

By the Committees on Fiscal Policy; Judiciary; and Regulated Industries; and Senator Latvala

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1 A bill to be entitled
2 An act relating to termination of a condominium
3 association; amending s. 718.117, F.S.; providing and
4 revising procedures and requirements for termination
5 of a condominium property; providing requirements for
6 the rejection of a plan of termination; defining
7 terms; providing applicability; providing and revising
8 requirements relating to partial termination of a
9 condominium property; authorizing a plan of
10 termination to be withdrawn, modified, or amended
11 under certain conditions; revising and providing
12 requirements relating to the allocation of proceeds of
13 the sale of condominium property; revising
14 requirements relating to the right to contest a plan
15 of termination; amending s. 718.1255, F.S.; revising
16 the term "dispute"; providing an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Subsections (3), (4), (9), (11), (12), and (16)
21 of section 718.117, Florida Statutes, are amended to read:

22 718.117 Termination of condominium.—

23 (3) OPTIONAL TERMINATION.—Except as provided in subsection
24 (2) or unless the declaration provides for a lower percentage,
25 the condominium form of ownership may be terminated for all or a
26 portion of the condominium property pursuant to a plan of
27 termination approved by at least 80 percent of the total voting
28 interests of the condominium if less ~~no more~~ than 10 percent of
29 the total voting interests of the condominium have rejected the

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30 plan of termination by negative vote or by providing written
31 objections.

32 (a) The termination of the condominium form of ownership is
33 subject to the following conditions:

34 1. The total voting interests of the condominium must
35 include all voting interests for the purpose of considering a
36 plan of termination. A voting interest of the condominium may
37 not be suspended for any reason when voting on termination
38 pursuant to this subsection.

39 2. If 10 percent or more of the total voting interests of
40 the condominium reject a plan of termination, a subsequent plan
41 of termination pursuant to this subsection may not be considered
42 for 18 months after the date of the rejection.

43 (b) This subsection does not apply to any condominium
44 created pursuant to part VI of this chapter until 5 years after
45 the recording of the declaration of condominium for the
46 condominium unless there are no objections to the plan of
47 termination ~~This subsection does not apply to condominiums in~~
48 ~~which 75 percent or more of the units are timeshare units.~~

49 (c) For purposes of this subsection, the term "bulk owner"
50 means the single holder of such voting interests or an owner
51 together with a related entity or entities that would be
52 considered insiders, as defined in s. 726.102, holding such
53 voting interests. If the condominium association is a
54 residential association proposed for termination pursuant to
55 this section and, at the time of recording the plan of
56 termination, at least 80 percent of the total voting interests
57 are owned by a bulk owner, the plan of termination is subject to
58 the following conditions and limitations:

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59 1. If the former condominium units are offered for lease to
60 the public after the termination, each unit owner in occupancy
61 immediately before the date of recording of the plan of
62 termination may lease his or her former unit and remain in
63 possession of the unit for 12 months after the effective date of
64 the termination on the same terms as similar unit types within
65 the property which are being offered to the public. In order to
66 obtain a lease and exercise the right to retain exclusive
67 possession of the unit owner's former unit, the unit owner must
68 make a written request to the termination trustee to rent the
69 former unit within 90 days after the date the plan of
70 termination is recorded. Any unit owner who fails to timely make
71 such written request and sign a lease within 15 days after being
72 presented with a lease is deemed to have waived his or her right
73 to retain possession of his or her former unit and is required
74 to vacate the former unit upon the effective date of the
75 termination, unless otherwise provided in the plan of
76 termination.

77 2. Any former unit owner whose unit was granted homestead-
78 exemption status by the applicable county property appraiser as
79 of the date of the recording of the plan of termination shall be
80 paid a relocation payment in an amount equal to 1 percent of the
81 termination proceeds allocated to the owner's former unit. Any
82 relocation payment payable under this subparagraph shall be paid
83 by the single entity or related entities owning at least 80
84 percent of the total voting interests. Such relocation payment
85 is in addition to the termination proceeds for such owner's
86 former unit and shall be paid no later than 10 days after the
87 former unit owner vacates his or her former unit.

