

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, or the objection to, a plan of
 7 termination; providing definitions; providing
 8 applicability; providing and revising requirements
 9 relating to partial termination of a condominium
 10 property; authorizing a plan of termination to be
 11 withdrawn, modified, or amended under certain
 12 conditions; revising and providing requirements
 13 relating to the allocation of proceeds of the sale of
 14 condominium property; revising requirements relating
 15 to the right to contest a plan of termination;
 16 amending s. 718.1255, F.S.; revising a definition;
 17 providing an effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:
 20

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

23 718.117 Termination of condominium.—

24 (3) OPTIONAL TERMINATION.—Except as provided in subsection
 25 (2) or unless the declaration provides for a lower percentage,
 26 the condominium form of ownership may be terminated for all or a

27 | portion of the condominium property pursuant to a plan of
28 | termination approved by at least 80 percent of the total voting
29 | interests of the condominium if no more than 10 percent of the
30 | total voting interests of the condominium have rejected the plan
31 | of termination by negative vote or by providing written
32 | objections, subject to the following conditions:

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

38 | (b) If more than 10 percent of the total voting interests
39 | of the condominium reject a plan of termination, a subsequent
40 | plan of termination pursuant to this subsection may not be
41 | considered for 18 months after the date of the rejection.

42 | (c) This subsection does not apply to condominiums in
43 | which 75 percent or more of the units are timeshare units. This
44 | subsection also does not apply to any condominium created
45 | pursuant to part VI of this chapter until 7 years after the
46 | recording of the declaration of condominium for the condominium.

47 | (d) For purposes of this paragraph, the term "bulk owner"
48 | means the single holder of such voting interests or an owner
49 | together with a related entity or entities that would be
50 | considered an insider, as defined in s. 726.102, holding such
51 | voting interests. If the condominium association is a
52 | residential association proposed for termination pursuant to

53 this section and, at the time of recording the plan of
54 termination, at least 80 percent of the total voting interests
55 are owned by a bulk owner, the plan of termination is subject to
56 the following conditions and limitations:

57 1. 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
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 2. 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 3. For their respective units, all unit owners other than
87 the bulk owner must be compensated at least 100 percent of the
88 fair 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 that 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,
96 or 110 percent of fair market value, whichever is greater. For
97 purposes of this 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 4. A plan of termination is not effective unless the plan
106 provides for outstanding first mortgages of all unit owners
107 other than the bulk owner are satisfied in full before, or
108 simultaneously with, the termination.

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

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

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

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

128 (e) If the members of the board of administration are
129 elected by the bulk owner, unit owners other than the bulk owner
130 may elect at least one-third of the members of the board of

131 administration before the approval of any plan of termination by
132 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 (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
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
 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 consent or joinder in lieu of a unit
 179 owner meeting.

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

182 (a) Unless the plan of termination expressly authorizes a

183 ~~may provide that each~~ unit owner or other person to retain
184 ~~retains the exclusive right to possess that of possession to the~~
185 portion of the real estate which formerly constituted the unit
186 after termination or to use the common elements of the
187 condominium after termination, all such rights in the unit or
188 common elements automatically terminate on the effective date of
189 termination. Unless the plan expressly provides otherwise, all
190 leases, occupancy agreements, subleases, licenses, or other
191 agreements for the use or occupancy of any unit or common
192 elements of the condominium automatically terminate on the
193 effective date of termination. If the plan expressly authorizes
194 a unit owner or other person to retain exclusive right of
195 possession for that portion of the real estate that formerly
196 constituted the unit or to use the common elements of the
197 condominium after termination, the plan must specify the terms
198 and if the plan specifies the conditions of possession. In a
199 partial termination, the plan of termination as specified in
200 subsection (10) must also identify the units that survive the
201 partial termination and provide that such units remain in the
202 condominium form of ownership pursuant to an amendment to the
203 declaration of condominium or an amended and restated
204 declaration. In a partial termination, title to the surviving
205 units and common elements that remain part of the condominium
206 property specified in the plan of termination remain vested in
207 the ownership shown in the public records and do not vest in the
208 termination trustee.

