

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/CS/SB 1172

INTRODUCER: Judiciary Committee; Regulated Industries Committee; and Senator Latvala

SUBJECT: Termination of a Condominium Association

DATE: April 17, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Caldwell</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Pre-meeting</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1172 revises the requirements for the optional termination of condominiums.

Current law permits a condominium to be terminated at any time if a plan of termination is approved by 80 percent of the condominium's total voting interests and 10 percent or more of the total voting interests reject the termination. The bill provides that, 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.

The bill prohibits condominiums that have been created pursuant to the condominium conversion procedures in Part VI of ch. 718, F.S., from undertaking an optional plan of termination until 5 years after the conversion.

The bill provides the following conditions and limitations for the termination of a condominium if at the time the plan of termination is recorded at least 80 percent of the total voting interests are owned by a bulk owner which would be considered an insider under s. 726.102, F.S., and no sale of the terminated condominium property to an unrelated third party is contemplated:

- Unit owners must be allowed to retain possession of units and lease their former units;
- Any unit owner whose unit was granted homestead exemption must be paid a relocation payment equal to 1 percent of the termination proceeds allocated to the unit;
- Unit owners other than 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;

- The fair market value for a unit of an owner who was an original purchaser from the developer and who dissented or objected to the plan of termination may not be less than the original purchase price paid for the unit; and
- 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.

The bill provides timeframes for objections to the plan of termination, including plans approved at a meeting and plans approved by a written consent or joinder.

The bill permits unit owners to contest a plan of termination by petitioning the Division of Florida Condominiums, Timeshares, and Mobile Homes for mandatory nonbinding arbitration. It repeals the unit owners' right to contest the plan of termination in a court by initiating a summary procedure pursuant to s. 51.011, F.S. Unit owners may contest the fairness and reasonableness of the apportionment of the proceeds from the sale, that the first mortgages of unit owners will not be fully satisfied, or that the required vote was not obtained.

The bill has an insignificant negative fiscal impact on the Department of Business and Professional Regulation.

## II. Present Situation:

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.<sup>1</sup> A developer creates a condominium or offers condominium units for sale or lease in the ordinary course of business.<sup>2</sup> A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.<sup>3</sup> A declaration governs the relationships of the condominium units' owners and the condominium association.<sup>4</sup>

A declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property and can be amended as provided in the declaration.<sup>5</sup> 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.<sup>6</sup> Condominium associations are administered by a board of administration and can assess costs for common expenses.<sup>7</sup>

Association property is property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members.<sup>8</sup> Whereas, condominium property is the lands, leaseholds, and personal property subjected to condominium

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<sup>1</sup> Section 718.103(11), F.S.

<sup>2</sup> Section 718.103(16), F.S.

<sup>3</sup> Section 718.104(2), F.S.

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

<sup>5</sup> Sections 718.104(5) and 718.110(1)(a), F.S.

<sup>6</sup> 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.

<sup>7</sup> Section 718.103(1) and (4), F.S.

<sup>8</sup> Section 718.103(3), F.S.

ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.<sup>9</sup> The common elements are the portions of the condominium property not included in the units.<sup>10</sup>

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.<sup>11</sup>

### **Termination of a Condominium: Optional Termination**

Except as provided for in a termination because of economic waste or impossibility and unless the declaration provides for a lower percentage, an optional termination can occur. An optional termination allows for the condominium ownership to be terminated for all or a portion of the condominium property pursuant to a plan of termination approved by at least 80 percent of the total voting interests, if no more than 10 percent of the total voting interests reject the plan of termination by negative vote or by written objections. An optional termination cannot occur for condominiums in which 75 percent or more of the units are timeshare units.<sup>12</sup>

### **Exemption**

A plan of termination is not an amendment subject to s. 718.110(4), F.S., which relates to amendments that may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium.<sup>13</sup>

### **Plan of Termination**

The plan for termination must be a written document executed by unit owners having the requisite percentage of voting interests to approve the plan and by the termination trustee. The plan may provide that each unit owner retains the exclusive right of possession to the portion of the real estate that formerly constituted the unit, in which case the plan must specify the conditions of possession.<sup>14</sup> In the case of a conditional termination, the plan must specify the conditions for termination. A conditional plan will not vest title in the termination trustee until the plan and a certificate executed by the association with the formalities of a deed have been recorded that confirm the conditions in the conditional plan have been satisfied or waived by the requisite percentage of the voting interests.<sup>15</sup> The provisions required in the plan of termination are provided in ss. 718.117(10) and (11), F.S.

