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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/26/2015	.	
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	.	

The Committee on Regulated Industries (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

718.117 Termination of condominium.—

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



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11 portion of the condominium property pursuant to a plan of
12 termination approved by at least 80 percent of the total voting
13 interests of the condominium if no more than 10 percent of the
14 total voting interests of the condominium have rejected the plan
15 of termination by negative vote or by providing written
16 objections, subject to the following conditions:

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

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

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

31 (d) For purposes of this paragraph, the term "bulk owner"
32 means the single holder of such voting interests or an owner
33 together with a related entity that would be considered an
34 insider, as defined in s. 726.102, holding such voting
35 interests. If the condominium association is a residential
36 association proposed for termination pursuant to this section
37 and, at the time of recording the plan of termination, at least
38 80 percent of the total voting interests are owned by a bulk
39 owner:



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40 1. If the plan of termination is voted on at a meeting of
41 the unit owners called in accordance with subsection (9), any
42 unit owner desiring to reject the plan must do so by either
43 voting to reject the plan in person or by proxy, or by
44 delivering a written rejection to the association before or at
45 the meeting.

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

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

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



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

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

85 c. For their respective units, all unit owners other than
86 the bulk owner must be compensated at least 100 percent of the
87 fair market value of their units. The fair market value shall be
88 determined as of a date that is no earlier than 90 days before
89 the date that the plan of termination is recorded and shall be
90 determined by an independent appraiser selected by the
91 termination trustee. Notwithstanding subsection (12), the
92 allocation of the proceeds of the sale of condominium property
93 to owners of units dissenting or objecting to the plan of
94 termination shall be 110 percent of the original purchase price,
95 or 110 percent of fair market value, whichever is greater. For
96 purposes of this sub-subparagraph, the term "fair market value"
97 means the price of a unit that a seller is willing to accept and



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98 a buyer is willing to pay on the open market in an arms-length
99 transaction based on similar units sold in other condominiums,
100 including units sold in bulk purchases but excluding units sold
101 at wholesale or distressed prices. The purchase price of units
102 acquired in bulk following a bankruptcy or foreclosure shall not
103 be considered for purposes of determining fair market value.

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

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

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

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

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

126 5. If the members of the board of administration are



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127 elected by the bulk owner, unit owners other than the bulk owner
128 may elect at least one-third of the members of the board of
129 administration before the approval of any plan of termination by
130 the board.

131 (4) EXEMPTION.—A plan of termination is not an amendment
132 subject to s. 718.110(4). In a partial termination, a plan of
133 termination is not an amendment subject to s. 718.110(4) if the
134 ownership share of the common elements of a surviving unit in
135 the condominium remains in the same proportion to the surviving
136 units as it was before the partial termination. An amendment to
137 a declaration to conform the declaration to this section is not
138 an amendment subject to s. 718.110(4) and may be approved by the
139 lesser of 80 percent of the voting interests or the percentage
140 of the voting interests required to amend the declaration.

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

143 (a) Unless the plan of termination expressly authorizes a
144 may provide that each unit owner or other person to retain
145 retains the exclusive right to possess that of possession to the
146 portion of the real estate which formerly constituted the unit
147 after termination or to use the common elements of the
148 condominium after termination, all such rights in the unit or
149 common elements automatically terminate on the effective date of
150 termination. Unless the plan expressly provides otherwise, all
151 leases, occupancy agreements, subleases, licenses, or other
152 agreements for the use or occupancy of any unit or common
153 elements of the condominium automatically terminate on the
154 effective date of termination. If the plan expressly authorizes
155 a unit owner or other person to retain exclusive right of



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156 possession for that portion of the real estate which formerly
157 constituted the unit or to use the common elements of the
158 condominium after termination, the plan must specify the terms
159 and if the plan specifies the conditions of possession. In a
160 partial termination, the plan of termination as specified in
161 subsection (10) must also identify the units that survive the
162 partial termination and provide that such units remain in the
163 condominium form of ownership pursuant to an amendment to the
164 declaration of condominium or an amended and restated
165 declaration. In a partial termination, title to the surviving
166 units and common elements that remain part of the condominium
167 property specified in the plan of termination remain vested in
168 the ownership shown in the public records and do not vest in the
169 termination trustee.

