

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Sprowls offered the following:

2
3 **Amendment (with directory amendment)**

4 Remove lines 94-380 and insert:

5 termination trustee. For an original purchaser from the
6 developer who rejects the plan of termination and whose unit was
7 granted homestead exemption status by the applicable county
8 property appraiser, or was an owner-occupied operating business,
9 as of the date that the plan of termination is recorded and who
10 is current in payment of both assessments and other monetary
11 obligations to the association and any mortgage encumbering the
12 unit as of the date the plan of termination is recorded, the
13 fair market value for the unit owner rejecting the plan shall be
14 at least the original purchase price paid for the unit. For

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15 purposes of this subparagraph, the term "fair market value"
16 means the price of a unit that a seller is willing to accept and
17 a buyer is willing to pay on the open market in an arms-length
18 transaction based on similar units sold in other condominiums,
19 including units sold in bulk purchases but excluding units sold
20 at wholesale or distressed prices. The purchase price of units
21 acquired in bulk following a bankruptcy or foreclosure shall not
22 be considered for purposes of determining fair market value.

23 4. The plan of termination must provide for payment of a
24 first mortgage encumbering a unit to the extent necessary to
25 satisfy the lien, but the payment may not exceed the unit's
26 share of the proceeds of termination under the plan. If the unit
27 owner is current in payment of both assessments and other
28 monetary obligations to the association and any mortgage
29 encumbering the unit as of the date the plan of termination is
30 recorded, the receipt by the holder of the unit's share of the
31 proceeds of termination under the plan or the outstanding
32 balance of the mortgage, whichever is less, shall be deemed to
33 have satisfied the first mortgage in full.

34 5. Before a plan of termination is presented to the unit
35 owners for consideration pursuant to this paragraph, the plan
36 must include the following written disclosures in a sworn
37 statement:

38 a. The identity of any person or entity that owns or
39 controls 50 percent or more of the units in the condominium and,
40 if the units are owned by an artificial entity or entities, a

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41 disclosure of the natural person or persons who, directly or
42 indirectly, manage or control the entity or entities and the
43 natural person or persons who, directly or indirectly, own or
44 control 20 percent or more of the artificial entity or entities
45 that constitute the bulk owner.

46 b. The units acquired by any bulk owner, the date each
47 unit was acquired, and the total amount of compensation paid to
48 each prior unit owner by the bulk owner, regardless of whether
49 attributed to the purchase price of the unit.

50 c. The relationship of any board member to the bulk owner
51 or any person or entity affiliated with the bulk owner subject
52 to disclosure pursuant to this subparagraph.

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

57 (9) PLAN OF TERMINATION.—The plan of termination must be a
58 written document executed in the same manner as a deed by unit
59 owners having the requisite percentage of voting interests to
60 approve the plan and by the termination trustee. A copy of the
61 proposed plan of termination shall be given to all unit owners,
62 in the same manner as for notice of an annual meeting, at least
63 14 days prior to the meeting at which the plan of termination is
64 to be voted upon or prior to or simultaneously with the
65 distribution of the solicitation seeking execution of the plan
66 of termination or written consent to or joinder in the plan. A

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67 unit owner may document assent to the plan by executing the plan
68 or by consent to or joinder in the plan in the manner of a deed.
69 A plan of termination and the consents or joinders of unit
70 owners ~~and, if required, consents or joinders of mortgagees~~ must
71 be recorded in the public records of each county in which any
72 portion of the condominium is located. The plan is effective
73 only upon recordation or at a later date specified in the plan.
74 If the plan of termination fails to receive the required
75 approval, the plan shall not be recorded and a new attempt to
76 terminate the condominium may not be proposed at a meeting or by
77 solicitation for joinder and consent for 18 months ~~180 days~~
78 after the date that such failed plan of termination was first
79 given to all unit owners in the manner as provided in this
80 subsection.

81 (a) If the plan of termination is voted on at a meeting of
82 the unit owners called in accordance with this subsection, any
83 unit owner desiring to reject the plan must do so by either
84 voting to reject the plan in person or by proxy, or by
85 delivering a written rejection to the association before or at
86 the meeting.