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<sup>9</sup> Section 718.103(13), F.S.

<sup>10</sup> Section 718.103(8), F.S.

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

<sup>12</sup> Section 718.117(3), F.S.

<sup>13</sup> Section 718.117(4), F.S.

<sup>14</sup> Section 718.117(11)(a), F.S.

<sup>15</sup> Section 718.117(11)(b), F.S.

The plan of termination must be recorded before it can take effect and is effective only when recorded or at a later date specified in the plan.

A plan of termination that fails to receive the required approval cannot be recorded and a new attempt to terminate the condominium may not be proposed at a meeting or by solicitation for joinder and consent for 180 days after the date that the failed plan of termination was first given to all unit owners.<sup>16</sup>

### **Allocation of Proceeds of Sale**

Unless the declaration expressly provides for the allocation of the proceeds of sale of condominium property, the plan must first apportion the proceeds between the aggregate value of all units and the value of the common elements, based on their respective fair-market values immediately before the termination. The market values are to be determined by one or more independent appraisers selected by the association or termination trustee. The value of the common elements is to be paid to the owners according to their proportionate share in the common elements.<sup>17</sup>

### **Right to Contest**

A unit owner or lienor may contest a plan of termination by initiating a summary procedure pursuant to s. 51.011, F.S., within 90 days after the date the plan is recorded. If not contested within 90 days, a unit owner or lienor is barred from asserting or prosecuting a claim against the association, the termination trustee, any unit owner, or any successor in interest to the condominium property.<sup>18</sup>

The person contesting the plan has the burden of pleading and proving that the apportionment of the proceeds from the sale among the unit owners was not fair and reasonable. The court is required to determine the rights and interests of the parties and order the plan of termination to be implemented if it is fair and reasonable. If the court determines that the plan of termination is not fair and reasonable, it may void the plan or may modify the plan to apportion the proceeds in a fair and reasonable manner. The prevailing party is entitled to recover reasonable attorney fees and costs.<sup>19</sup>

### **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 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

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<sup>16</sup> Section 718.117(9), F.S.

<sup>17</sup> Section 718.117(12), F.S.

<sup>18</sup> Section 718.117(16), F.S.

<sup>19</sup> *Id.*

limited to investigating complaints related to financial issues, elections, and unit owner access to association records.<sup>20</sup>

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.<sup>21</sup>

### III. Effect of Proposed Changes:

The bill amends s. 718.117, F.S., to revise the requirements for the optional termination of condominiums.

#### Termination of a Condominium: Optional Termination

The bill creates s. 718.117(3)(a), F.S., to provide that, in a vote on a plan of termination, the total voting interests of the condominium include all voting interests for the purpose of considering a plan of termination, and a voting interest of the condominium may not be suspended during the consideration of a plan of termination. If 10 percent or more of the total voting interests of the condominium reject a plan of termination, another optional plan of termination may not be considered for 18 months after the date of rejection.

Section 718.117(3)(b), F.S., is created to prohibit a condominium that has been created pursuant to the condominium conversion procedures in Part VI of ch. 718, F.S.,<sup>22</sup> (conversion condominium) from undertaking an optional plan of termination until 5 years after the conversion. The bill repeals the provision that optional termination provisions do not apply to condominiums in which 75 percent or more of the units are timeshare units.

#### Optional Terminations and Bulk Owners

Section 718.117(3)(c), F.S., is created and defines the term "bulk owner" to mean the single owner of such voting interests or an owner with a related entity or entities that would be considered insiders, as defined in s. 726.102, F.S.<sup>23</sup>

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

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<sup>20</sup> Sections 718.501(1) and 719.501(1), F.S.

<sup>21</sup> *Id.*

<sup>22</sup> Part VI of ch. 718, F.S., provides the process for converting real property into the condominium form of ownership.

