of s. 718.302 regarding any contracts entered into by the association during the period the bulk assignee or bulk buyer maintains control of the board of administration. Unit owners shall be afforded all the protections contained in s. 718.302 regarding agreements entered into by the association before unit owners other than the developer, bulk assignee, or bulk buyer elected a majority of the board of administration.

(5)A bulk buyer must comply with the requirements contained in the declaration regarding any transfer of a unit, including sales, leases, and subleases. A bulk buyer is not entitled to any exemptions afforded a developer or successor developer under this chapter regarding the transfer of a unit, including sales, leases, or subleases.

History.—s. 18, ch. 2010-174.

718.707 Time limitation for classification as bulk assignee or bulk buyer.—A person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired before July 1, 2012. The date of such acquisition shall be determined by the date of recording of a deed or other instrument of conveyance for such parcels in the public records of the county in which the condominium is located, or by the date of issuance of a certificate of title in a foreclosure proceeding with respect to such condominium parcels.

History.—s. 18, ch. 2010-174.

718.708 Liability of developers and others.—An assignment of developer rights to a bulk assignee or bulk buyer does not release the original developer from liabilities under the declaration or this chapter. This part does not limit the liability of the original developer for claims brought by unit owners, bulk assignees, or bulk buyers for violations of this chapter by the original developer, unless specifically excluded in this part. This part does not waive, release, compromise, or limit liability established under this chapter except as specifically excluded under this part.

History.—s. 18, ch. 2010-174.