

By the Committee on Regulated Industries; and Senator Latvala

580-02817-15

20151172c1

1 A bill to be entitled
2 An act relating to termination of a condominium
3 association; amending s. 718.117, F.S.; providing and
4 revising procedures and requirements for termination
5 of a condominium property; providing requirements for
6 the rejection of a plan of termination; defining
7 terms; providing applicability; providing and revising
8 requirements relating to partial termination of a
9 condominium property; authorizing a plan of
10 termination to be withdrawn, modified, or amended
11 under certain conditions; revising and providing
12 requirements relating to the allocation of proceeds of
13 the sale of condominium property; revising
14 requirements relating to the right to contest a plan
15 of termination; amending s. 718.1255, F.S.; revising
16 the term "dispute"; providing an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Subsections (3), (4), (9), (11), (12), and (16)
21 of section 718.117, Florida Statutes, are amended to read:

22 718.117 Termination of condominium.—

23 (3) OPTIONAL TERMINATION.—Except as provided in subsection
24 (2) or unless the declaration provides for a lower percentage,
25 the condominium form of ownership may be terminated for all or a
26 portion of the condominium property pursuant to a plan of
27 termination approved by at least 80 percent of the total voting
28 interests of the condominium if no more than 10 percent of the
29 total voting interests of the condominium have rejected the plan

580-02817-15

20151172c1

30 of termination by negative vote or by providing written
31 objections, subject to the following conditions:

32 (a) The total voting interests of the condominium must
33 include all voting interests for the purpose of considering a
34 plan of termination. A voting interest of the condominium may
35 not be suspended for any reason when voting on termination
36 pursuant to this subsection.

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

41 (c) This subsection also does not apply to any condominium
42 created pursuant to part VI of this chapter until 7 years after
43 the recording of the declaration of condominium for the
44 condominium ~~This subsection does not apply to condominiums in~~
45 ~~which 75 percent or more of the units are timeshare units.~~

46 (d) For purposes of this paragraph, the term "bulk owner"
47 means the single holder of such voting interests or an owner
48 together with a related entity or entities that would be
49 considered insiders, as defined in s. 726.102, holding such
50 voting interests. If the condominium association is a
51 residential association proposed for termination pursuant to
52 this section and, at the time of recording the plan of
53 termination, at least 80 percent of the total voting interests
54 are owned by a bulk owner, the plan of termination is subject to
55 the following conditions and limitations:

56 1. 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

580-02817-15

20151172c1

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

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

84 3. All unit owners other than the bulk owner shall be
85 compensated at least 100 percent of the fair market value of
86 their respective units. The fair market value shall be
87 determined by an independent appraiser, selected by the

580-02817-15

20151172c1

88 termination trustee, as of a date that is no earlier than 90
89 days before the date that the plan of termination is recorded.
90 Notwithstanding subsection (12), the allocation of the proceeds
91 of the sale of condominium property to owners of units
92 dissenting or objecting to the plan of termination must be 110
93 percent of the original purchase price, or 110 percent of fair
94 market value, whichever is greater. For purposes of this
95 subparagraph, the term "fair market value" means the price of a
96 unit that a seller is willing to accept and a buyer is willing
97 to pay on the open market in an arms-length transaction based on
98 similar units sold in other condominiums, including units sold
99 in bulk purchases but excluding units sold at wholesale or
100 distressed prices. The purchase price of units acquired in bulk
101 following a bankruptcy or foreclosure may not be considered for
102 purposes of determining fair market value.

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

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

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

580-02817-15

20151172c1

117 control 20 percent or more of the artificial entity or entities
118 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 (e) If the members of the board of administration are
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 (9) PLAN OF TERMINATION.—The plan of termination must be a
142 written document executed in the same manner as a deed by unit
143 owners having the requisite percentage of voting interests to
144 approve the plan and by the termination trustee. A copy of the
145 proposed plan of termination shall be given to all unit owners,

580-02817-15

20151172c1

146 in the same manner as for notice of an annual meeting, at least
147 14 days prior to the meeting at which the plan of termination is
148 to be voted upon or prior to or simultaneously with the
149 distribution of the solicitation seeking execution of the plan
150 of termination or written consent to or joinder in the plan. A
151 unit owner may document assent to the plan by executing the plan
152 or by consent to or joinder in the plan in the manner of a deed.
153 A plan of termination and the consents or joinders of unit
154 owners and, if required, consents or joinders of mortgagees must
155 be recorded in the public records of each county in which any
156 portion of the condominium is located. The plan is effective
157 only upon recordation or at a later date specified in the plan.
158 If the plan of termination fails to receive the required
159 approval, the plan shall not be recorded and a new attempt to
160 terminate the condominium may not be proposed at a meeting or by
161 solicitation for joinder and consent for 180 days after the date
162 that such failed plan of termination was first given to all unit
163 owners in the manner as provided in this subsection.

164 (a) If the plan of termination is voted on at a meeting of
165 the unit owners called in accordance with this subsection, any
166 unit owner desiring to reject the plan must do so by either
167 voting to reject the plan in person or by proxy, or by
168 delivering a written rejection to the association before or at
169 the meeting.

