

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; providing  
7 definitions; providing applicability; providing and  
8 revising requirements relating to partial termination  
9 of a 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10 termination to be withdrawn, modified, or amended  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; providing an effective date.

16  
17 Be It Enacted by the Legislature of the State of Florida:

18  
19 Section 1. Subsections (3), (4), (11), (12), and (16) of  
20 section 718.117, Florida Statutes, are amended to read:

21 718.117 Termination of condominium.—

22 (3) OPTIONAL TERMINATION.—Except as provided in subsection  
23 (2) or unless the declaration provides for a lower percentage,  
24 the condominium form of ownership may be terminated for all or a  
25 portion of the condominium property pursuant to a plan of  
26 termination approved by at least 80 percent of the total voting

27 interests of the condominium if no more than 10 percent of the  
28 total voting interests of the condominium have rejected the plan  
29 of termination by negative vote or by providing written  
30 objections, subject to the following conditions:

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

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

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

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

53 owner:

54 1. If the plan of termination is voted on at a meeting of  
55 the unit owners called in accordance with subsection (9), any  
56 unit owner desiring to reject the plan must do so by either  
57 voting to reject the plan in person or by proxy, or by  
58 delivering a written rejection to the association before or at  
59 the meeting.

60 2. If the plan of termination is approved by written  
61 consent or joinder without a meeting of the unit owners, any  
62 unit owner desiring to object to the plan must deliver a written  
63 objection to the association within 20 days after the date that  
64 the association notifies the nonconsenting owners, in the manner  
65 provided in paragraph (15) (a), that the plan of termination has  
66 been approved by written action in lieu of a unit owner meeting.

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

70 a. If the former condominium units are offered for lease  
71 to the public after the termination, each unit owner in  
72 occupancy immediately before the date of recording of the plan  
73 of termination may lease his or her former unit and remain in  
74 possession of the unit for 12 months after the effective date of  
75 the termination on the same terms as similar unit types within  
76 the property are being offered to the public. In order to obtain  
77 a lease and exercise the right to retain exclusive possession of  
78 the unit owner's former unit, the unit owner must make a written

79 request to the termination trustee to rent the former unit  
80 within 90 days after the date the plan of termination is  
81 recorded. Any unit owner who fails to timely make such written  
82 request and sign a lease within 15 days after being presented  
83 with a lease is deemed to have waived his or her right to retain  
84 possession of his or her former unit and shall be required to  
85 vacate the former unit upon the effective date of the  
86 termination, unless otherwise provided in the plan of  
87 termination.

88 b. Any former unit owner whose unit was granted homestead  
89 exemption status by the applicable county property appraiser as  
90 of the date of the recording of the plan of termination shall be  
91 paid a relocation payment in an amount equal to 1 percent of the  
92 termination proceeds allocated to the owner's former unit. Any  
93 relocation payment payable under this subparagraph shall be paid  
94 by the single entity or related entities owning at least 80  
95 percent of the total voting interests. Such relocation payment  
96 shall be in addition to the termination proceeds for such  
97 owner's former unit and shall be paid no later than 10 days  
98 after the former unit owner vacates his or her former unit.

99 c. For their respective units, all unit owners other than  
100 the bulk owner must be compensated at least 100 percent of the  
101 fair market value of their units. The fair market value shall be  
102 determined as of a date that is no earlier than 90 days before  
103 the date that the plan of termination is recorded and shall be  
104 determined by an independent appraiser selected by the

105 termination trustee. Notwithstanding subsection (12), the  
 106 allocation of the proceeds of the sale of condominium property  
 107 to owners of units dissenting or objecting to the plan of  
 108 termination shall be 110 percent of the original purchase price,  
 109 or 110 percent of fair market value, whichever is greater. For  
 110 purposes of this sub-subparagraph, the term "fair market value"  
 111 means the price of a unit that a seller is willing to accept and  
 112 a buyer is willing to pay on the open market in an arms-length  
 113 transaction based on similar units sold in other condominiums,  
 114 including units sold in bulk purchases but excluding units sold  
 115 at wholesale or distressed prices. The purchase price of units  
 116 acquired in bulk following a bankruptcy or foreclosure shall not  
 117 be considered for purposes of determining fair market value.

118 d. A plan of termination is not effective unless the  
 119 outstanding first mortgages of all unit owners other than the  
 120 bulk owner are satisfied in full before, or simultaneously with,  
 121 the termination.

122 4. Before presenting a plan of termination to the unit  
 123 owners for consideration pursuant to this paragraph, the plan  
 124 must include the following written disclosures in a sworn  
 125 statement:

126 a. The identity of any person that owns or controls 50  
 127 percent or more of the units in the condominium and, if the  
 128 units are owned by an artificial entity, a disclosure of the  
 129 natural person or persons who, directly or indirectly, manage or  
 130 control the entity and the natural person or persons who,

131 directly or indirectly, own or control 20 percent or more of the  
132 artificial entity or entities that constitute the bulk owner.