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88 3. All unit owners other than the bulk owner shall be
89 compensated at least 100 percent of the fair market value of
90 their respective units. The fair market value shall be
91 determined by an independent appraiser, selected by the
92 termination trustee, as of a date that is no earlier than 90
93 days before the date that the plan of termination is recorded.
94 For original purchasers from the developer who dissent or object
95 to the plan of termination, the fair market value for the unit
96 owner dissenting or objecting may not be less than the original
97 purchase price paid for the unit. For purposes of this
98 subparagraph, the term "fair market value" means the price of a
99 unit that a seller is willing to accept and a buyer is willing
100 to pay on the open market in an arms-length transaction based on
101 similar units sold in other condominiums, including units sold
102 in bulk purchases but excluding units sold at wholesale or
103 distressed prices. The purchase price of units acquired in bulk
104 following a bankruptcy or foreclosure may not be considered for
105 purposes of determining fair market value.

106 4. The plan of termination must provide the manner by which
107 each first mortgage on a unit will be satisfied so that each
108 unit owner's obligation under a first mortgage is satisfied in
109 full at the time the plan of termination is implemented.

110 5. Before presenting a plan of termination to the unit
111 owners for consideration pursuant to this paragraph, the plan
112 must include the following written disclosures in a sworn
113 statement:

114 a. The identity of any person or entity that owns or
115 controls 50 percent or more of the units in the condominium and,
116 if the units are owned by an artificial entity or entities, a

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117 disclosure of the natural person or persons who, directly or
118 indirectly, manage or control the entity or entities and the
119 natural person or persons who, directly or indirectly, own or
120 control 20 percent or more of the artificial entity or entities
121 that constitute the bulk owner.

122 b. The units acquired by any bulk owner, the date each unit
123 was acquired, and the total amount of compensation paid to each
124 prior unit owner by the bulk owner, regardless of whether
125 attributed to the purchase price of the unit.

126 c. The relationship of any board member to the bulk owner
127 or any person or entity affiliated with the bulk owner subject
128 to disclosure pursuant to this subparagraph.

129 (d) If the members of the board of administration are
130 elected by the bulk owner, unit owners other than the bulk owner
131 may elect at least one-third of the members of the board of
132 administration before the approval of any plan of termination.

133 (4) EXEMPTION.—A plan of termination is not an amendment
134 subject to s. 718.110(4). In a partial termination, a plan of
135 termination is not an amendment subject to s. 718.110(4) if the
136 ownership share of the common elements of a surviving unit in
137 the condominium remains in the same proportion to the surviving
138 units as it was before the partial termination. An amendment to
139 a declaration to conform the declaration to this section is not
140 an amendment subject to s. 718.110(4) and may be approved by the
141 lesser of 80 percent of the voting interests or the percentage
142 of the voting interests required to amend the declaration.

143 (9) PLAN OF TERMINATION.—The plan of termination must be a
144 written document executed in the same manner as a deed by unit
145 owners having the requisite percentage of voting interests to

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146 approve the plan and by the termination trustee. A copy of the
147 proposed plan of termination shall be given to all unit owners,
148 in the same manner as for notice of an annual meeting, at least
149 14 days prior to the meeting at which the plan of termination is
150 to be voted upon or prior to or simultaneously with the
151 distribution of the solicitation seeking execution of the plan
152 of termination or written consent to or joinder in the plan. A
153 unit owner may document assent to the plan by executing the plan
154 or by consent to or joinder in the plan in the manner of a deed.
155 A plan of termination and the consents or joinders of unit
156 owners and, if required, consents or joinders of mortgagees must
157 be recorded in the public records of each county in which any
158 portion of the condominium is located. The plan is effective
159 only upon recordation or at a later date specified in the plan.
160 If the plan of termination fails to receive the required
161 approval, the plan shall not be recorded and a new attempt to
162 terminate the condominium may not be proposed at a meeting or by
163 solicitation for joinder and consent for 180 days after the date
164 that such failed plan of termination was first given to all unit
165 owners in the manner as provided in this subsection.

