

# Court Ruling Puts Condo Buyouts At Risk



As Florida developers adapt to the lack of suitable development sites, some are turning their focus to condominium communities that were built decades ago for middle-income working families and retirees that are now located on what would otherwise be prime development sites.

This is causing angst to some Florida condo owners about the future of their homes and communities. To some condo owners, developers offer the opportunity to cash out for a good price. But to others, condo buyouts are nothing more than a nightmare where developers force them out of their homes, and in some cases in a way that forced homeowners to incur significant losses.

## ***The Legislative Background to Condominium Terminations***

In 2007, the Florida legislature enacted laws setting forth the procedures for condo terminations, sometimes called condo buy-outs. The law provided that a condominium could be terminated if least 80 percent of the total voting interests of the condominium approve of the termination, but only so long as no more than 10 percent of the total voting interests do not reject the plan by a negative vote or written objection.

Because many communities required a unanimous vote to amend the condominium's governing documents in any manner, the 2007 legislation, requiring only an 80 percent vote to terminate the community, was beneficial to many real estate developers. Unfortunately for some developers, and perhaps luckily for some homeowners, a recent appeals court decision is restricting the new rule's application.

## ***The Courts Get Involved***

In the recent case, a majority of unit owners favored terminating an oceanfront condominium in order to make way for new development. But a few owners objected to the proposal and voted against it. A Miami-Dade appeals court ruled that the 80 percent rule set forth in the 2007 legislation wasn't applicable. Instead, the court ruled that in order for the condominium to be properly terminated, 100 percent of the unit owners needed to agree.

While this recent case may throw many planned condo terminations into doubt, the decision has been heralded as a victory for homeowners scared of a forced move. But developers say the decision could delay much needed economic redevelopment to less affluent areas in the state. In either event it illustrates some of the complexities surrounding condominium terminations in Florida.

## ***Our Condo is Terminating: What Happens To The Holdouts?***

Many condo owners in Miami are fearful of a forced move – and not without reason. Throughout the recession, stories of unit owners forced out of their homes for prices below the amounts they owed on their mortgage started appearing throughout the state. The condo owners faced the undesirable situation of being forced to sell their homes while continuing to owe significant sums on their mortgages.

Luckily, legislators realized the issue and amended the law to provide that that mortgage deficiencies for those current with their monthly payments would have to be forgiven by the mortgage lender. In addition, owners that have the condo unit as their homestead are now entitled to receive a relocation bonus equal to 1% of the proceeds allocated to their units. Finally, if the developer intends to operate the building as a rental property following the termination, the unit owners now have the right to receive a one-year lease at the same terms that are offered to the general public.

The issue of condo terminations is already causing for heated condominium board meetings throughout the state and with natural land constraints and the population in south Florida continuing to grow, we can be sure the issue won't disappear anytime soon.

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