

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 11          withdrawn, modified, or amended under certain  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 or more  
30 | of the total voting interests of the condominium have rejected  
31 | the plan of termination by negative vote or by providing written  
32 | objections, the plan of termination may not proceed.

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

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

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

44 | (b) This subsection does not apply to any condominium  
45 | created pursuant to part VI of this chapter until 5 years after  
46 | the recording of the declaration of condominium, unless there is  
47 | no objection to the plan of termination ~~condominiums in which 75~~  
48 | ~~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 an insider, 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:

59 1. If the former condominium units are offered for lease  
60 to the public after the termination, each unit owner in  
61 occupancy immediately before the date of recording of the plan  
62 of 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 are being offered to the public. In order to obtain  
66 a lease and exercise the right to retain exclusive possession of  
67 the unit owner's former unit, the unit owner must make a written  
68 request to the termination trustee to rent the former unit  
69 within 90 days after the date the plan of termination is  
70 recorded. Any unit owner who fails to timely make such written  
71 request and sign a lease within 15 days after being presented  
72 with a lease is deemed to have waived his or her right to retain  
73 possession of his or her former unit and shall be required to  
74 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 shall be in addition to the termination proceeds for such  
86 owner's former unit and shall be paid no later than 10 days  
87 after the former unit owner vacates his or her former unit.

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

105 be considered for purposes of determining fair market value.

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

110 5. Before a plan of termination is presented 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  
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  
123 unit was acquired, and the total amount of compensation paid to  
124 each 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  
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 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 that 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~~  
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

209 the 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,  
 219 at any time before the sale of the condominium property, a plan  
 220 may be withdrawn or modified 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  
 233 allocation of the proceeds of sale of condominium property, the  
 234 plan of termination may require separate valuations for the ~~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 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  
249 be ~~further~~ apportioned among the individual units. The  
250 apportionment is deemed fair and reasonable if it is ~~so~~  
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  
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) Liens that encumber a unit shall, unless otherwise  
271 provided in the plan of termination, be transferred to the  
272 proceeds of sale of the condominium property and the proceeds of  
273 sale or other distribution of association property, common  
274 surplus, or other association assets attributable to such unit  
275 in their same priority. In a partial termination, liens that  
276 encumber a unit being terminated must be transferred to the  
277 proceeds of sale of that portion of the condominium property  
278 being terminated which are attributable to such unit. The  
279 proceeds of any sale of condominium property pursuant to a plan  
280 of termination may not be deemed to be common surplus or  
281 association property. The holder of a lien that encumbers a unit  
282 at the time of recording a plan must, within 30 days after the  
283 written request from the termination trustee, deliver a  
284 statement to the termination trustee confirming the outstanding  
285 amount of any obligations of the unit owner secured by the lien.

286 (e) The termination trustee may setoff 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,  
291 finances, charges, and other amounts due and owing to the  
292 association associated with the unit, its owner, or the owner's  
293 family members, guests, tenants, occupants, licensees, invitees,  
294 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 or the owner's family  
302 members, guests, tenants, occupants, licensees, 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  
306 the plan by the owner or the owner's family members, guests,  
307 tenants, occupants, licensees, invitees, or other persons.

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

313 invitees, or other persons as required by the plan.

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

318 (16) RIGHT TO CONTEST.—A unit owner or lienor may contest  
319 a plan of termination by initiating a petition for mandatory  
320 nonbinding arbitration ~~summary procedure~~ pursuant to s. 718.1255  
321 ~~51.011~~ within 90 days after the date the plan is recorded. A  
322 unit owner or lienor may only contest the fairness and  
323 reasonableness of the apportionment of the proceeds from the  
324 sale among the unit owners, that the first mortgages of all unit  
325 owners other than the bulk owner have not or will not be fully  
326 satisfied at the time of termination as required by subsection  
327 (3), or that the required vote to approve the plan was not  
328 obtained. A unit owner or lienor who does not contest the plan  
329 within the 90-day period is barred from asserting or prosecuting  
330 a claim against the association, the termination trustee, any  
331 unit owner, or any successor in interest to the condominium  
332 property. In an action contesting a plan of termination, the  
333 person contesting the plan has the burden of pleading and  
334 proving that the apportionment of the proceeds from the sale  
335 among the unit owners was not fair and reasonable or that the  
336 required vote was not obtained. The apportionment of sale  
337 proceeds is presumed fair and reasonable if it was determined  
338 pursuant to the methods prescribed in subsection (12). The

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

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

363 718.1255 Alternative dispute resolution; voluntary  
364 mediation; mandatory nonbinding arbitration; legislative

365 findings.—

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

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

370

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

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