166 (a) If the plan of termination is voted on at a meeting of
167 the unit owners called in accordance with this subsection, any
168 unit owner desiring to reject the plan must do so by either
169 voting to reject the plan in person or by proxy, or by
170 delivering a written rejection to the association before or at
171 the meeting.

172 (b) If the plan of termination is approved by written
173 consent or joinder without a meeting of the unit owners, any
174 unit owner desiring to object to the plan must deliver a written

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175 objection to the association within 20 days after the date that
176 the association notifies the nonconsenting owners, in the manner
177 provided in paragraph (15) (a), that the plan of termination has
178 been approved by written action in lieu of a unit owner meeting.

179 (11) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL
180 TERMINATION; WITHDRAWAL; ERRORS.—

181 (a) Unless the plan of termination expressly authorizes a
182 may provide that each unit owner or other person to retain
183 retains the exclusive right to possess that of possession to the
184 portion of the real estate which formerly constituted the unit
185 after termination or to use the common elements of the
186 condominium after termination, all such rights in the unit and
187 common elements automatically terminate on the effective date of
188 termination. Unless the plan expressly provides otherwise, all
189 leases, occupancy agreements, subleases, licenses, or other
190 agreements for the use or occupancy of any unit or common
191 elements of the condominium automatically terminate on the
192 effective date of termination. If the plan expressly authorizes
193 a unit owner or other person to retain exclusive right of
194 possession for that portion of the real estate which formerly
195 constituted the unit or to use the common elements of the
196 condominium after termination, the plan must specify the terms
197 and if the plan specifies the conditions of possession. In a
198 partial termination, the plan of termination as specified in
199 subsection (10) must also identify the units that survive the
200 partial termination and provide that such units remain in the
201 condominium form of ownership pursuant to an amendment to the
202 declaration of condominium or an amended and restated
203 declaration. In a partial termination, title to the surviving

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204 units and common elements that remain part of the condominium
205 property specified in the plan of termination remain vested in
206 the ownership shown in the public records and do not vest in the
207 termination trustee.

208 (b) In a conditional termination, the plan must specify the
209 conditions for termination. A conditional plan does not vest
210 title in the termination trustee until the plan and a
211 certificate executed by the association with the formalities of
212 a deed, confirming that the conditions in the conditional plan
213 have been satisfied or waived by the requisite percentage of the
214 voting interests, have been recorded. In a partial termination,
215 the plan does not vest title to the surviving units or common
216 elements that remain part of the condominium property in the
217 termination trustee.

218 (c) Unless otherwise provided in the plan of termination, a
219 plan may be withdrawn or modified at any time before the sale of
220 the condominium property by the affirmative vote or written
221 agreement of at least the same percentage of voting interests in
222 the condominium as that which was required for the initial
223 approval of the plan.

224 (d) Upon the discovery of a scrivener's error in the plan
225 of termination, the termination trustee may record an amended
226 plan or an amendment to the plan for the purpose of correcting
227 the error, and the amended plan or amendment to the plan must be
228 executed by the termination trustee in the same manner as
229 required for the execution of a deed.

230 (12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM
231 PROPERTY.—

232 (a) Unless the declaration expressly provides for the

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233 allocation of the proceeds of sale of condominium property, the
234 plan of termination may require separate valuations for ~~must~~
235 ~~first apportion the proceeds between the aggregate value of all~~
236 ~~units and the value of the common elements.~~ However, in the
237 absence of such a provision, it is presumed that the common
238 elements have no independent value but rather that their value
239 is incorporated into the valuation of the units, ~~based on their~~
240 ~~respective fair market values immediately before the~~
241 ~~termination, as determined by one or more independent appraisers~~
242 ~~selected by the association or termination trustee.~~ In a partial
243 termination, the aggregate values of the units and common
244 elements that are being terminated must be separately
245 determined, and the plan of termination must specify the
246 allocation of the proceeds of sale for the units and common
247 elements being terminated.

