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## 2010 DISTRESSED CONDOMINIUM RELIEF ACT

The downturn in the Florida real estate market has adversely affected all segments of the Florida real estate community including developers, lenders, associations and owners, however, condominium developments were the most adversely impacted by the overall downturn in Florida real estate.

In 2009, the Florida Legislature had proposed a similar reform bill known as Senate Bill 714 which was vetoed by the governor. However, the 2010 Florida Legislature again proposed numerous changes contained in Senate Bill 1196 which will form and will have significant impact on issues facing the Florida real estate market, generally in common interest ownership communities. Senate Bill 1196 (the "Legislation") was signed into law by Governor Crist on June 1, 2010, and took effect July 1, 2010.

A significant component of the Legislation created the Distressed Condominium Relief Act and provides community associations with the ability to collect money from tenants where the owner stopped paying assessments and to collect a larger portion of past due assessments in foreclosures. A summary of the Legislation changes affecting condominiums, cooperatives, and homeowner associations are set out below.

### **Distressed Condominium Relief Act (Section 718.701 through Section 718.708, Florida Statutes):**

- Legislature determined that successor purchasers of bulk units (including foreclosing mortgagees) should be granted relief from certain provisions of the Florida Condominium Act and created the Distressed Condominium Relief Act (DCRA) for the purpose of economic incentives for successor purchasers that also would benefit existing unit owners and condominium associations.
- Legislation creates two classifications of bulk purchasers: (1) a "bulk assignee" and (2) a "bulk buyer," both of which are specifically excluded from being defined as a "developer" under the Condominium Act. A bulk assignee who acquires more than seven parcels receives an assignment of some or all of the rights of the developer. The bulk buyer acquires more than seven condominium parcels but does *not* receive an assignment of developers' rights other than (a) the right to conduct sales, leasing and marketing activities; (b) the right to be exempt from the payment of working capital contributions to the

condominium association (c) the right to be exempt from any rights of first refusal that may be held by the condominium association.

- The original developer's liability is essentially unchanged, however, a bulk assignee assumes all liability of an original developer, and unless excluded by statute (exclusions pertain to warranties, turnover audit, liability for developer actions while in control of the board, and requirements to fund deficits; note also that a bulk assignee will have warranty liability if it undertakes design, construction, development or repair work and there are other responsibilities for the period where the bulk assignee controls the association), but otherwise specifically assumed; and a bulk buyer has no liability unless expressly assumed or provided by statute.
- There are differences between a bulk assignee and a bulk buyer and their respective any specific purchaser of condominium units in bulk must consider applicability and suitability on a case by case basis, dependent upon facts of a particular condominium project. To qualify as a bulk assignee or a bulk buyer, a purchaser must acquire title on or after July 1, 2010, but before July 1, 2012. The sunset provisions are limited, however, to qualifications as to bulk assignee or bulk buyer; the remainder of the Distressed Condominium Relief Act provisions will remain in effect after the July 1, 2012 sunset date. There is some discussion in Florida Legislature in 2011 regarding extending the sunset date an additional year to afford potential purchasers the benefits of the Distressed Condominium Relief Act.

**Homeowners' Associations-Collections/Foreclosures  
(Section 718.116, Florida Statutes):**

- If member is delinquent for more than 90 days in the payment of a monetary obligation, the association may suspend the right to use the common areas, except for common areas that must be used to provide access to the parcel or utility services provided to the parcel.
- Fines of less than \$1,000 may not become a lien against the parcel.
- If association imposes a fine or suspension, the association must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner, and if applicable, to the tenant, licensee, or invitee.
- Provides that if a unit is occupied by a tenant and that unit owner is delinquent in the payment of any monetary obligation to the association, the association may demand that the tenant pay to the association the future monetary obligations related to the condominium unit. Requires the association to mail written notice to the unit owner of the association's demand that the tenant make **payments to the association.**

- Provides that the liability of the tenant may not exceed the amount due from the tenant to the tenant's landlord. Provides that the tenant's landlord shall provide the tenant a credit against rents due to the unit owner in the amount of monies paid to the association.
- Provides that the association may sue for eviction as if the association were a landlord if the tenant fails to pay a required assessment to the association.

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