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

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

94 (11) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL
95 TERMINATION; WITHDRAWAL; ERRORS.-

96 (a) Unless the plan of termination expressly authorizes a
97 may provide that each unit owner or other person to retain
98 retains the exclusive right to possess that of possession to the
99 portion of the real estate which formerly constituted the unit
100 after termination or to use the common elements of the
101 condominium after termination, all such rights in the unit and
102 common elements automatically terminate on the effective date of
103 termination. Unless the plan expressly provides otherwise, all
104 leases, occupancy agreements, subleases, licenses, or other
105 agreements for the use or occupancy of any unit or common
106 elements of the condominium automatically terminate on the
107 effective date of termination. If the plan expressly authorizes
108 a unit owner or other person to retain exclusive right of
109 possession for that portion of the real estate that formerly
110 constituted the unit or to use the common elements of the
111 condominium after termination, the plan must specify the terms
112 and if the plan specifies the conditions of possession. In a
113 partial termination, the plan of termination as specified in
114 subsection (10) must also identify the units that survive the
115 partial termination and provide that such units remain in the
116 condominium form of ownership pursuant to an amendment to the
117 declaration of condominium or an amended and restated

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118 declaration. In a partial termination, title to the surviving
119 units and common elements that remain part of the condominium
120 property specified in the plan of termination remain vested in
121 the ownership shown in the public records and do not vest in the
122 termination trustee.

123 (b) In a conditional termination, the plan must specify
124 the conditions for termination. A conditional plan does not vest
125 title in the termination trustee until the plan and a
126 certificate executed by the association with the formalities of
127 a deed, confirming that the conditions in the conditional plan
128 have been satisfied or waived by the requisite percentage of the
129 voting interests, have been recorded. In a partial termination,
130 the plan does not vest title to the surviving units or common
131 elements that remain part of the condominium property in the
132 termination trustee.

133 (c) Unless otherwise provided in the plan of termination,
134 at any time before the sale of the condominium property, a plan
135 may be withdrawn or modified by the affirmative vote or written
136 agreement of at least the same percentage of voting interests in
137 the condominium as that which was required for the initial
138 approval of the plan.

139 (d) Upon the discovery of a scrivener's error in the plan
140 of termination, the termination trustee may record an amended
141 plan or an amendment to the plan for the purpose of correcting
142 the error, and the amended plan or amendment to the plan must be

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143 executed by the termination trustee in the same manner as
144 required for the execution of a deed.

145 (12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM
146 PROPERTY.—

147 (a) Unless the declaration expressly provides for the
148 allocation of the proceeds of sale of condominium property, the
149 plan of termination may require separate valuations for the ~~must~~
150 ~~first apportion the proceeds between the aggregate value of all~~
151 ~~units and the value of the common elements.~~ However, in the
152 absence of such provision, it is presumed that the common
153 elements have no independent value but rather that their value
154 is incorporated into the valuation of the units ~~based on their~~
155 ~~respective fair market values immediately before the~~
156 ~~termination, as determined by one or more independent appraisers~~
157 ~~selected by the association or termination trustee.~~ In a partial
158 termination, the aggregate values of the units and common
159 elements that are being terminated must be separately
160 determined, and the plan of termination must specify the
161 allocation of the proceeds of sale for the units and common
162 elements being terminated.

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

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168 1. The respective values of the units based on the fair
169 market values of the units immediately before the termination,
170 as determined by one or more independent appraisers selected by
171 the association or termination trustee;

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

175 3. The respective interests of the units in the common
176 elements specified in the declaration immediately before the
177 termination.

178 (c) The methods of apportionment in paragraph (b) do not
179 prohibit any other method of apportioning the proceeds of sale
180 allocated to the units or any other method of valuing the units
181 agreed upon in the plan of termination. Any ~~The~~ portion of the
182 proceeds separately allocated to the common elements shall be
183 apportioned among the units based upon their respective
184 interests in the common elements as provided in the declaration.

185 (d) Liens that encumber a unit shall, unless otherwise
186 provided in the plan of termination, be transferred to the
187 proceeds of sale of the condominium property and the proceeds of
188 sale or other distribution of association property, common
189 surplus, or other association assets attributable to such unit
190 in their same priority. In a partial termination, liens that
191 encumber a unit being terminated must be transferred to the
192 proceeds of sale of that portion of the condominium property
193 being terminated which are attributable to such unit. The

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194 proceeds of any sale of condominium property pursuant to a plan
195 of termination may not be deemed to be common surplus or
196 association property. The holder of a lien that encumbers a unit
197 at the time of recording a plan must, within 30 days after the
198 written request from the termination trustee, deliver a
199 statement to the termination trustee confirming the outstanding
200 amount of any obligations of the unit owner secured by the lien.