248 (b) The portion of proceeds allocated to the units shall be
249 ~~further~~ apportioned among the individual units. The
250 apportionment is deemed fair and reasonable if it is ~~se~~
251 ~~determined by the unit owners, who may approve the plan of~~
252 ~~termination~~ by any of the following methods:

253 1. The respective values of the units based on the fair
254 market values of the units immediately before the termination,
255 as determined by one or more independent appraisers selected by
256 the association or termination trustee;

257 2. The respective values of the units based on the most
258 recent market value of the units before the termination, as
259 provided in the county property appraiser's records; or

260 3. The respective interests of the units in the common
261 elements specified in the declaration immediately before the

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262 termination.

263 (c) The methods of apportionment in paragraph (b) do not
264 prohibit any other method of apportioning the proceeds of sale
265 allocated to the units or any other method of valuing the units
266 agreed upon in the plan of termination. Any ~~The~~ portion of the
267 proceeds separately allocated to the common elements shall be
268 apportioned among the units based upon their respective
269 interests in the common elements as provided in the declaration.

270 (d) Unless otherwise provided in the plan of termination,
271 liens that encumber a unit shall be transferred to the proceeds
272 of sale of the condominium property and the proceeds of sale or
273 other distribution of association property, common surplus, or
274 other association assets attributable to such unit in their same
275 priority. In a partial termination, liens that encumber a unit
276 being terminated must be transferred to the proceeds of sale of
277 that portion of the condominium property being terminated which
278 are attributable to such unit. The proceeds of any sale of
279 condominium property pursuant to a plan of termination may not
280 be deemed to be common surplus or association property. The
281 holder of a lien that encumbers a unit at the time of recording
282 a plan must, within 30 days after the written request from the
283 termination trustee, deliver a statement to the termination
284 trustee confirming the outstanding amount of any obligations of
285 the unit owner which are secured by the lien.

286 (e) The termination trustee may set off against, and reduce
287 the share of, the termination proceeds allocated to a unit by
288 the following amounts, which may include attorney fees and
289 costs:

290 1. All unpaid assessments, taxes, late fees, interest,

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291 finances, charges, and other amounts due and owing to the
292 association associated with the unit; its owner; the owner's
293 family members, guests, tenants, occupants, licensees, or
294 invitees; or other persons.

295 2. All costs of clearing title to the owner's unit,
296 including, but not limited to, locating lienors, obtaining
297 statements from such lienors confirming the outstanding amount
298 of any obligations of the unit owner, and paying all mortgages
299 and other liens, judgments, and encumbrances and filing suit to
300 quiet title or remove title defects.

301 3. All costs of removing the owner; the owner's family
302 members, guests, tenants, occupants, licensees, or invitees; or
303 other persons from the unit in the event such persons fail to
304 vacate a unit as required by the plan.

305 4. All costs arising from, or related to, any breach of the
306 plan by the owner; the owner's family members, guests, tenants,
307 occupants, licensees, or invitees; or other persons.

308 5. All costs arising out of, or related to, the removal and
309 storage of all personal property remaining in a unit, other than
310 personal property owned by the association, so that the unit may
311 be delivered vacant and clear of the owner; the owner's family
312 members, guests, tenants, occupants, licensees, or invitees; or
313 other persons as required by the plan.

314 6. All costs arising out of, or related to, the appointment
315 and activities of a receiver or attorney ad litem acting for the
316 owner in the event that the owner is unable to be located.