133 b. The units acquired by any bulk owner, the date each  
134 unit was acquired, and the total amount of compensation paid to  
135 each prior unit owner by the bulk owner, regardless of whether  
136 attributed to the purchase price of the unit.

137 c. The relationship of any board member to the bulk owner  
138 or any person or entity affiliated with the bulk owner subject  
139 to disclosure pursuant to this subparagraph.

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

145 (4) EXEMPTION.—A plan of termination is not an amendment  
146 subject to s. 718.110(4). In a partial termination, a plan of  
147 termination is not an amendment subject to s. 718.110(4) if the  
148 ownership share of the common elements of a surviving unit in  
149 the condominium remains in the same proportion to the surviving  
150 units as it was before the partial termination. An amendment to  
151 a declaration to conform the declaration to this section is not  
152 an amendment subject to s. 718.110(4) and may be approved by the  
153 lesser of 80 percent of the voting interests or the percentage  
154 of the voting interests required to amend the declaration.

155 (11) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL  
156 TERMINATION; WITHDRAWAL; ERRORS.—

157           (a) Unless the plan of termination expressly authorizes a  
158 ~~may provide that each~~ unit owner or other person to retain  
159 ~~retains~~ the exclusive right to possess that of possession to the  
160 portion of the real estate which formerly constituted the unit  
161 after termination or to use the common elements of the  
162 condominium after termination, all such rights in the unit or  
163 common elements automatically terminate on the effective date of  
164 termination. Unless the plan expressly provides otherwise, all  
165 leases, occupancy agreements, subleases, licenses, or other  
166 agreements for the use or occupancy of any unit or common  
167 elements of the condominium automatically terminate on the  
168 effective date of termination. If the plan expressly authorizes  
169 a unit owner or other person to retain exclusive right of  
170 possession for that portion of the real estate that formerly  
171 constituted the unit or to use the common elements of the  
172 condominium after termination, the plan must specify the terms  
173 and if the plan specifies the conditions of possession. In a  
174 ~~partial termination, the plan of termination as specified in~~  
175 ~~subsection (10) must also identify the units that survive the~~  
176 ~~partial termination and provide that such units remain in the~~  
177 ~~condominium form of ownership pursuant to an amendment to the~~  
178 ~~declaration of condominium or an amended and restated~~  
179 ~~declaration.~~ In a partial termination, title to the surviving  
180 units and common elements that remain part of the condominium  
181 property specified in the plan of termination remain vested in  
182 the ownership shown in the public records and do not vest in the

183 termination trustee.

184 (b) In a conditional termination, the plan must specify  
 185 the conditions for termination. A conditional plan does not vest  
 186 title in the termination trustee until the plan and a  
 187 certificate executed by the association with the formalities of  
 188 a deed, confirming that the conditions in the conditional plan  
 189 have been satisfied or waived by the requisite percentage of the  
 190 voting interests, have been recorded. ~~In a partial termination,~~  
 191 ~~the plan does not vest title to the surviving units or common~~  
 192 ~~elements that remain part of the condominium property in the~~  
 193 ~~termination trustee.~~

194 (c) Unless otherwise provided in the plan of termination,  
 195 at any time before the sale of the condominium property, a plan  
 196 may be withdrawn or modified by the affirmative vote or written  
 197 agreement of at least the same percentage of voting interests in  
 198 the condominium as that which was required for the initial  
 199 approval of the plan.

200 (d) Upon the discovery of a scrivener's error in the plan  
 201 of termination, the termination trustee may record an amended  
 202 plan or an amendment to the plan for the purpose of correcting  
 203 the error, and the amended plan or amendment to the plan must be  
 204 executed by the termination trustee in the same manner as  
 205 required for the execution of a deed.

206 (12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM  
 207 PROPERTY.—

208 (a) Unless the declaration expressly provides for the



209 allocation of the proceeds of sale of condominium property, the  
 210 plan of termination may require separate valuations for the ~~must~~  
 211 ~~first apportion the proceeds between the aggregate value of all~~  
 212 ~~units and the value of the common elements.~~ However, in the  
 213 absence of such provision, it is presumed that the common  
 214 elements have no independent value but rather that their value  
 215 is incorporated into the valuation of the units ~~based on their~~  
 216 ~~respective fair market values immediately before the~~  
 217 ~~termination, as determined by one or more independent appraisers~~  
 218 ~~selected by the association or termination trustee.~~ In a partial  
 219 termination, the aggregate values of the units and common  
 220 elements that are being terminated must be separately  
 221 determined, and the plan of termination must specify the  
 222 allocation of the proceeds of sale for the units and common  
 223 elements being terminated.

