COMMENTARY

Combatting the Rise of the Zombie Condos in Florida

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Board of Contributors

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A troubling trend is on the horizon for condominium ownership in Florida—the potential rise of “zombie condos.” A zombie condo consists of an association operating in a quasi-functional, ultimately wasteful limbo, struggling to maintain a barely habitable condominium in an unaffordable manner. A zombie condo is on its last legs, threatened by buzzards seeking to exploit its vulnerability (be they unscrupulous actors or opportunistic investors). Within its walls, strife and conflict reign, as members turn against each other in desperation, turning homes into battlegrounds.

This potentially unsettling phenomenon is poised to rise from a confluence of factors, including the newly enacted SB-4D and 154 reserve funding and repair laws, skyrocketing insurance costs, inflation, obsolescence, rising sea levels and intensifying hurricanes, and other financial burdens. These forces are making it increasingly unaffordable for individuals to reside within condominiums, casting a shadow over the future of community living and many Floridians’ primary investments.

The horrific tragedy at Champlain Towers South in Surfside illustrated the need take drastic measures to ensure that condominium residents are proactively protected from life safety risks, and to get ahead of the looming financial burdens associated with aging (and in some cases defective) coastal structures. The SB-4D reserve funding and milestone inspection requirements were implemented to force earlier due diligence, accountability, and mandatory funding for long term structural deferred maintenance, repairs, improvements, and replacements. In SB 154, the legislature course corrected somewhat by attempting to resolve certain glitches and mitigate the impacts of these new requirements.

Though well-intentioned, these requirements have inadvertently placed immense financial strain on condominium unit owners, by contributing to a rapid surge in financial obligations for condominium communities, estimated to be billions of dollars across Florida. The burden of complying with these requirements will lead to escalated assessments for repair projects, and mandatory reserve contributions—thereby exacerbating the financial crunch faced by owners. The relentless march of inflation further aggravates the situation, impacting every sector of the economy. Escalating costs of labor, materials, and services have drastically inflated repair and maintenance expenses, making it more challenging for condo associations to adequately fund necessary repairs and replacements.

Compounding the crisis are soaring insurance costs, increased construction costs, rising property valuations, and climate change factors. Insurance rates have skyrocketed due to various factors such as numerous billion-dollar disaster events nationally and in Florida in recent years. The cost of these insurance premiums further exacerbates the financial strain on condominium associations, as they struggle to secure affordable coverage. With very limited exceptions, associations must make best efforts to obtain coverage for full replacement costs as determined by an appraisal obtained not less than every thirty-six (36) months. Where available, the costs are prohibitive; however, for some associations, such coverage is not even attainable.

In this dire financial climate, a concerning subset of condominium associations has emerged as uninsurable or only partially insurable entities. This lack of insurance coverage can render these associations unable to secure loans essential for financing special assessments and budget requirements. The consequences are far-reaching, putting immense cash pressure on owners and stifling the ability of prospective buyers to secure mortgages for purchasing units within these associations.

Correspondingly, updated lending guidelines from Fannie Mae and Freddie Mac disqualify many associations, preventing buyers from obtaining financing backed by those institutions. This hurdle reverberates throughout the condominium market, adversely impacting current owners looking to sell their units. The inability to attract buyers not only stagnates the real estate market but also amplifies financial woes for existing owners, hindering their ability to liquidate their investments.

Consequently, a growing number of condo owners find themselves at a crossroads, contemplating drastic measures like bulk sales or termination of their condominiums to developers. Zombie condos will be most likely to fall prey to predatory negotiation tactics and below market acquisitions, unless they can pursue positive initiative to set the terms of engagement, garner owner consensus to maximize value, and find a way to comply with maintenance and financial obligations in the interim. Many owners understandably fear displacement from a homestead residence that they thought could not be taken away as long as they complied with their payment obligations. These homestead rights are threatened by disproportionate assessments needed to maintain and improve the condominium and involuntary termination if a critical mass of owners seek the exits. Given the stakes, a wave of complex litigation over these highly technical issues is inevitable.

Constructive solutions and urgent action is imperative to prevent this staggering wave of zombie condos. Policymakers, industry stakeholders, and condominium associations must collaborate to strike a balance between prudent financial risk management and maintaining the affordability and viability of condominium living. Among other alternatives, condominium laws can be clarified, improved, or more targeted, to ensure associations have flexibility to tailor reasonable solutions to assist affordability of major projects, and to ease the suddenness of imminent financial burdens. For example, having to obtain an impractical membership approval to borrow money or assess is a recipe for litigation, financial pressure, and neglect. Alternative funding options can be expanded to alleviate the pressures caused by immediately having to fund new reserve obligations. The category of associations requiring structural integrity reserves can be narrowed to buildings in excess of three stories, or coastal buildings.

Termination laws can be adjusted to provide a more effective mechanism to address constructive and inevitable waste of a zombie condo, while going even further to protect the value and availability of housing for their displaced owners.

Solutions are not merely technical, but also political. A statewide fund can be created to assist owners in associations that cannot obtain traditional financing, such as offered in Miami-Dade County. Financial incentives for hurricane protection can be increased, to lower insurance premiums, increase protection and safety, and mitigate costs. Safe-harbors from assessment liability for unit lenders can be revisited to minimize the threat and burden of uncollectible bad debt, while providing alternative incentives for association lenders.

Failure to act swiftly and decisively could leave the Florida condominium market in potential peril, at risk of plunging countless condo owners into dislocation, litigation, domestic strife, and financial despair. Is Florida ready to combat the zombie condo crisis?

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