

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 1520

INTRODUCER: Senator Latvala

SUBJECT: Condominium Terminations

DATE: April 3, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1520 revises the requirements for the optional termination of a condominium. Current law authorizes the termination of a condominium due to economic waste or impossibility or at the option of the unit owners. In an optional termination, a plan of termination must be approved by 80 percent of the condominium's total voting interests and no more than 10 percent of the total voting interests may reject the plan of termination. The bill:

- Increases the minimum percentage of the voting interests required for approval of a plan of termination from 80 percent to 90 percent;
- Decreases the percentage of voting interests required to veto a plan of termination from 10 percent to five percent of the total voting interests; and
- Extends the period of time before another vote on a plan of termination after a failed vote from 18 to 24 months.

Current law prohibits a vote on a plan of termination within five years after an existing residential apartment is converted to a condominium. The bill extends that period to 10 years.

Current law requires that only an original purchaser from the developer who votes to reject a plan of termination is entitled to at least 100 percent of the fair market value of the unit as determined by one or more independent appraisers. The bill extends the right to receive 100 percent of fair market value to all unit owners who vote to reject the plan of termination.

The bill provides an effective date of July 1, 2017.

II. Present Situation:

Condominiums

A condominium is a form of ownership of real property comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.¹ A developer creates a condominium or offers condominium units for sale or lease in the ordinary course of business.² A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.³ A declaration governs the relationship between of the condominium unit owners and the condominium association.⁴

A declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units and may be amended as provided in the declaration.⁵ If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not less than two-thirds of the unit owners.⁶ Condominium associations are administered by a board of administration and can assess costs for common expenses.⁷

Association property is real and personal property owned or leased, or dedicated by a recorded plat to the association for the use and benefit of its members.⁸ Whereas, condominium property is lands, leaseholds, and personal property subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.⁹ The common elements are the portions of the condominium property not included in the units.¹⁰

Voting interests are the voting rights distributed to the association members. In a multicondominium association, the voting interests of the association are the voting rights distributed to the unit owners in all condominiums operated by the association. On matters related to a specific condominium in a multicondominium association, the voting interests of the condominium are the voting rights distributed to the unit owners in that condominium.¹¹

Division of Florida Condominiums, Timeshares, and Mobile Homes

Condominiums and cooperatives are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) in accordance with chs. 718 and 719, F.S. The division is afforded complete jurisdiction to investigate complaints and enforce compliance with

¹ Section 718.103(11), F.S.

² Section 718.103(16), F.S.

³ Section 718.104(2), F.S.

⁴ *Woodside Village Condominium Assoc. Inc. v. Jahren*, 806 So. 2d 452, 456 (Fla. 2002).

⁵ Sections 718.104(5) and 718.110(1)(a), F.S.

⁶ Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.

⁷ Section 718.103(1) and (4), F.S.

⁸ Section 718.103(3), F.S.

⁹ Section 718.103(13), F.S.

¹⁰ Section 718.103(8), F.S.

¹¹ Section 718.103(30), F.S. Voting rights are distributed pursuant to s. 718.104(4)(j), F.S.

chs. 718 and 719, F.S., with respect to associations that are still under developer control. The division also has the authority to investigate complaints against developers involving improper turnover or failure to turnover control to the association. After control of the condominium or cooperative is transferred from the developer to the unit owners, the division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records.¹²

As part of the division's authority to investigate complaints, the division is authorized to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.¹³

Termination of a Condominium

Pursuant to s. 718.117, F.S., termination of a condominium is authorized under two separate conditions:

- Termination due to economic waste or impossibility; and
- Optional termination.

Termination Due to Economic Waste or Impossibility

When the continued operation of a condominium would constitute economic waste or when the ability to continue operating a condominium is made impossible by law or regulation, a plan of termination based on economic waste or impossibility may be approved by the lesser of the lowest percentage of voting interests necessary to amend the declaration or as otherwise provided in the declaration for approval of termination if:

1. The total estimated cost of construction or repairs necessary to construct the intended improvements or restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of the units in the condominium after completion of the construction or repairs; or
2. It becomes impossible to operate or reconstruct a condominium to its prior physical configuration because of land use laws or regulations.¹⁴

Optional Termination

Section 718.117(3), F.S., provides the process for optional termination of a condominium. Unless the declaration of condominium provides a lower percentage, a condominium may be terminated at any time if a plan of termination is approved by 80 percent of the condominium's total voting interests and no more than 10 percent of the total voting interests reject the termination.¹⁵ If 10 percent or more of the voting interests of a condominium reject a plan of

¹² Sections 718.501(1) and 719.501(1), F.S.

¹³ *Id.*

¹⁴ Section 718.117(2)(a), F.S. However, if the condominium contains timeshare units, a different approval percentage may apply. See ss. 718.117(2)(b) and (c), F.S.