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

229 1. The respective values of the units based on the fair  
 230 market values of the units immediately before the termination,  
 231 as determined by one or more independent appraisers selected by  
 232 the association or termination trustee;

233 2. The respective values of the units based on the most  
 234 recent market value of the units before the termination, as

235 provided in the county property appraiser's records; or

236 3. The respective interests of the units in the common  
237 elements specified in the declaration immediately before the  
238 termination.

239 (c) The methods of apportionment in paragraph (b) do not  
240 prohibit any other method of apportioning the proceeds of sale  
241 allocated to the units or any other method of valuing the units  
242 agreed upon in the plan of termination. Any ~~The~~ portion of the  
243 proceeds separately allocated to the common elements shall be  
244 apportioned among the units based upon their respective  
245 interests in the common elements as provided in the declaration.

246 (d) Liens that encumber a unit shall, unless otherwise  
247 provided in the plan of termination, be transferred to the  
248 proceeds of sale of the condominium property and the proceeds of  
249 sale or other distribution of association property, common  
250 surplus, or other association assets attributable to such unit  
251 in their same priority. In a partial termination, liens that  
252 encumber a unit being terminated must be transferred to the  
253 proceeds of sale of that portion of the condominium property  
254 being terminated which are attributable to such unit. The  
255 proceeds of any sale of condominium property pursuant to a plan  
256 of termination may not be deemed to be common surplus or  
257 association property. The holder of a lien that encumbers a unit  
258 at the time of recording a plan must, within 30 days after the  
259 written request from the termination trustee, deliver a  
260 statement to the termination trustee confirming the outstanding

261 amount of any obligations of the unit owner secured by the lien.

262 (e) The termination trustee may setoff against, and reduce  
263 the share of, the termination proceeds allocated to a unit by  
264 the following amounts, which may include attorney fees and  
265 costs:

266 1. All unpaid assessments, taxes, late fees, interest,  
267 finances, charges, and other amounts due and owing to the  
268 association associated with the unit, its owner, or the owner's  
269 family members, guests, tenants, occupants, licensees, invitees,  
270 or other persons.

271 2. All costs of clearing title to the owner's unit,  
272 including, but not limited to, locating lienors, obtaining  
273 statements from such lienors confirming the outstanding amount  
274 of any obligations of the unit owner, and paying all mortgages  
275 and other liens, judgments, and encumbrances and filing suit to  
276 quiet title or remove title defects.

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

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

284 5. All costs arising out of, or related to, the removal  
285 and storage of all personal property remaining in a unit, other  
286 than personal property owned by the association, so that the

287 unit may be delivered vacant and clear of the owner or the  
288 owner's family members, guests, tenants, occupants, licensees,  
289 invitees, or other persons as required by the plan.

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

294 (16) RIGHT TO CONTEST.—A unit owner or lienor may contest  
295 a plan of termination by initiating a summary procedure pursuant  
296 to s. 51.011 within 90 days after the date the plan is recorded.  
297 A unit owner or lienor may only contest the fairness and  
298 reasonableness of the apportionment of the proceeds from the  
299 sale among the unit owners, that the first mortgages of all unit  
300 owners have not or will not be fully satisfied at the time of  
301 termination as required by subsection (3), or that the required  
302 vote to approve the plan was not obtained. A unit owner or  
303 lienor who does not contest the plan within the 90-day period is  
304 barred from asserting or prosecuting a claim against the  
305 association, the termination trustee, any unit owner, or any  
306 successor in interest to the condominium property. In an action  
307 contesting a plan of termination, the person contesting the plan  
308 has the burden of pleading and proving that the apportionment of  
309 the proceeds from the sale among the unit owners was not fair  
310 and reasonable or that the required vote was not obtained. The  
311 apportionment of sale proceeds is presumed fair and reasonable  
312 if it was determined pursuant to the methods prescribed in

313 subsection (12). The court shall determine the rights and  
314 interests of the parties in the apportionment of the sale  
315 proceeds and order the plan of termination to be implemented if  
316 it is fair and reasonable. If the court determines that the  
317 apportionment of sales proceeds plan of termination is not fair  
318 and reasonable, the court may ~~void the plan or~~ modify the  
319 plan to apportion the proceeds in a fair and reasonable manner  
320 pursuant to this section based upon the proceedings and order  
321 the modified plan of termination to be implemented. If the court  
322 determines that the plan was not properly approved, it may void  
323 the plan or grant other relief it deems just and proper. Any  
324 challenge to a plan, other than a challenge that the required  
325 vote was not obtained, does not affect title to the condominium  
326 property or the vesting of the condominium property in the  
327 trustee, but shall only be a claim against the proceeds of the  
328 plan. In any such action, the prevailing party shall recover  
329 reasonable attorney ~~attorney's~~ fees and costs.

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