<sup>23</sup> 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 the condominium association is a residential association subject to an optional termination and, at the time of recording the plan of termination, at least 80 percent of the total voting interests are owned by a bulk owner, the plan of termination is subject to the following conditions and limitations:

- Right to lease the former unit;
- Relocation payments for homestead property;
- Compensation at fair market value as determined by an independent appraiser; and
- Mandated disclosures in the plan of termination.

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

### ***Right to Lease Former Unit***

If the former units are offered for lease to the public after the termination, each unit owner in occupancy immediately before the termination may lease his or her former unit and remain in possession of the unit for 12 months after the termination. To obtain a lease the unit owner must:

- Make a written request to the termination trustee to rent the former unit make a written request and sign a lease within 90 days after the approved plan of termination is recorded; and
- Sign the lease within 15 days after being presented with the lease.

Any unit owner who fails to make such a timely written request waives his or her right to retain possession of the former unit and is required to vacate the former unit on the effective date of the termination, unless otherwise provided in the plan of termination.

### ***Relocation Payments for Homestead Property***

Any former unit owner whose unit was granted homestead exemption as of the date of the recording of the plan of termination must be paid a relocation payment equal to 1 percent of the termination proceeds allocated to the owner's former unit. The relocation payment must be paid by the single entity or related entities owning at least 80 percent of the voting interests. The relocation payment is in addition to any termination proceeds and must be paid within 10 days after the unit owner vacates the unit.

It is not clear whether this provision applies if the unit owners retains possession to lease after termination as provided above in which case the relocation payments would be due within 10 days after the end of the unit owner's post-termination lease.

### ***Compensation***

All unit owners other than the bulk owner must be compensated with at least 100 percent of the fair market value of their units.

The fair market value must be determined by an independent appraiser, who is selected by the termination trustee as of a date that is no earlier than 90 days before the date that the plan of termination is recorded.

The fair market value for a unit owner, who was an original purchaser from the developer and is dissenting or objecting to the plan of termination, may not be less than the original purchase price paid for the unit.

The bill defines the term “fair market value” to mean the price of a unit that a seller is willing to accept and a buyer is willing to pay on the open market in an arms-length transaction based on similar units sold in other condominiums, including units sold in bulk purchases but excluding units sold at wholesale or distressed prices.

### ***Mandated Disclosures in the Plan of Termination***

Before presenting the plan of termination to the unit owners, the plan must include the following written disclosures in a sworn statement:

- The identity of the person or entity that owns 50 percent or more of the units and, if an artificial entity owns such units, the name of the natural person who directly or indirectly manages or controls the entity;
- The identity of the natural person or entity that owns or controls, directly or indirectly, 20 percent or more of the artificial entity that constitutes a bulk owner;
- The units acquired by any bulk owner, the date of their acquisition, and the total amount of compensation paid to each prior unit owner by the bulk owner, regardless of whether attributed to the purchase price of the unit; and
- The relationship of any board member to the bulk owner or any person or entity affiliated with the bulk owner whose identity must be disclosed.

### **Exemption**

Section 718.117(4), F.S., is amended to provide that an amendment to a declaration to conform the declaration to s. 718.117, F.S., is not an amendment subject to the notice and vote requirements in s. 718.110(4), F.S., and may be approved by the lesser of 80 percent of the voting interests or the percentage of the voting interests required to amend the declaration.

### **Plan of Termination**

The bill amends s. 718.117(9), F.S., which provides the process for a unit owner to reject or object to a plan of termination. If the vote on the plan of termination is at a meeting of the unit owners, a vote to reject the plan must be made in person or by proxy, or by delivering a written rejection to the association before or at the meeting. If the plan of termination is approved by written consent or joinder without a meeting of the unit owners, an objection to the plan must be made by written objection within 20 days after the date the association notifies the non-consenting owners that the plan of termination was approved by written action in lieu of a unit owner meeting.

The bill amends s. 718.117(11), F.S., to provide that, unless the plan of termination expressly authorizes a unit owner or other person to retain the exclusive right to possess the unit and to use the common elements of the condominium after termination, all such rights in the unit or common elements automatically terminate on the effective date of termination. All leases, occupancy agreements, subleases, licenses, or other agreements for the use or occupancy of any

unit or common elements of the condominium automatically terminate on the effective date of termination unless the plan expressly provides otherwise. The plan must specify the terms and conditions of occupancy if the plan expressly authorizes a unit owner or other person to retain exclusive right of possession after termination.