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

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

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

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

233 (a) Unless the declaration expressly provides for the
 234 allocation of the proceeds of sale of condominium property, the

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

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

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

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

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

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

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

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

291 1. All unpaid assessments, taxes, late fees, interest,
292 finances, charges, and other amounts due and owing to the
293 association associated with the unit, its owner, or the owner's
294 family members, guests, tenants, occupants, licensees, invitees,
295 or other persons.

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

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

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

309 5. All costs arising out of, or related to, the removal
310 and storage of all personal property remaining in a unit, other
311 than personal property owned by the association, so that the
312 unit may be delivered vacant and clear of the owner or the

313 owner's family members, guests, tenants, occupants, licensees,
314 invitees, or other persons as required by the plan.

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

319 (16) RIGHT TO CONTEST.—A unit owner or lienor may contest
320 a plan of termination by initiating a petition for mandatory
321 nonbinding arbitration ~~summary procedure~~ pursuant to s. 718.1255
322 ~~51.011~~ within 90 days after the date the plan is recorded. A
323 unit owner or lienor may only contest the fairness and
324 reasonableness of the apportionment of the proceeds from the
325 sale among the unit owners, that the first mortgages of all unit
326 owners other than the bulk owner have not or will not be fully
327 satisfied at the time of termination as required by subsection
328 (3), or that the required vote to approve the plan was not
329 obtained. A unit owner or lienor who does not contest the plan
330 within the 90-day period is barred from asserting or prosecuting
331 a claim against the association, the termination trustee, any
332 unit owner, or any successor in interest to the condominium
333 property. In an action contesting a plan of termination, the
334 person contesting the plan has the burden of pleading and
335 proving that the apportionment of the proceeds from the sale
336 among the unit owners was not fair and reasonable or that the
337 required vote was not obtained. The apportionment of sale
338 proceeds is presumed fair and reasonable if it was determined

339 pursuant to the methods prescribed in subsection (12). The
340 arbitrator ~~court~~ shall determine the rights and interests of the
341 parties in the apportionment of the sale proceeds ~~and order the~~
342 ~~plan of termination to be implemented if it is fair and~~
343 ~~reasonable~~. If the arbitrator ~~court~~ determines that the
344 apportionment of sales proceeds ~~plan of termination~~ is not fair
345 and reasonable, the arbitrator ~~court~~ may void the plan or may
346 modify the plan to apportion the proceeds in a fair and
347 reasonable manner pursuant to this section based upon the
348 proceedings and order the modified plan of termination to be
349 implemented. If the arbitrator determines that the plan was not
350 properly approved, or that the procedures to adopt the plan were
351 not properly followed, the arbitrator may void the plan or grant
352 other relief it deems just and proper. The arbitrator shall
353 automatically void the plan upon a finding that any of the
354 disclosures required in subparagraph (3)(d)5. are omitted,
355 misleading, incomplete, or inaccurate. Any challenge to a plan,
356 other than a challenge that the required vote was not obtained,
357 does not affect title to the condominium property or the vesting
358 of the condominium property in the trustee, but shall only be a
359 claim against the proceeds of the plan. In any such action, the
360 prevailing party shall recover reasonable attorney ~~attorney's~~
361 fees and costs.

362 Section 2. Paragraph (c) is added to subsection (1) of
363 section 718.1255, Florida Statutes, to read:

364 718.1255 Alternative dispute resolution; voluntary

CS/CS/HB 643

2015

365 mediation; mandatory nonbinding arbitration; legislative
366 findings.—

367 (1) DEFINITIONS.—As used in this section, the term
368 "dispute" means any disagreement between two or more parties
369 that involves:

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

371

372 "Dispute" does not include any disagreement that primarily
373 involves: title to any unit or common element; the
374 interpretation or enforcement of any warranty; the levy of a fee
375 or assessment, or the collection of an assessment levied against
376 a party; the eviction or other removal of a tenant from a unit;
377 alleged breaches of fiduciary duty by one or more directors; or
378 claims for damages to a unit based upon the alleged failure of
379 the association to maintain the common elements or condominium
380 property.

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