170 (b) If the plan of termination is approved by written
171 consent or joinder without a meeting of the unit owners, any
172 unit owner desiring to object to the plan must deliver a written
173 objection to the association within 20 days after the date that
174 the association notifies the nonconsenting owners, in the manner

580-02817-15

20151172c1

175 provided in paragraph (15) (a), that the plan of termination has
176 been approved by written action in lieu of a unit owner meeting.

177 (11) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL
178 TERMINATION; WITHDRAWAL; ERRORS.-

179 (a) Unless the plan of termination expressly authorizes a
180 may provide that each unit owner or other person to retain
181 retains the exclusive right to possess that of possession to the
182 portion of the real estate which formerly constituted the unit
183 after termination or to use the common elements of the
184 condominium after termination, all such rights in the unit or
185 common elements automatically terminate on the effective date of
186 termination. Unless the plan expressly provides otherwise, all
187 leases, occupancy agreements, subleases, licenses, or other
188 agreements for the use or occupancy of any unit or common
189 elements of the condominium automatically terminate on the
190 effective date of termination. If the plan expressly authorizes
191 a unit owner or other person to retain exclusive right of
192 possession for that portion of the real estate which formerly
193 constituted the unit or to use the common elements of the
194 condominium after termination, the plan must specify the terms
195 and if the plan specifies the conditions of possession. In a
196 partial termination, the plan of termination as specified in
197 subsection (10) must also identify the units that survive the
198 partial termination and provide that such units remain in the
199 condominium form of ownership pursuant to an amendment to the
200 declaration of condominium or an amended and restated
201 declaration. In a partial termination, title to the surviving
202 units and common elements that remain part of the condominium
203 property specified in the plan of termination remain vested in

580-02817-15

20151172c1

204 the ownership shown in the public records and do not vest in the
205 termination trustee.

206 (b) In a conditional termination, the plan must specify the
207 conditions for termination. A conditional plan does not vest
208 title in the termination trustee until the plan and a
209 certificate executed by the association with the formalities of
210 a deed, confirming that the conditions in the conditional plan
211 have been satisfied or waived by the requisite percentage of the
212 voting interests, have been recorded. In a partial termination,
213 the plan does not vest title to the surviving units or common
214 elements that remain part of the condominium property in the
215 termination trustee.

216 (c) Unless otherwise provided in the plan of termination,
217 at any time before the sale of the condominium property, a plan
218 may be withdrawn or modified by the affirmative vote or written
219 agreement of at least the same percentage of voting interests in
220 the condominium as that which was required for the initial
221 approval of the plan.

222 (d) Upon the discovery of a scrivener's error in the plan
223 of termination, the termination trustee may record an amended
224 plan or an amendment to the plan for the purpose of correcting
225 the error, and the amended plan or amendment to the plan must be
226 executed by the termination trustee in the same manner as
227 required for the execution of a deed.

228 (12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM
229 PROPERTY.—

230 (a) Unless the declaration expressly provides for the
231 allocation of the proceeds of sale of condominium property, the
232 plan of termination may require separate valuations for ~~must~~

580-02817-15

20151172c1

233 ~~first apportion the proceeds between the aggregate value of all~~
234 ~~units and the value of the common elements. However, in the~~
235 ~~absence of such provision, it is presumed that the common~~
236 ~~elements have no independent value but rather that their value~~
237 ~~is incorporated into the valuation of the units based on their~~
238 ~~respective fair market values immediately before the~~
239 ~~termination, as determined by one or more independent appraisers~~
240 ~~selected by the association or termination trustee. In a partial~~
241 ~~termination, the aggregate values of the units and common~~
242 ~~elements that are being terminated must be separately~~
243 ~~determined, and the plan of termination must specify the~~
244 ~~allocation of the proceeds of sale for the units and common~~
245 ~~elements being terminated.~~

246 (b) The portion of proceeds allocated to the units shall be
247 ~~further~~ apportioned among the individual units. The
248 apportionment is deemed fair and reasonable if it is ~~se~~
249 ~~determined by the unit owners, who may approve the plan of~~
250 ~~termination~~ by any of the following methods:

251 1. The respective values of the units based on the fair
252 market values of the units immediately before the termination,
253 as determined by one or more independent appraisers selected by
254 the association or termination trustee;

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

258 3. The respective interests of the units in the common
259 elements specified in the declaration immediately before the
260 termination.

261 (c) The methods of apportionment in paragraph (b) do not

580-02817-15

20151172c1

262 prohibit any other method of apportioning the proceeds of sale
263 allocated to the units or any other method of valuing the units
264 agreed upon in the plan of termination. Any ~~The~~ portion of the
265 proceeds separately allocated to the common elements shall be
266 apportioned among the units based upon their respective
267 interests in the common elements as provided in the declaration.

