

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
 2 Representative Sprowls offered the following:

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:

6 Section 1. Subsections (3), (4), (11), (12) and (16) of
 7 section 718.117, Florida Statutes, are amended to read:

8 718.117 Termination of condominium.—

9 (3) OPTIONAL TERMINATION.—Except as provided in subsection
 10 (2) or unless the declaration provides for a lower percentage,
 11 the condominium form of ownership may be terminated for all or a
 12 portion of the condominium property pursuant to a plan of
 13 termination approved by at least 80 percent of the total voting
 14 interests of the condominium if no more than 10 percent of the
 15 total voting interests of the condominium have rejected the plan
 16 of termination by negative vote or by providing written
 17 objections, subject to following conditions:—

Amendment No. 1

18 (a) The total voting interests of the condominium include
19 all voting interests for the purpose of considering a plan of
20 termination. A voting interest of the condominium may not be
21 suspended for any reason when voting on termination pursuant to
22 this subsection.

23 (b) If more than 10 percent of the total voting interests
24 of the condominium reject a plan of termination, a subsequent
25 plan of termination pursuant to this subsection may not be
26 considered for 18 months after the date of the rejection.

27 (c) This subsection does not apply to condominiums in
28 which 75 percent or more of the units are timeshare units. This
29 subsection also does not apply to any condominium created
30 pursuant to part VI until 7 years after the recording of the
31 declaration of condominium for the condominium.

32 (d) For purposes of this paragraph only, a bulk owner
33 shall be deemed to be a single holder of such voting interests
34 or an owner together with related entities which would be
35 considered an insider under s. 726.102 holding such voting
36 interests. If the condominium association is a residential
37 association proposed for termination pursuant to this subsection
38 and if, at the time of recording the plan of termination at
39 least 80 percent of the total voting interests are owned by a
40 bulk owner:

41 1. If the plan of termination is voted on at a meeting of
42 the unit owners called in accordance with subsection (9), any
43 unit owner desiring to reject the plan must do so by either

Amendment No. 1

44 voting to reject the plan in person or by proxy, or by
45 delivering a written rejection to the association before or at
46 the meeting.

47 2. If the plan of termination is approved by written
48 consent or joinder without a meeting of the unit owners, any
49 unit owner desiring to object to the plan must deliver a written
50 objection to the association within 20 days after the date that
51 the association notifies the nonconsenting owners, in the manner
52 provided in paragraph (15) (a), that the plan of termination has
53 been approved by written action in lieu of a unit owner meeting.

54 3. Unless the terminated condominium property is sold as a
55 whole to an unrelated third party, the plan of termination is
56 subject to the following conditions and limitations:

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

966903 - h0643- strike.docx

Published On: 3/10/2015 3:04:25 PM

Amendment No. 1

70 with a lease is deemed to have waived his or her right to retain
71 possession of his or her former unit and shall be required to
72 vacate the former unit upon the effective date of the
73 termination, unless otherwise provided in the plan of
74 termination.

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

86 c. For their respective units, all units not owned by the
87 bulk owner must be compensated at least 100 percent of the fair
88 market value of their units. The fair market value shall be
89 determined as of a date that is no earlier than 90 days before
90 the date the plan of termination is recorded, and shall be
91 determined by an independent appraiser selected by the
92 termination trustee. Notwithstanding subsection (12), the
93 allocation of the proceeds of the sale of condominium property
94 to owners of units dissenting or objecting to the plan of
95 termination shall be 110 percent of the original purchase price,

Amendment No. 1

96 or 110 percent of fair market value, whichever is greater. For
97 purposes of this sub-subparagraph, the term "fair market value"
98 means the price of a unit that a seller is willing to accept and
99 a buyer is willing to pay on the open market in an arms-length
100 transaction based on similar units sold in other condominiums,
101 including units sold in bulk purchases but excluding units sold
102 at wholesale or distressed prices. The purchase price of units
103 acquired in bulk following a bankruptcy or foreclosure shall not
104 be considered for purposes of determining fair market value.

105 d. A plan of termination is not effective unless the
106 outstanding first mortgages of all unit owners other than the
107 bulk owner are satisfied in full before, or simultaneously with,
108 the termination.

109 4. Prior to presenting a plan of termination to the unit
110 owners for consideration pursuant to this paragraph, the plan
111 shall include the following written disclosures in a sworn
112 statement:

113 a. The identity of any person that owners or controls 50%
114 or more of the units in the condominium, and if the units are
115 owned by an artificial entity, a disclosure of the natural
116 person or persons who, directly or indirectly, manage or control
117 the entity and the natural person or persons who, directly or
118 indirectly, own or control 20% or more of the artificial entity
119 or entities that constitute the bulk owner.

120 b. The identity of all units acquired by any bulk owner,
121 the date of acquisition of each unit, and the total

Amendment No. 1

122 consideration paid to each prior owner by the bulk owner,
123 whether or not attributed to the purchase price of the unit.

124 c. The relationship of any currently serving board member
125 to the bulk owner or any person or entity affiliated with the
126 bulk owner and subject to disclosure pursuant to this
127 subsection.

