

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: CS/SB 1520

INTRODUCER: Regulated Industries and Senator Latvala

SUBJECT: Condominium Terminations

DATE: April 4, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	McSwain	RI	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/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:

- Decreases the percentage of voting interests required to veto a plan of termination from 10 percent to five percent of the total voting interests;
- Increases from five years to 10 years the period of time that must pass before a vote on a plan of termination may be held after an existing residential apartment is converted to a condominium.
- Extends the period of time before another vote on a plan of termination after a failed vote from 18 to 24 months;
- Decreases from more than 50 percent of the units to more than 25 percent of the units, the number of units in the condominium requiring disclosure of that ownership in the plan of termination;
- Decreases from 20 percent to 10 percent, the percentage of ownership or control by an entity that constitutes a bulk buyer that must be disclosed in the plan of termination; and
- Clarifies that the condominium termination process applies to all condominiums created under ch. 718, F.S., (Condominium Act).

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.

The bill also requires the filing of a plan of termination with the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) of the Department of Business and Professional Regulation (DBPR) for review after the unit owners have approved the plan of termination. The termination may proceed after the division determines that the plan complies with the procedural requirements for termination of a condominium in s. 718.117, F.S.

The bill appropriates, for the 2017-2018 fiscal year, \$85,006 in recurring funds and \$4,046 in nonrecurring funds from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund (trust fund) to the DBPR, and authorizes one full-time equivalent position with an associated salary rate of \$56,791 to implement the provisions in the bill.

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

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.

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 in accordance with chs. 718 and 719, F.S. The division is afforded complete jurisdiction to investigate complaints and enforce compliance with 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.

The termination provisions in s. 718.117, F.S., apply to all condominiums in Florida in existence on or after July 1, 2007.¹⁴

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.

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

¹³ *Id.*

¹⁴ Section 718.117(1), F.S.

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.¹⁵

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.¹⁶ If 10 percent or more of the voting interests of a condominium reject a plan of termination, another termination may not be considered for 18 months after the date of rejection.¹⁷

Condominiums created pursuant to the condominium conversion procedures in part VI of ch. 718, F.S.,¹⁸ may not undertake an optional plan of termination until five years after the conversion into condominium ownership.¹⁹

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.²⁰

¹⁵ 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.

¹⁶ Section 718.117(3), F.S.

¹⁷ Section 718.117(3)(a)2., F.S.

¹⁸ Part VI of ch. 718, F.S., provides the process for the conversion of existing residential apartments into the condominium form of ownership.

¹⁹ Section 718.117(3)(b), F.S.

²⁰ 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."

If at 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.²¹
- 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.²²
- The relocation must be paid by the single entity or entities owning at least 80 percent of the total voting interests.²³
- 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.²⁴
- 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.²⁵
- 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.²⁶

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.²⁷

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.²⁸

Number of Condominium Terminations

The division furnished the number of condominium terminations for the previous five calendar years:²⁹

Calendar Year	Total Terminations	Optional Terminations
2012	30	28
2013	37	35
2014	38	37

²¹ Section 718.117(3)(c)1., F.S.

²² Section 718.117(3)(c)2., F.S.

²³ *Id.*

²⁴ Section 718.117(3)(c)3., F.S.

²⁵ *Id.*

²⁶ Section 718.117(3)(c)4., F.S.

²⁷ Section 718.117(3)(c)5., F.S.

²⁸ Section 718.117(3)(d), F.S.

²⁹ Email from Colton Madill, DBPR, March 28, 2017, on file with the Senate Committee on Regulated Industries.

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.

Legislative Findings

The bill revises the legislative findings in s. 718.117(1), F.S., to provide that it is in the best interest of the state to provide for termination of a condominium to:

- Ensure the continued maintenance, management, and repair of stormwater management systems, conservation areas, and conservation easements.
- Avoid transferring the expense of maintaining the condominium’s infrastructure to the general tax bases of the state and local governments.
- Prevent impairing the continued productive use of the property.
- Protect state residents from health and safety hazards created by derelict, damaged, obsolete, or abandoned condominium properties.
- Provide fair treatment and just compensation for individuals and preserve property values and the local property tax base.
- Preserve the state’s long history of protecting homestead property.

Process for Optional Termination of a Condominium

The bill:

- 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.
- Increases from five years to 10 years the period of time that must pass before a vote on a plan of termination may be held after an existing residential apartment is converted to a condominium.
- Requires that all unit owners (instead of only original purchasers from the developer who reject the plan of termination) must be paid at least 100 percent of the fair market value of the unit as determined by one or more independent appraisers.
- Decreases from more than 50 percent of the units to more than 25 percent of the units, the number of units in the condominium that a person must own to require the disclosure of that ownership in the plan of termination.
- Decreases from 20 percent to 10 percent, the percentage of ownership or control of an entity that constitutes a bulk buyer that must be disclosed in the plan of termination.
- Requires that the plan of termination must include factual circumstances that show that the plan complies with the requirements of s. 718.117, F.S., and that the plan supports the public policies expressed in s. 718.117, F.S.

- Provides that the process in s. 718.117(2), F.S., dealing with termination of a condominium because of economic waste or impossibility, does not apply to an optional termination under subsection (3) of that section.

Division Approval

The bill requires that a plan of termination must be submitted to the division for review after approval of the plan by the unit owners. The division may authorize the termination to proceed after it determines that the plan complies with the procedural requirements of s. 718.117, F.S.