¹⁵ Section 718.117(3), F.S.

termination, another termination may not be considered for 18 months after the date of rejection.¹⁶

Condominiums created pursuant to the condominium conversion procedures in part VI of ch. 718, F.S.,¹⁷ may not undertake an optional plan of termination until five years after the conversion into condominium ownership.¹⁸

Section 718.117(3)(c), F.S., provides the process for termination if at least 80 percent of the total voting interests are owned by a bulk owner. It defines a bulk owner as the single holder of voting interests or an owner together with a related entity or entities that would be considered an insider, as defined in s. 726.102, F.S., holding such voting interests.¹⁹

If least 80 percent of the total voting interests are owned by a bulk owner at the time the plan of termination is recorded, the following conditions apply:

- Upon timely request, unit owners must be allowed to retain possession of units and lease their former units for 12 months after the effective date of the termination if the units are offered to the public.²⁰
- Any unit owner whose unit was granted a homestead exemption must be paid a relocation payment equal to one percent of the termination proceeds allocated to the unit.²¹
- The relocation must be paid by the single entity or entities owning at least 80 percent of the total voting interests.²²
- A unit owner who rejects the plan of termination and is an original purchaser from the developer must be paid at least 100 percent of the fair market value of their units as determined by one or more independent appraisers.²³
- The fair market value of a unit for an owner who is an original purchaser from the developer and who dissented or objected to the plan of termination must be at least the original purchase price paid for the unit.²⁴
- The plan of termination must provide the manner by which each first mortgage on a unit will be satisfied in full at the time the plan is implemented.²⁵

¹⁶ Section 718.117(3)(a)2., F.S.

¹⁷ Part VI of ch. 718, F.S., provides the process for the conversion of existing residential apartments into the condominium form of ownership.

¹⁸ Section 718.117(3)(b), F.S.

¹⁹ Section 726.102(8), F.S., defines an “insider” to include: “(a) If the debtor is an individual: 1. A relative of the debtor or of a general partner of the debtor; 2. A partnership in which the debtor is a general partner; 3. A general partner in a partnership described [above]. A corporation of which the debtor is a director, officer, or person in control; (b) If the debtor is a corporation: 1. A director of the debtor; 2. An officer of the debtor; 3. A person in control of the debtor; 4. A partnership in which the debtor is a general partner; 5. A general partner in a partnership described [above]; 6. A relative of a general partner, director, officer, or person in control of the debtor. (c) If the debtor is a partnership: 1. A general partner in the debtor; 2. A relative of a general partner in, a general partner of, or a person in control of the debtor; 3. Another partnership in which the debtor is a general partner; 4. A general partner in a partnership described [above]. 5. A person in control of the debtor. (d) An affiliate, or an insider of an affiliate as if the affiliate were the debtor. (e) A managing agent of the debtor.”

²⁰ Section 718.117(3)(c)1., F.S.

²¹ Section 718.117(3)(c)2., F.S.

²² *Id.*

²³ Section 718.117(3)(c)3., F.S.

²⁴ *Id.*

²⁵ Section 718.117(3)(c)4., F.S.

The plan of termination must make the following disclosures to unit owners in a sworn statement before a plan of termination may be presented for consideration:

- The identity of any person who owns or controls 50 percent or more of the condominium units or, if owned by an artificial entity, the person who owns or controls it and the person who owns or controls 20 percent of the entity that constitutes the bulk owner;
- The units acquired by the bulk owner, the date of acquisition and the price of each unit; and
- The relationship of any board member to the bulk owner.²⁶

The unit owners, other than the bulk owner or owners, are entitled to elect at least one-third of the board before approval of any plan of termination.²⁷

Number of Condominium Terminations

The division furnished the number of condominium terminations for the previous five calendar years:²⁸

Calendar Year	Total Terminations	Optional Terminations
2012	30	28
2013	37	35
2014	38	37
2015	33	33
2016	29	26

III. Effect of Proposed Changes:

The bill amends s. 720.117(3), F.S. to revise the requirements for the optional termination of a condominium. The bill:

- Increases the minimum percentage of the voting interests required for approval of a plan of termination from 80 percent to 90 percent;
- Decreases the percentage of voting interests required to veto a plan of termination from 10 percent to five percent of the total voting interests;
- Extends the period before another vote on a plan of termination may be held after a failed vote from 18 to 24 months;
- Extends the time after creation of a condominium by conversion before a vote for optional termination may be held from five years to 10 years; and
- Requires that all unit owners who reject a plan of termination (instead of only original purchasers from the developer) must be paid at least 100 percent of the fair market value of the unit as determined by one or more independent appraisers.

The bill provides an effective date of July 1, 2017.

²⁶ Section 718.117(3)(c)5., F.S.

²⁷ Section 718.117(3)(d), F.S.

²⁸ Email from Colton Madill, DBPR, March 28, 2017, on file with the Senate Committee on Regulated Industries.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

After a plan of termination is approved, a unit owner who voted against the plan of termination and is not an original purchaser from the developer would be entitled under the bill to be paid at least 100 percent of the fair market value of the unit, as determined by one or more independent appraisers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 718.117 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