128 d. If the members of the board of administration are
129 elected by the bulk owner, the unit owners other than the bulk
130 owner shall be entitled to elect not less than one-third of the
131 board of administration prior to the approval of any plan of
132 termination by the board.

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

145 (a) Unless the ~~The~~ plan of termination expressly
146 authorizes a ~~may provide that each~~ unit owner or other person to
147 retain ~~retains~~ the exclusive right to possess that ~~of possession~~

966903 - h0643- strike.docx

Published On: 3/10/2015 3:04:25 PM

Amendment No. 1

148 ~~to the~~ portion of the real estate which formerly constituted the
149 unit after termination or to use the common elements of the
150 condominium after termination, then all such rights in the unit
151 or common elements shall automatically terminate on the
152 effective date of termination. Unless the plan expressly
153 provides otherwise, all leases, occupancy agreements, subleases,
154 licenses or other agreements for the use or occupancy of any
155 unit or common elements in the condominium shall automatically
156 terminate on the effective date of termination subject to
157 paragraph 2(a). In the event the plan expressly authorizes a
158 unit owner or other person to retain exclusive right to possess
159 that portion of the real estate that formerly constituted the
160 unit or to use the common elements of the condominium after
161 termination, then the plan must specify the terms and if the
162 ~~plan specifies the conditions of possession. In a partial~~
163 ~~termination, the plan of termination as specified in subsection~~
164 ~~(10) must also identify the units that survive the partial~~
165 ~~termination and provide that such units remain in the~~
166 ~~condominium form of ownership pursuant to an amendment to the~~
167 ~~declaration of condominium or an amended and restated~~
168 ~~declaration.~~ In a partial termination, title to the surviving
169 units and common elements that remain part of the condominium
170 property specified in the plan of termination remain vested in
171 the ownership shown in the public records and do not vest in the
172 termination trustee.

173 (b) In a conditional termination, the plan must specify

Amendment No. 1

174 the conditions for termination. A conditional plan does not vest
175 title in the termination trustee until the plan and a
176 certificate executed by the association with the formalities of
177 a deed, confirming that the conditions in the conditional plan
178 have been satisfied or waived by the requisite percentage of the
179 voting interests, have been recorded. ~~In a partial termination,~~
180 ~~the plan does not vest title to the surviving units or common~~
181 ~~elements that remain part of the condominium property in the~~
182 ~~termination trustee.~~

183 (c) Unless otherwise provided in the plan of termination,
184 at any time prior to the sale of the condominium property, a
185 plan may be withdrawn or modified by the affirmative vote or
186 written agreement of not less than the same percentage of voting
187 interests in the condominium as was required for the initial
188 approval of the plan.

189 (d) Upon the discovery of a scrivener's error in the plan
190 of termination, the termination trustee may record an amended
191 plan or an amendment to the plan for the purpose of correcting
192 such scrivener's error, and such amended plan or amendment to
193 the plan need only be executed by the termination trustee in the
194 manner for execution of a deed.

195 (12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM
196 PROPERTY.—

197 (a) Unless the declaration expressly provides for the
198 allocation of the proceeds of sale of condominium property, the
199 plan of termination may require separate valuations for the ~~must~~

Amendment No. 1

200 ~~first apportion the proceeds between the aggregate value of all~~
201 ~~units and the value of the common elements, but in the absence~~
202 ~~of such provision it shall be presumed that the common elements~~
203 ~~have no independent value, but rather that their value is~~
204 ~~incorporated into the valuation of the units based on their~~
205 ~~respective fair market values immediately before the~~
206 ~~termination, as determined by one or more independent appraisers~~
207 ~~selected by the association or termination trustee. In a partial~~
208 ~~termination, the aggregate values of the units and common~~
209 ~~elements that are being terminated must be separately~~
210 ~~determined, and the plan of termination must specify the~~
211 ~~allocation of the proceeds of sale for the units and common~~
212 ~~elements being terminated.~~

213 (b) The portion of proceeds allocated to the units shall
214 be ~~further~~ apportioned among the individual units. The
215 apportionment is deemed fair and reasonable if it is ~~so~~
216 ~~determined by the unit owners, who may approve the plan of~~
217 ~~termination~~ by any of the following methods:

218 1. The respective values of the units based on the fair
219 market values of the units immediately before the termination,
220 as determined by one or more independent appraisers selected by
221 the association or termination trustee;

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

225 3. The respective interests of the units in the common

Amendment No. 1

226 elements specified in the declaration immediately before the
227 termination.

228 (c) The methods of apportionment in paragraph (b) do not
229 prohibit any other method of apportioning the proceeds of sale
230 allocated to the units or any other method of valuing the units
231 agreed upon in the plan of termination. Any ~~The~~ portion of the
232 proceeds separately allocated to the common elements shall be
233 apportioned among the units based upon their respective
234 interests in the common elements as provided in the declaration.

