

By the Committees on Judiciary; and Regulated Industries; and
Senator Latvala

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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10 termination to be withdrawn, modified, or amended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 (2)
24 or unless the declaration provides for a lower percentage, the
25 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 or more
29 of the total voting interests of the condominium have rejected

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30 the plan of termination by negative vote or by providing written
31 objections.

32 (a) The termination of the condominium form of ownership is
33 subject to the following conditions:

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

39 2. If 10 percent or more of the total voting interests of
40 the condominium reject a plan of termination, a subsequent plan
41 of termination pursuant to this subsection may not be considered
42 for 18 months after the date of the rejection.

43 (b) This subsection also does not apply to any condominium
44 created pursuant to part VI of this chapter until 5 years after
45 the recording of the declaration of condominium for the
46 condominium unless there are no objections to the plan of
47 termination ~~This subsection does not apply to condominiums in~~
48 ~~which 75 percent or more of the units are timeshare units.~~

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

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59 1. If the former condominium units are offered for lease to
60 the public after the termination, each unit owner in occupancy
61 immediately before the date of recording of the plan of
62 termination may lease his or her former unit and remain in
63 possession of the unit for 12 months after the effective date of
64 the termination on the same terms as similar unit types within
65 the property are being offered to the public. In order to obtain
66 a lease and exercise the right to retain exclusive possession of
67 the unit owner's former unit, the unit owner must make a written
68 request to the termination trustee to rent the former unit
69 within 90 days after the date the plan of termination is
70 recorded. Any unit owner who fails to timely make such written
71 request and sign a lease within 15 days after being presented
72 with a lease is deemed to have waived his or her right to retain
73 possession of his or her former unit and is required to vacate
74 the former unit upon the effective date of the termination,
75 unless otherwise provided in the plan of termination.

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

87 3. All unit owners other than the bulk owner shall be

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88 compensated at least 100 percent of the fair market value of
89 their respective units. The fair market value shall be
90 determined by an independent appraiser, selected by the
91 termination trustee, as of a date that is no earlier than 90
92 days before the date that the plan of termination is recorded.
93 For original purchasers from the developer who dissent or object
94 to the plan of termination, the fair market value for the unit
95 owner dissenting or objecting may not be less than the original
96 purchase price paid for the unit. For purposes of this
97 subparagraph, the term "fair market value" means the price of a
98 unit that a seller is willing to accept and a buyer is willing
99 to pay on the open market in an arms-length transaction based on
100 similar units sold in other condominiums, including units sold
101 in bulk purchases but excluding units sold at wholesale or
102 distressed prices. The purchase price of units acquired in bulk
103 following a bankruptcy or foreclosure may not be considered for
104 purposes of determining fair market value.

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

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

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

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117 indirectly, manage or control the entity or entities and the
118 natural person or persons who, directly or indirectly, own or
119 control 20 percent or more of the artificial entity or entities
120 that constitute the bulk owner.

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

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

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

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

142 (9) PLAN OF TERMINATION.—The plan of termination must be a
143 written document executed in the same manner as a deed by unit
144 owners having the requisite percentage of voting interests to
145 approve the plan and by the termination trustee. A copy of the

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

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

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

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

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

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

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204 property specified in the plan of termination remain vested in
205 the ownership shown in the public records and do not vest in the
206 termination trustee.

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

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

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

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

231 (a) Unless the declaration expressly provides for the
232 allocation of the proceeds of sale of condominium property, the

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

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

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

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

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

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262 (c) The methods of apportionment in paragraph (b) do not
263 prohibit any other method of apportioning the proceeds of sale
264 allocated to the units or any other method of valuing the units
265 agreed upon in the plan of termination. Any ~~The~~ portion of the
266 proceeds separately allocated to the common elements shall be
267 apportioned among the units based upon their respective
268 interests in the common elements as provided in the declaration.

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

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

289 1. All unpaid assessments, taxes, late fees, interest,
290 finances, charges, and other amounts due and owing to the

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291 association associated with the unit, its owner, or the owner's
292 family members, guests, tenants, occupants, licensees, invitees,
293 or other persons.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

375 1. Properly conduct elections.

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

377 3. Properly conduct meetings.

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378 4. Allow inspection of books and records.

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

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

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