



Insights

Distressed Condominium Act: Mitigating the Legislative Risks

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The Distressed Condominium Relief Act (“DCRA”) is currently set to expire on July 1, 2018. More specifically, effective July 1, 2018, acquirers of distressed condominium units will no longer be eligible for the “bulk buyer” or “bulk assignee” classifications.

Here’s a quick refresher on why this is significant. The DCRA was introduced in 2010 in an effort to address the massive downturn in the condominium market during the Great Recession. One of the main objectives of the DCRA is to limit certain risks and liabilities which may otherwise be imposed on acquirers of units distressed condominium projects. The DCRA accomplishes this by creating two new non-developer classifications, a “bulk buyer” and a “bulk assignee”.

Each of these classifications explicitly protect the acquirer (whether a lender enforcing its loan rights or a third party investor) against some significant liabilities which could be inherited from the original developer (a.k.a. “successor developer” liabilities), while allowing the new owner to retain certain useful and valuable rights with respect to the development, operations, and eventual disposition of the asset.

Allowing the DCRA to “sunset” as currently scheduled will likely have an adverse effect on the valuations of distressed condominiums in the state. There is currently an effort in the legislature to remove the “sunset” provision of the DCRA (and therefore keep it in place indefinitely), in the form of House Bill 841 and Senate Bill 1274. There have been prior unsuccessful attempts to remove the “sunset” provision of the DCRA, so it is by no means a done deal that this effort will get through the finish line.

Regardless of the legislative outcome, there are steps that both investors and lenders can take to mitigate against the risk of legislative failure and/or to position a distressed condominium asset so as to fully take advantage of a possible legislative success. These steps will largely depend on the current structure of the condominium documents establishing the condominium regime in question, and on careful evaluation of how recent administrative and judicial interpretations of the

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DCRA can affect its applicability to a particular condominium community.