268 (d) Liens that encumber a unit shall, unless otherwise
269 provided in the plan of termination, be transferred to the
270 proceeds of sale of the condominium property and the proceeds of
271 sale or other distribution of association property, common
272 surplus, or other association assets attributable to such unit
273 in their same priority. In a partial termination, liens that
274 encumber a unit being terminated must be transferred to the
275 proceeds of sale of that portion of the condominium property
276 being terminated which are attributable to such unit. The
277 proceeds of any sale of condominium property pursuant to a plan
278 of termination may not be deemed to be common surplus or
279 association property. The holder of a lien that encumbers a unit
280 at the time of recording a plan must, within 30 days after the
281 written request from the termination trustee, deliver a
282 statement to the termination trustee confirming the outstanding
283 amount of any obligations of the unit owner secured by the lien.

284 (e) The termination trustee may setoff against, and reduce
285 the share of, the termination proceeds allocated to a unit by
286 the following amounts, which may include attorney fees and
287 costs:

288 1. All unpaid assessments, taxes, late fees, interest,
289 finances, charges, and other amounts due and owing to the
290 association associated with the unit, its owner, or the owner's

580-02817-15

20151172c1

291 family members, guests, tenants, occupants, licensees, invitees,
292 or other persons.

293 2. All costs of clearing title to the owner's unit,
294 including, but not limited to, locating lienors, obtaining
295 statements from such lienors confirming the outstanding amount
296 of any obligations of the unit owner, and paying all mortgages
297 and other liens, judgments, and encumbrances and filing suit to
298 quiet title or remove title defects.

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

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

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

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

315 (16) RIGHT TO CONTEST.—A unit owner or lienor may contest a
316 plan of termination by initiating a petition for mandatory
317 nonbinding arbitration ~~summary procedure~~ pursuant to s. 718.1255
318 ~~s. 51.011~~ within 90 days after the date the plan is recorded. A
319 unit owner or lienor may only contest the fairness and

580-02817-15

20151172c1

320 reasonableness of the apportionment of the proceeds from the
321 sale among the unit owners, that the first mortgages of all unit
322 owners other than the bulk owner have not or will not be fully
323 satisfied at the time of termination as required by subsection
324 (3), or that the required vote to approve the plan was not
325 obtained. A unit owner or lienor who does not contest the plan
326 within the 90-day period is barred from asserting or prosecuting
327 a claim against the association, the termination trustee, any
328 unit owner, or any successor in interest to the condominium
329 property. In an action contesting a plan of termination, the
330 person contesting the plan has the burden of pleading and
331 proving that the apportionment of the proceeds from the sale
332 among the unit owners was not fair and reasonable or that the
333 required vote was not obtained. The apportionment of sale
334 proceeds is presumed fair and reasonable if it was determined
335 pursuant to the methods prescribed in subsection (12). The
336 arbitrator ~~court~~ shall determine the rights and interests of the
337 parties in the apportionment of the sale proceeds ~~and order the~~
338 ~~plan of termination to be implemented if it is fair and~~
339 ~~reasonable.~~ If the arbitrator ~~court~~ determines that the
340 apportionment of sale proceeds ~~plan of termination~~ is not fair
341 and reasonable, the arbitrator ~~court~~ may void the plan or may
342 modify the plan to apportion the proceeds in a fair and
343 reasonable manner pursuant to this section based upon the
344 proceedings and order the modified plan of termination to be
345 implemented. If the arbitrator determines that the plan was not
346 properly approved, or that the procedures to adopt the plan were
347 not properly followed, it may void the plan or grant other
348 relief it deems just and proper. The arbitrator shall

580-02817-15

20151172c1

349 automatically void the plan upon a finding that any of the
350 disclosures required in subparagraph (3)(d)4. are omitted,
351 misleading, incomplete, or inaccurate. Any challenge to a plan,
352 other than a challenge that the required vote was not obtained,
353 does not affect title to the condominium property or the vesting
354 of the condominium property in the trustee, but shall only be a
355 claim against the proceeds of the plan. In any such action, the
356 prevailing party shall recover reasonable attorney ~~attorney's~~
357 fees and costs.

358 Section 2. Subsection (1) of section 718.1255, Florida
359 Statutes, is amended to read:

360 718.1255 Alternative dispute resolution; voluntary
361 mediation; mandatory nonbinding arbitration; legislative
362 findings.—

363 (1) DEFINITIONS.—As used in this section, the term
364 “dispute” means any disagreement between two or more parties
365 that involves:

366 (a) The authority of the board of directors, under this
367 chapter or association document to:

368 1. Require any owner to take any action, or not to take any
369 action, involving that owner's unit or the appurtenances
370 thereto.

371 2. Alter or add to a common area or element.

372 (b) The failure of a governing body, when required by this
373 chapter or an association document, to:

374 1. Properly conduct elections.

375 2. Give adequate notice of meetings or other actions.

376 3. Properly conduct meetings.

377 4. Allow inspection of books and records.

580-02817-15

20151172c1

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

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380 "Dispute" does not include any disagreement that primarily
381 involves: title to any unit or common element; the
382 interpretation or enforcement of any warranty; the levy of a fee
383 or assessment, or the collection of an assessment levied against
384 a party; the eviction or other removal of a tenant from a unit;
385 alleged breaches of fiduciary duty by one or more directors; or
386 claims for damages to a unit based upon the alleged failure of
387 the association to maintain the common elements or condominium
388 property.

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