

The Distressed Condominium Relief Act, as the Legislative Dust Settles

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The legislative session ended with a photo-finish, last-hours-of-the-session maneuvering, resulting in the passage of HB 841, which among (many) other unrelated matters also removes the “sunset” provision of the Distressed Condominium Relief Act (“DCRA”).

The DCRA was set to expire on July 1, 2018. More specifically, effective July 1, 2018, acquirers of distressed condominium units would no longer be eligible for the “bulk buyer” or “bulk assignee” classifications.

As a reminder, 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.

The passage of HB 841 is not quite the end of the line, however. There is still a possibility of a gubernatorial veto, which has indeed happened in the past with a different “vehicle” bill for this very DCRA sunset removal. HB 841, in its final “enrolled” form, was presented to the Governor on Wednesday, March 21, 2018 at 4:17 PM. The Governor has until April 5 to either sign or veto the bill – failure to do either will result in the bill becoming law.

Even with the sunset removal, which appears likely at this stage, there have been a number of administrative and judicial interpretations of the DCRA sometimes severely limiting its applicability to certain distressed condominiums. It is important to review (and if necessary or advisable modify) existing condominium documents so as to fully take advantage of the DCRA.

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