Retroactive Application

The bill creates an undesignated section of law to provide that the amendments in the bill to s. 718.117, F.S., are intended to clarify existing law, are remedial in nature, and are intended to address the rights and liabilities of the affected parties, and apply to all condominiums created under the Condominium Act.

Appropriation

For Fiscal Year 2017-2018, the bill appropriates \$85,006 in recurring funds and \$4,046 in nonrecurring funds from the trust fund to the DBPR. The bill also authorizes one full-time equivalent position with an associated salary rate of 56,791 to implement the provisions in the bill.

Effective Date

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

CS/SB 1520 provides that the amendments to s. 718.117, F.S., are intended to clarify existing law, are remedial in nature, are intended to address the rights and liabilities of the affected parties, and apply to all condominiums created under the Condominium Act. With respect to

existing condominiums the provisions of the bill may implicate constitutional concerns relating to impairment of contract.³⁰

In *Pomponio v. Claridge of Pompano Condominium, Inc.*,³¹ the Florida Supreme court stated that some degree of flexibility has developed over the last century in interpreting the contract clause in order to ameliorate the harshness of the original rigid application used by the United States Supreme Court. The Florida Supreme Court invalidated a statute, as an unconstitutional impairment of contract, which required the deposit of rent into a court registry during litigation involving obligations under a contract lease. The court set forth several factors to be considered in balancing whether a state law has in fact operated as a substantial impairment of a contractual relationship, stating “[t]he severity of the impairment measures the height of the hurdle the state legislation must clear.”³²

The court stated that if there is minimal alteration of contractual obligations, the inquiry may end at its first stage. Severe impairment pushes the inquiry into a careful examination of the nature and purpose of the state legislation. The factors to be considered are whether:

- The law was enacted to deal with a broad, generalized economic or social problem;
- The law operates in an area that was already subject to state regulation at the time the contract was entered into; and
- The effect on the contractual relationships is temporary, or whether it is severe, permanent, immediate, and retroactive.³³

In *Tropicana Condominium Association, Inc. v. Tropical Condominium, L.L.C. (Tropicana Condominium)*,³⁴ the Third District Court of Appeals held that the 2007 amendments to s. 718.117, F.S., dealing with termination of a condominium, could not be applied retroactively to a condominium in which the declaration of condominium did not contain language that the condominium was governed by Florida’s Condominium Act “as amended from time to time.” The 2007 amendment to s. 718.117, F.S., reduced from 100 percent to 80 percent the vote required to consent to termination of a condominium.³⁵

Absent language that a condominium’s declaration was governed by Florida’s Condominium Act “as amended from time to time,” the Condominium Act could not be applied retroactively to a declaration if it impairs contractual obligations. Applying the test in *Pomponio*, the court held that applying the reduced percentage required for termination in s. 718.117, F.S., would “work a sever, permanent, and immediate change” in the unit owners’ safeguards against termination built into their condominium’s declaration.³⁶

³⁰ Article I, s. 10, U.S. Constitution and Art. I, s. 10, Fla. Const.

³¹ *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 776 (Fla. 1979).

³² *Pomponio*, 378 So. 2d at 779.

³³ *Id.*

³⁴ *Tropicana Condominium Association, Inc. v. Tropical Condominium, L.L.C.*, 208 So.3rd 755 (Fla. 3rd DCA 2016).

³⁵ *Compare*, s. 718.117(1), F.S. (2006) and s. 1, ch. 2007-226, Laws of Fla., (the amendment to s. 718.117(3), F.S.).

Additionally, the *Tropicana Condominium*’s declaration required approval of 100 percent of the unit owners to terminate the condominium. *See, Tropicana, Id.*

³⁶ *Id.*, quoting *Pomponio*.

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:

For Fiscal Year 2017-2018, the bill appropriates \$85,006 in recurring funds and \$4,046 in nonrecurring funds from the trust fund to the DBPR. The bill also authorizes one full-time equivalent position with an associated salary rate of 56,791 to implement the provisions in the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 718.117 of the Florida Statutes.

This bill creates an undesignated section of Florida law.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Regulated Industries on April 4, 2017:**

The committee substitute:

- Revises the legislative findings in s. 718.117(1), F.S.;
- Retains the requirement in current law that at least 80 percent of the total voting interests must approve the plan of termination.
- Repeals the requirement that a unit owner must have rejected the plan of termination to be compensated for the fair market value of the unit.
- Requires that the plan of termination must include factual circumstances that show that the plan complies with the requirements of s. 718.117, F.S., and that the plan supports the public policies expressed in s. 718.117, F.S.

- Requires that the plan of termination must be submitted to the division for review after the unit owners approve the plan of termination.
- Provides that plan of termination may proceed after the division determines that the plan complies with s. 718.117, F.S.
- Provides that the process in s. 718.117(2), F.S., dealing with termination of a condominium because of economic waste or impossibility, does not apply to the optional termination authorized in subsection (3) of that section.
- Transfers the language in s. 718.117(1), F.S., which provides for its application to all condominiums in Florida in existence on or after July 1, 2007, to a new subsection (21) in s. 718.117, F.S.
- Creates an undesignated section of law to provide that the amendments in the bill to s. 718.117, F.S., are intended to clarify existing law, are remedial in nature, and are intended to address the rights and liabilities of the affected parties, and apply to all condominiums created under the Condominium Act.
- Appropriates, for Fiscal Year 2017-2018, \$85,006 in recurring funds and \$4,046 in nonrecurring funds from the trust fund to the DBPR.
- Authorizes one full-time equivalent position at the DBPR with an associated salary rate of 56,791 to implement the provisions in the bill.

B. Amendments:

None.