201 (e) The termination trustee may setoff against, and reduce
202 the share of, the termination proceeds allocated to a unit by
203 the following amounts, which may include attorney fees and
204 costs:

205 1. All unpaid assessments, taxes, late fees, interest,
206 finances, charges, and other amounts due and owing to the
207 association associated with the unit, its owner, or the owner's
208 family members, guests, tenants, occupants, licensees, invitees,
209 or other persons.

210 2. All costs of clearing title to the owner's unit,
211 including, but not limited to, locating lienors, obtaining
212 statements from such lienors confirming the outstanding amount
213 of any obligations of the unit owner, and paying all mortgages
214 and other liens, judgments, and encumbrances and filing suit to
215 quiet title or remove title defects.

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

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

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

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

233 (16) RIGHT TO CONTEST.—A unit owner or lienor may contest
234 a plan of termination by initiating a petition for mandatory
235 nonbinding arbitration ~~summary procedure~~ pursuant to s. 718.1255
236 ~~51.011~~ within 90 days after the date the plan is recorded. A
237 unit owner or lienor may only contest the fairness and
238 reasonableness of the apportionment of the proceeds from the
239 sale among the unit owners, that the first mortgages of all unit
240 owners other than the bulk owner have not or will not be
241 required by subsection (3), or that the required vote to approve
242 the plan was not obtained. A unit owner or lienor who does not
243 contest the plan within the 90-day period is barred from
244 asserting or prosecuting a claim against the association, the
245 termination trustee, any unit owner, or any successor in

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246 interest to the condominium property. In an action contesting a
247 plan of termination, the person contesting the plan has the
248 burden of pleading and proving that the apportionment of the
249 proceeds from the sale among the unit owners was not fair and
250 reasonable or that the required vote was not obtained. The
251 apportionment of sale proceeds is presumed fair and reasonable
252 if it was determined pursuant to the methods prescribed in
253 subsection (12). The arbitrator ~~court~~ shall determine the rights
254 and interests of the parties in the apportionment of the sale
255 proceeds and order the plan of termination to be implemented if
256 it is fair and reasonable. If the arbitrator ~~court~~ determines
257 that the apportionment of sales proceeds ~~plan of termination~~ is
258 not fair and reasonable, the arbitrator ~~court~~ may void the plan
259 or may modify the plan to apportion the proceeds in a fair and
260 reasonable manner pursuant to this section based upon the
261 proceedings and order the modified plan of termination to be
262 implemented. If the arbitrator determines that the plan was not
263 properly approved, or that the procedures to adopt the plan were
264 not properly followed, the arbitrator may void the plan or grant
265 other relief it deems just and proper. The arbitrator shall
266 automatically void the plan upon a finding that any of the
267 disclosures required in subparagraph (3)(c)5. are omitted,
268 misleading, incomplete, or inaccurate. Any challenge to a plan,
269 other than a challenge that the required vote was not obtained,
270 does not affect title to the condominium property or the vesting
271 of the condominium property in the trustee, but shall only be a

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272 claim against the proceeds of the plan. In any such action, the
273 prevailing party shall recover reasonable attorney ~~attorney's~~
274 fees and costs.

275 Section 2. Paragraph (c) is added to subsection (1) of
276 section 718.1255, Florida Statutes, to read:

277 718.1255 Alternative dispute resolution; voluntary
278 mediation; mandatory nonbinding arbitration; legislative
279 findings.—

280 (1) DEFINITIONS.—As used in this section, the term
281 "dispute" means any disagreement between two or more parties
282 that involves:

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

284
285 "Dispute" does not include any disagreement that primarily
286 involves: title to any unit or common element; the
287 interpretation or enforcement of any warranty; the levy of a fee
288 or assessment, or the collection of an assessment levied against
289 a party; the eviction or other removal of a tenant from a unit;
290 alleged breaches of fiduciary duty by one or more directors; or
291 claims for damages to a unit based upon the alleged failure of
292 the association to maintain the common elements or condominium
293 property.

294 Section 3. This act shall take effect upon becoming a law.
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297 **D I R E C T O R Y A M E N D M E N T**

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298 Remove line 21 and insert:
299 Section 1. Subsections (3), (9), (11), (12), and (16)

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