235 (d) Liens that encumber a unit shall, unless otherwise
236 provided in the plan of termination, be transferred to the
237 proceeds of sale of the condominium property and the proceeds of
238 sale or other distribution of association property, common
239 surplus, or other association assets attributable to such unit
240 in their same priority. In a partial termination, liens that
241 encumber a unit being terminated must be transferred to the
242 proceeds of sale of that portion of the condominium property
243 being terminated which are attributable to such unit. The
244 proceeds of any sale of condominium property pursuant to a plan
245 of termination may not be deemed to be common surplus or
246 association property. The holder of a lien that encumbers a unit
247 at the time of recording a plan is required, within 30 days
248 following written request from the termination trustee, to
249 deliver to the termination trustee a statement confirming the
250 outstanding amount of any obligations of the unit owner secured
251 by the lien.

966903 - h0643- strike.docx

Published On: 3/10/2015 3:04:25 PM

Amendment No. 1

252 (e) The termination trustee shall have the right to setoff
253 against and reduce the share of the termination proceeds
254 allocated to a unit by the following amounts, which may include
255 attorney fees and costs in each instance:

256 1. All unpaid assessments, taxes, late fees, interest,
257 finances, charges and all other amounts due and owing the
258 association associated with the unit, its owner, the owner's
259 family members, guests, tenants, occupants, licensees, invitees
260 or others.

261 2. All costs of clearing title to the owner's unit,
262 including without limitation, locating lienors, obtaining
263 statements from such lienors confirming the outstanding amount
264 of any obligations of the unit owner, and paying all mortgages
265 and other liens, judgments and encumbrances and filing suit to
266 quiet title or remove title defects.

267 3. All costs of removing the owner, the owner's family
268 members, guests, tenants, occupants, licensees, invitees or
269 others from the unit in the event an owner, or owner's family
270 members, tenants, occupants, or others fail to vacate a unit as
271 required by the plan.

272 4. All costs arising from or related to such other breach
273 of the plan by an owner, the owner's family members, guests,
274 tenants, occupants, licensees, invitees or others.

275 5. All costs arising out of or related to removal and
276 storage of all personal property remaining in a unit other than
277 personal property owned by the association such that the unit

Amendment No. 1

278 can be delivered vacant and clear of the owner, the owner's
279 family members, guests, tenants, occupants, licensees, invitees
280 or others as required by the plan.

281 6. All costs arising out of or related to the appointment
282 and activities of a receiver or attorney ad litem acting for
283 such owner in the event that an owner cannot be located.

284 (16) RIGHT TO CONTEST.—A unit owner or lienor may contest
285 a plan of termination by initiating a summary procedure pursuant
286 to s. 51.011 within 90 days after the date the plan is recorded.
287 A unit owner or lienor may only contest the fairness and
288 reasonableness of the apportionment of the proceeds from the
289 sale among the unit owners, that the first mortgages of all unit
290 owners have not or will not be fully satisfied at the time of
291 termination as required by subsection (3), or that the required
292 vote to approve the plan was not obtained. A unit owner or
293 lienor who does not contest the plan within the 90-day period is
294 barred from asserting or prosecuting a claim against the
295 association, the termination trustee, any unit owner, or any
296 successor in interest to the condominium property. In an action
297 contesting a plan of termination, the person contesting the plan
298 has the burden of pleading and proving that the apportionment of
299 the proceeds from the sale among the unit owners was not fair
300 and reasonable or that the required vote was not obtained. The
301 apportionment of sale proceeds is presumed fair and reasonable
302 if it was determined pursuant to the methods prescribed in
303 subsection (12). The court shall determine the rights and

966903 - h0643- strike.docx

Published On: 3/10/2015 3:04:25 PM

Amendment No. 1

304 interests of the parties in the apportionment of the sale
305 proceeds and ~~order the plan of termination to be implemented if~~
306 ~~it is fair and reasonable~~. If the court determines that the
307 apportionment of sales proceeds ~~plan of termination~~ is not fair
308 and reasonable, the court may ~~void the plan or may~~ modify the
309 plan to apportion the proceeds in a fair and reasonable manner
310 pursuant to this section based upon the proceedings and order
311 the modified plan of termination to be implemented. If the court
312 determines that the plan was not properly approved, it may void
313 the plan or grant other relief it deems just and proper. Any
314 challenge to a plan, other than a challenge that the required
315 vote was not obtained, does not affect title to the condominium
316 property or the vesting of the condominium property in the
317 trustee, but shall only be a claim against the proceeds of the
318 plan. In any such action, the prevailing party shall recover
319 reasonable attorney ~~attorney's~~ fees and costs.

320 Section 2. This act shall take effect July 1, 2015.

321
322
323 -----
324 **T I T L E A M E N D M E N T**

325 Remove everything before the enacting clause and insert:
326 An act relating to termination of a condominium association;
327 amending s. 718.117, F.S.; providing and revising procedures and
328 requirements for termination of a condominium property;
329 providing requirements for the rejection of a plan of

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 643 (2015)

Amendment No. 1

330 termination; providing definitions; providing applicability;
331 providing requirements relating to partial termination of a
332 condominium property; revising requirements relating to the
333 right to contest a plan of termination; providing an effective
334 date.