317 (16) RIGHT TO CONTEST.—A unit owner or lienor may contest a
318 plan of termination by initiating a petition for mandatory
319 nonbinding arbitration ~~summary procedure~~ pursuant to s. 718.1255

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320 ~~s. 51.011~~ within 90 days after the date the plan is recorded. A
321 unit owner or lienor may only contest the fairness and
322 reasonableness of the apportionment of the proceeds from the
323 sale among the unit owners, that the first mortgages of all unit
324 owners other than the bulk owner have not or will not be fully
325 satisfied at the time of termination as required by subsection
326 (3), or that the required vote to approve the plan was not
327 obtained. A unit owner or lienor who does not contest the plan
328 within the 90-day period is barred from asserting or prosecuting
329 a claim against the association, the termination trustee, any
330 unit owner, or any successor in interest to the condominium
331 property. In an action contesting a plan of termination, the
332 person contesting the plan has the burden of pleading and
333 proving that the apportionment of the proceeds from the sale
334 among the unit owners was not fair and reasonable or that the
335 required vote was not obtained. The apportionment of sale
336 proceeds is presumed fair and reasonable if it was determined
337 pursuant to the methods prescribed in subsection (12). The
338 arbitrator ~~court~~ shall determine the rights and interests of the
339 parties in the apportionment of the sale proceeds ~~and order the~~
340 ~~plan of termination to be implemented if it is fair and~~
341 ~~reasonable.~~ If the arbitrator ~~court~~ determines that the
342 apportionment of sale proceeds ~~plan of termination~~ is not fair
343 and reasonable, the arbitrator ~~court~~ may void the plan or may
344 modify the plan to apportion the proceeds in a fair and
345 reasonable manner pursuant to this section based upon the
346 proceedings and order the modified plan of termination to be
347 implemented. If the arbitrator determines that the plan was not
348 properly approved, or that the procedures to adopt the plan were

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349 not properly followed, he or she may void the plan or grant
350 other relief it deems just and proper. The arbitrator shall
351 automatically void the plan upon a finding that any of the
352 disclosures required in subparagraph (3) (d)4. are omitted,
353 misleading, incomplete, or inaccurate. Any challenge to a plan,
354 other than a challenge that the required vote was not obtained,
355 does not affect title to the condominium property or the vesting
356 of the condominium property in the trustee, but shall only be a
357 claim against the proceeds of the plan. In any such action, the
358 prevailing party shall recover reasonable ~~attorney~~ ~~attorney's~~
359 fees and costs.

360 Section 2. Subsection (1) of section 718.1255, Florida
361 Statutes, is amended to read:

362 718.1255 Alternative dispute resolution; voluntary
363 mediation; mandatory nonbinding arbitration; legislative
364 findings.—

365 (1) DEFINITIONS.—As used in this section, the term
366 “dispute” means any disagreement between two or more parties
367 which ~~that~~ involves:

368 (a) The authority of the board of directors, under this
369 chapter or association document to:

370 1. Require any owner to take any action, or not to take any
371 action, involving that owner's unit or the appurtenances
372 thereto.

373 2. Alter or add to a common area or element.

374 (b) The failure of a governing body, when required by this
375 chapter or an association document, to:

376 1. Properly conduct elections.

377 2. Give adequate notice of meetings or other actions.

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378 3. Properly conduct meetings.

379 4. Allow inspection of books and records.

380 (c) A plan of termination pursuant to s. 718.117.

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382 "Dispute" does not include any disagreement that primarily
383 involves: title to any unit or common element; the
384 interpretation or enforcement of any warranty; the levy of a fee
385 or assessment, or the collection of an assessment levied against
386 a party; the eviction or other removal of a tenant from a unit;
387 alleged breaches of fiduciary duty by one or more directors; or
388 claims for damages to a unit based upon the alleged failure of
389 the association to maintain the common elements or condominium
390 property.

391 Section 3. This act shall take effect July 1, 2015.