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

180 (c) Unless otherwise provided in the plan of termination,
181 at any time before the sale of the condominium property, a plan
182 may be withdrawn or modified by the affirmative vote or written
183 agreement of at least the same percentage of voting interests in
184 the condominium as that which was required for the initial



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185 approval of the plan.

186 (d) Upon the discovery of a scrivener's error in the plan
187 of termination, the termination trustee may record an amended
188 plan or an amendment to the plan for the purpose of correcting
189 the error, and the amended plan or amendment to the plan must be
190 executed by the termination trustee in the same manner as
191 required for the execution of a deed.

192 (12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM
193 PROPERTY.—

194 (a) Unless the declaration expressly provides for the
195 allocation of the proceeds of sale of condominium property, the
196 plan of termination may require separate valuations for ~~must~~
197 ~~first apportion the proceeds between the aggregate value of all~~
198 ~~units and the value of the common elements.~~ However, in the
199 absence of such provision, it is presumed that the common
200 elements have no independent value but rather that their value
201 is incorporated into the valuation of the units ~~based on their~~
202 ~~respective fair market values immediately before the~~
203 ~~termination, as determined by one or more independent appraisers~~
204 ~~selected by the association or termination trustee.~~ In a partial
205 termination, the aggregate values of the units and common
206 elements that are being terminated must be separately
207 determined, and the plan of termination must specify the
208 allocation of the proceeds of sale for the units and common
209 elements being terminated.

210 (b) The portion of proceeds allocated to the units shall be
211 ~~further~~ apportioned among the individual units. The
212 apportionment is deemed fair and reasonable if it is ~~so~~
213 ~~determined by the unit owners, who may approve the plan of~~



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214 ~~termination~~ by any of the following methods:

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

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

222 3. The respective interests of the units in the common
223 elements specified in the declaration immediately before the
224 termination.

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

232 (d) Liens that encumber a unit shall, unless otherwise
233 provided in the plan of termination, be transferred to the
234 proceeds of sale of the condominium property and the proceeds of
235 sale or other distribution of association property, common
236 surplus, or other association assets attributable to such unit
237 in their same priority. In a partial termination, liens that
238 encumber a unit being terminated must be transferred to the
239 proceeds of sale of that portion of the condominium property
240 being terminated which are attributable to such unit. The
241 proceeds of any sale of condominium property pursuant to a plan
242 of termination may not be deemed to be common surplus or



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243 association property. The holder of a lien that encumbers a unit
244 at the time of recording a plan must, within 30 days after the
245 written request from the termination trustee, deliver a
246 statement to the termination trustee confirming the outstanding
247 amount of any obligations of the unit owner secured by the lien.

248 (e) The termination trustee may setoff against, and reduce
249 the share of, the termination proceeds allocated to a unit by
250 the following amounts, which may include attorney fees and
251 costs:

252 1. All unpaid assessments, taxes, late fees, interest,
253 finances, charges, and other amounts due and owing to the
254 association associated with the unit, its owner, or the owner's
255 family members, guests, tenants, occupants, licensees, invitees,
256 or other persons.

257 2. All costs of clearing title to the owner's unit,
258 including, but not limited to, locating lienors, obtaining
259 statements from such lienors confirming the outstanding amount
260 of any obligations of the unit owner, and paying all mortgages
261 and other liens, judgments, and encumbrances and filing suit to
262 quiet title or remove title defects.

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

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

270 5. All costs arising out of, or related to, the removal and
271 storage of all personal property remaining in a unit, other than



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272 personal property owned by the association, so that the unit may
273 be delivered vacant and clear of the owner or the owner's family
274 members, guests, tenants, occupants, licensees, invitees, or
275 other persons as required by the plan.

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

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



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

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

316
317 ===== T I T L E A M E N D M E N T =====

318 And the title is amended as follows:

319 Delete everything before the enacting clause
320 and insert:

321 A bill to be entitled

322 An act relating to termination of a condominium
323 association; amending s. 718.117, F.S.; providing and
324 revising procedures and requirements for termination
325 of a condominium property; providing requirements for
326 the rejection of a plan of termination; defining
327 terms; providing applicability; providing and revising
328 requirements relating to partial termination of a
329 condominium property; authorizing a plan of



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330 termination to be withdrawn, modified, or amended
331 under certain conditions; revising and providing
332 requirements relating to the allocation of proceeds of
333 the sale of condominium property; revising
334 requirements relating to the right to contest a plan
335 of termination; providing an effective date.