



NEWS & KNOWLEDGE

Editorial: Pitfalls In Fla.'s Revised Condo Termination Statute

Law 360

February 10, 2014

By Martin A. Schwartz, Real Estate Partner

In 2007, the condominium termination statute (Section 718.117 of Florida Statutes) was completely rewritten to address problems with an aging condominium inventory and declarations that typically required 100 percent of unit owners to consent to any termination. This 100 percent requirement typically made any termination almost impossible to achieve.

The revised statute expanded a two-page, 1,159-word provision to 11 pages and 4,360 words. The expansion covered a variety of issues that might necessitate a termination and set forth an elaborate and detailed process for termination. It applied both to existing condominiums and to those to be created in the future.

The application to existing condominiums, the Florida Senate sponsor of the revised termination statute believed, was necessary to allow for termination of an aging stock of condominiums approaching the end of their useful lives and afford owners in such condominiums the ability to realize on the value of the buildings' underlying land.

While the revised statute has provided substantial assistance in effecting a termination, unanticipated issues have arisen that can occasionally create substantial problems for those seeking to terminate the condominium. The steps to termination are clearly described in the statute.

1. The association adopts a plan of termination. The plan can require an automatic termination upon its recording or can be conditional upon the occurrence of some future event. A conditional plan does not effect a termination until the occurrence of some specified event.
2. The plan is recorded in the public records of the county in which the property is located.
3. Notice of the recording of the plan is sent to all owners and lienholders.
4. The owners and lienholders not intended to receive the full value of their liens have 90 days following recording to challenge the plan.
5. Title to the condominium property vests in a termination trustee described in the plan and all liens are discharged from the property but attach to proceeds generated by the

sale of the property by the termination trustee.

6. At the expiration of the 90-day period following plan recording, the termination trustee sells the property and distributes the proceeds in accordance with the plan. This relatively straightforward road map, however, has encountered a number of road hazards.

Lienholders. Lienholders such as mortgage holders are entitled to be paid the value of their liens. But how does the termination trustee determine the value of the liens?

Typically, and in accordance with Florida law, if a property is being sold or refinanced, a lender provides an estoppel letter to its borrower indicating the amount necessary to satisfy the loan in full. But termination is not a sale or refinance of a particular unit, and the termination trustee may not be aware of the appropriate party at the lender to obtain information on the unpaid amount and may not have access to the lender's account number to identify the loan.

Furthermore, since this type of request is not typical, experience to date is that lienholders do not readily respond to such a request for information.

Another problem relates to satisfying the lien of record. Florida law requires a lender to provide a satisfaction that its lien is paid in full. This requirement is sometimes not readily recognized by lenders when the payment comes through a termination.

Furthermore, if the plan provides for payment to lenders based on the value of the property, which frequently is substantially less than the amount of their loan, such payment does not require the delivery of a satisfaction. Yet, in both cases, a satisfaction might be required to clear title.

Title Issues. Some title companies are unwilling to insure the acquisition of title from a termination trustee by reason of the fact that they cannot establish that all owners and lienholders were given proper notice of the termination. The termination statute permits both owners and lienholders to challenge a termination following their obtaining a copy of the recorded plan.

However, it may be difficult for a termination trustee or the purchaser from a termination trustee to establish that the appropriate notice was given and received by the parties to be notified. The purchaser in such cases would then be required to bring a quiet title action naming all owners and possibly all lenders.

Even when it is possible to establish notice, there have been instances where a lender has commenced a foreclosure prior to the recording of the plan and acquired title subsequent to the plan. In such cases, a quiet title action may also be required to eliminate the lender's interest in its nonexistent unit.

Change in Circumstances. A problem may be faced with unconditional terminations effective upon recording the plan. The plan is recorded in anticipation of a sale 90 days thereafter. The proposed purchaser either defaults under its purchase contract or uses the failure of a condition precedent to the sale to terminate the purchase contract.

How does one regenerate the condominium? This is not covered by the statute and would appear to at least require 100 percent of the owners to consent to the reinstatement. The

status of the mortgages on the individual units is more problematic since they were discharged from the units. Once discharged, there is no provision for reinstatement.

Typically, experience with new laws reveals glitches not otherwise apparent at the outset. The termination statute should be revisited to address issues practitioners have experienced in attempting to operate under the current law.

This article is reprinted with permission from *Law360*.

Related Professionals

Martin A. Schwartz
mschwartz@bilzin.com
T: 305.350.2367

Related Practices

Condominiums &
Associations

Real Estate

© 2013 Bilzin Sumberg Baena Price & Axelrod LLP.
305 374 7580 » 1450 Brickell Avenue, 23rd Floor, Miami, FL 33131
All Rights Reserved. Attorney Advertising. Prior results do not guarantee a similar outcome.