The bill creates s. 718.117(11)(c), F.S., to permit a plan of termination to be withdrawn or amended by the same percentage required for approval.

The bill creates s. 718.117(11)(d), F.S., to permit a termination trustee to correct a scrivener's error in the plan of termination, and to require that the amended plan be executed in the same manner as a deed.

### **Allocation of Proceeds of Sale**

The bill amends s. 718.117(12)(a), F.S., to provide that the plan of termination may require separate valuations for the common elements. The bill repeals the requirement that the declaration apportion the proceeds of sale between the aggregate value of all units and the value of the common elements, based on their respective fair market values immediately before the termination by an independent appraiser. The bill provides that if the common elements are not separated, it is presumed that the common elements have no independent value and are included in the valuation of the unit.

The bill amends s. 718.117(12)(d), F.S., to require the lienholder of a unit to provide the termination trustee, within 30 days of the trustee's written request, with a statement confirming the outstanding obligations of the unit owner secured by the lien.

The bill amends s. 718.117(12)(e), F.S., to permit the termination trustee to setoff against, and reduce the share of, termination proceeds allocated to a unit by the following amounts, which may include attorney fees and costs:

- Unpaid assessments, taxes, late fees, interest, fines, charges, and other amounts owed for the unit;
- Costs of clearing title to the unit;
- Costs of removing persons from the unit;
- Costs related to breaches of the plan of termination by the owner and others related to the owner;
- Costs related to the removal and storage of personal property; and
- Costs related to the appointment of a receiver or attorney ad litem acting for the unit owner if the unit owner cannot be located.

### **Right to Contest**

The bill requires unit owners contest a plan of termination by petitioning the division for mandatory nonbinding arbitration pursuant s. 718.1255, F.S., which provides for the mediation and arbitration of disputes between the condominium association and unit owners.

The bill repeals the option for unit owners to contest the termination by initiating a summary procedure pursuant to s. 51.011, F.S.



The bill provides that a unit owner or lienor's right to contest a plan of termination is limited to contesting only the fairness and reasonableness of the apportionment of the proceeds from the sale, that the first mortgages of all unit owners have not or will not be fully satisfied at the time of termination, or that the required vote to approve the plan was not obtained. The contesting party bears the burden of proof.

Current law permits the court in a summary procedure to apportion the proceeds if it determines that the plan of termination is not fair and reasonable. The bill permits the arbitrator to void a plan of termination if it is determined that the plan was not properly approved. Any challenge to a plan, other than a challenge that the required vote was not obtained, does not affect title to the property or the vesting of the condominium property in the trustee. Challenges to the plan are limited to claims against the proceeds of the plan.

The bill amends s. 718.1255(1)(a), F.S., to include a plan of termination under s. 718.117, F.S., within the types of disputes that the division may arbitrate.

### **Effective Date**

The bill provides an effective date of July 1, 2015.

## **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:**

A condominium declaration is a form of contract between the members of the association. Where a recorded declaration may have termination provisions or may implement the protections provided by s. 718.110(4), F.S., the bill may implicate Art. I, s. 10 of the Florida Constitution and article I, section 10 of the United States Constitution, which prohibit the legislature from passing any law that impairs "the obligation of contracts."

As a threshold matter, a law must "substantially impair" a contractual right for it be constitutionally problematic.<sup>24</sup> The Florida Supreme Court has held that "[a]n impairment

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<sup>24</sup> *Pomponio v. Claridge of Pompano Condo., Inc.*, 378 So. 2d 774, 779 (Fla.1979) (citing *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244-45 (1978)).

may be constitutional if it is reasonable and necessary to serve an important public purpose.”<sup>25</sup>

The courts have adopted a balancing test to “determine whether the nature and extent of the impairment is constitutionally tolerable in light of the importance of the state's objective, or whether it unreasonably intrudes into the parties’ bargain to a degree greater than is necessary to achieve that objective.”<sup>26</sup> Factors considered in the balancing test include:

- Was the law enacted to deal with a broad, generalized economic or social problem?<sup>27</sup>
- Does the law operate in an area which was already subject to state regulation at the time the parties' contractual obligations were originally undertaken, or does it invade an area never before subject to regulation by the state?
- Does the law effect a temporary alteration of the contractual relationships of those within its coverage, or does it work a severe, permanent, and immediate change in those relationships irrevocably and retroactively?<sup>28</sup>

Additionally, the United States Supreme Court has found that parties cannot avoid state regulations and restrictions in an enterprise that is already subject to state regulation by simply entering into a contract.<sup>29</sup> This finding may be particularly relevant given the Florida Supreme Court's statement that, “In Florida, condominiums are creatures of statute and as such are subject to the control and regulation of the Legislature. That body has broad discretion to fashion such remedies as it deems necessary to protect the interests of the parties involved.”<sup>30</sup>

If this bill has the effect of re-writing previously recorded declarations that have termination provisions or that implement the protections provided by s. 718.110(4), F.S., the bill may be an unconstitutional impairment of an obligation of a contract.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

Section 718.117(3)(d)2., F.S., entitles any former unit owner whose unit was granted homestead exemption as of the date of the recording of the plan of termination to be paid a relocation payment equal to 1 percent of the termination proceeds allocated to the owner's former unit. Section 718.117(3)(d)3., F.S., requires that all unit owners who are

<sup>25</sup> *Id.* at 778–79 (citing *U.S. Trust Co. v N.J.*, 431 U.S. 1, 25 (1977)).

<sup>26</sup> *Id.* at 780.

<sup>27</sup> In determining the purpose of a statute, courts frequently look to the legislature’s express statements of intent in the statute. See *Pomponio*, 378 So. 2d at 781 (noting in its analysis of the public purpose of the statute that the specific objectives for the statute are “neither expressly articulated nor plainly evident” in the statute).

<sup>28</sup> *Id.* at 779.

<sup>29</sup> *Energy Reserves Group, Inc. v. Kan. Power and Light Co.*, 459 U.S. 400, 411 (1983).

<sup>30</sup> *Century Vill. Inc. v. Wellington, E, F, K, L, H, J, M, & G, Condo. Ass'n*, 361 So. 2d 128, 133 (Fla. 1978).

not a bulk owner must be compensated at least 100 percent of the fair market value of their units. The allocation of the proceeds of the sale of condominium property to dissenting or objecting owners must be 110 percent of the purchase price, or 110 percent of fair market value, whichever is greater.

**C. Government Sector Impact:**

The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation may experience an indeterminate but minimal increase in expenditures to provide arbitrations between condominium associations and unit owners related to a plan of termination. The division is required under current law to employ full-time attorneys to act as arbitrators.<sup>31</sup> Given the infrequency of terminations, the impact is indeterminate.

The bill has an insignificant negative fiscal impact on the Department of Business and Professional Regulation that the department reports can be absorbed within existing resources.<sup>32</sup>

**VI. Technical Deficiencies:**

The changes to the first sentence in s. 718.117(3), F.S., appear to have a scrivener's error. The intent of the underlying law and the bill seems to be that a plan of termination may proceed if fewer than 10 percent of the voting interests of a condominium object to the plan. By striking the phrase "no more than" in existing law, the first sentence of s. 718.117(3), F.S., has become ambiguous. One option to correct the bill would be to replace the words "if ~~no more than~~ 10 percent or more" with "if less ~~no more~~ than 10 percent."

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 718.117 and 718.1255 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Judiciary on April 7, 2015:**

The committee substitute (CS):

- Revises the threshold defining the amount of voting interests that are necessary to reject a plan of termination.
- Revises the restriction on the termination of a condominium that was converted to a condominium from a preexisting improvement, such as an apartment complex. Under

<sup>31</sup> 715.1255(4), F.S.

<sup>32</sup> The Department of Business and Regulation email to the Appropriations Subcommittee on General Government staff.

the amendment these condominiums may not terminate within 5 years, rather than 7 years, after the recording of the declaration of condominium unless there are no objections to the plan of termination.

- Revises the provision regarding allocation of proceeds of the sale of condominium property to owners of units dissenting or objecting to the plan at 110 percent of the unit price or fair market value, whichever is greater. Instead, original purchasers from the developer who dissent or object to the plan, fair market value may not be less than the original purchase price for the unit.
- Revises the language regarding the manner by which each first mortgage on a unit is satisfied so that the unit owner's obligation is satisfied in full when the termination plan is implemented.
- Changes "or" to "and" in the provision "providing that all such rights in the unit and common elements automatically terminate on the effective date of termination" unless the plan expressly authorizes otherwise.

### **CS by Regulated Industries on March 24, 2015:**

The committee substitute (CS):

- Revises the title of the bill from an "act relating to condominiums" to an "act relating to termination of a condominium association;"
- Amends s. 718.117(3), F.S., to provide that, if more than 10 percent of the voting interests of a condominium to reject a plan of termination, another termination may not be considered for 18 months instead of 36 months in the bill;
- Deletes the provision in s. 718.117(3)(c), F.S., that optional termination provisions do not apply to condominiums in which 75 percent or more of the units are timeshare units;
- Creates s. 718.117(3)(d), F.S., to define the term bulk owner;
- Amends s. 718.117(3)(d), F.S., to provide conditions for the termination of a condominium if at least 80 percent of the total voting interests at the time of recording the plan of termination are owned by a bulk owner. It does not limit the condition to when at least 80 percent of the voting interests are owned by bulk buyer or assignee or a related entity which would be considered an insider under and no sale of the terminated condominium property to an unrelated third party is contemplated;
- Amends s. 718.117(3)(d)3., F.S., to require that all unit owners other than the bulk owner must be compensated at least 100 percent of the fair market value of their units. It deletes the reference to third-party unit owners;
- Amends s. 718.117(3)(d)3., F.S., to require that the fair market value must be determined by an independent appraiser, selected by the termination trustee, as of a date that is no earlier than 90 days before the date that the plan of termination is recorded;
- Creates s. 718.117(3)(d)5., F.S., to require a written and sworn statement of disclosures before the plan of termination is presented to the unit owners;
- Amends s. 718.117(9), F.S., and does not amend s. 718.117(3), F.S., to provide the process for a unit owner to reject or object to a plan of terminations;
- Amends s. 718.117(11), F.S., to provide for the termination of possession rights by the former unit owner, including occupancy agreements, subleases, licenses, or other agreements, after the approval of a plan of termination, unless expressly authorized in

the plan of termination. It also deletes the provision that, in a partial termination, title to the surviving units and common elements that remain part of the condominium property and vested in the ownership shown in the public records and do not vest in the termination trustees;

- Creates s. 718.117(11)(c), F.S., to permit a plan of termination to be withdrawn or amended by the same percentage required for approval;
- Creates s. 718.117(11)(c), F.S., to permit a termination trustee to correct a scrivener's error in the plan of termination, and to require that the amended plan must be executed in the same manner as a deed;
- Amends s. 718.117(12), F.S., to provide that the plan of termination may require separate valuations for the common elements. It deletes the requirement that the declaration must expressly provide for the allocation of the proceeds of sale of condominium property and apportion the proceeds between the aggregate value of all units and the value of the common elements, based on their respective fair market values immediately before the termination by an independent appraiser;
- Amends s. 718.117(12)(d), F.S., to require the lienholder of a unit to provide the termination trustee, within 30 days of the trustee's written request, with a statement confirming the outstanding obligations of the unit owner secured by the lien;
- Amends s. 718.117(12)(e), F.S., to permit the termination trustee to setoff against and reduce the share of, termination proceeds allocated to a unit by the amounts provided, which may include attorney fees and costs;
- Amends s. 718.117(16), F.S., to permit unit owners to contest a plan of termination by petitioning the division for mandatory nonbinding arbitration pursuant s. 718.1255, F.S. It deletes the option for unit owners to contest the termination by initiating a summary procedure pursuant to s. 51.011, F.S.; and
- Amends s. 718.1255(1)(a), F.S., to include a plan of termination under s. 718.117, F.S., within the types of disputes that the division may arbitrate.

**B. Amendments:**

None.