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1
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, or the objection to, a plan of
7 termination; providing definitions; providing
8 applicability; providing and revising requirements
9 relating to partial termination of a condominium
10 property; authorizing a plan of termination to be
11 withdrawn, modified, or amended under certain
12 conditions; revising and providing requirements
13 relating to the allocation of proceeds of the sale of
14 condominium property; revising requirements relating
15 to the right to contest a plan of termination;
16 amending s. 718.1255, F.S.; revising a definition;
17 providing an effective date.

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

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

23 718.117 Termination of condominium.—

24 (3) OPTIONAL TERMINATION.—Except as provided in subsection
25 (2) or unless the declaration provides for a lower percentage,
26 the condominium form of ownership may be terminated for all or a



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27 | portion of the condominium property pursuant to a plan of
28 | termination approved by at least 80 percent of the total voting
29 | interests of the condominium. If ~~no more than~~ 10 percent or more
30 | of the total voting interests of the condominium have rejected
31 | the plan of termination by negative vote or by providing written
32 | objections, the plan of termination may not proceed.

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

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

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

44 | (b) This subsection does not apply to any condominium
45 | created pursuant to part VI of this chapter until 5 years after
46 | the recording of the declaration of condominium, unless there is
47 | no objection to the plan of termination ~~condominiums in which 75~~
48 | 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 an insider, as defined in s. 726.102, holding such



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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:

59 1. If the former condominium units are offered for lease
60 to the public after the termination, each unit owner in
61 occupancy immediately before the date of recording of the plan
62 of 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 shall be required to
74 vacate the former unit upon the effective date of the
75 termination, unless otherwise provided in the plan of
76 termination.

77 2. Any former unit owner whose unit was granted homestead
78 exemption status by the applicable county property appraiser as



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79 of the date of the recording of the plan of termination shall be
80 paid a relocation payment in an amount equal to 1 percent of the
81 termination proceeds allocated to the owner's former unit. Any
82 relocation payment payable under this subparagraph shall be paid
83 by the single entity or related entities owning at least 80
84 percent of the total voting interests. Such relocation payment
85 shall be in addition to the termination proceeds for such
86 owner's former unit and shall be paid no later than 10 days
87 after the former unit owner vacates his or her former unit.

88 3. For their respective units, all unit owners other than
89 the bulk owner must be compensated at least 100 percent of the
90 fair market value of their units. The fair market value shall be
91 determined as of a date that is no earlier than 90 days before
92 the date that the plan of termination is recorded and shall be
93 determined by an independent appraiser selected by the
94 termination trustee. For an original purchaser from the
95 developer who rejects the plan of termination and whose unit was
96 granted homestead exemption status by the applicable county
97 property appraiser, or was an owner-occupied operating business,
98 as of the date that the plan of termination is recorded and who
99 is current in payment of both assessments and other monetary
100 obligations to the association and any mortgage encumbering the
101 unit as of the date the plan of termination is recorded, the
102 fair market value for the unit owner rejecting the plan shall be
103 at least the original purchase price paid for the unit. For
104 purposes of this subparagraph, the term "fair market value"



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105 means the price of a unit that a seller is willing to accept and
106 a buyer is willing to pay on the open market in an arms-length
107 transaction based on similar units sold in other condominiums,
108 including units sold in bulk purchases but excluding units sold
109 at wholesale or distressed prices. The purchase price of units
110 acquired in bulk following a bankruptcy or foreclosure shall not
111 be considered for purposes of determining fair market value.

112 4. The plan of termination must provide for payment of a
113 first mortgage encumbering a unit to the extent necessary to
114 satisfy the lien, but the payment may not exceed the unit's
115 share of the proceeds of termination under the plan. If the unit
116 owner is current in payment of both assessments and other
117 monetary obligations to the association and any mortgage
118 encumbering the unit as of the date the plan of termination is
119 recorded, the receipt by the holder of the unit's share of the
120 proceeds of termination under the plan or the outstanding
121 balance of the mortgage, whichever is less, shall be deemed to
122 have satisfied the first mortgage in full.

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

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



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131 indirectly, manage or control the entity or entities and the
132 natural person or persons who, directly or indirectly, own or
133 control 20 percent or more of the artificial entity or entities
134 that constitute the bulk owner.

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

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

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

146 (9) PLAN OF TERMINATION.—The plan of termination must be a
147 written document executed in the same manner as a deed by unit
148 owners having the requisite percentage of voting interests to
149 approve the plan and by the termination trustee. A copy of the
150 proposed plan of termination shall be given to all unit owners,
151 in the same manner as for notice of an annual meeting, at least
152 14 days prior to the meeting at which the plan of termination is
153 to be voted upon or prior to or simultaneously with the
154 distribution of the solicitation seeking execution of the plan
155 of termination or written consent to or joinder in the plan. A
156 unit owner may document assent to the plan by executing the plan



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157 or by consent to or joinder in the plan in the manner of a deed.
158 A plan of termination and the consents or joinders of unit
159 owners ~~and, if required, consents or joinders of mortgagees~~ must
160 be recorded in the public records of each county in which any
161 portion of the condominium is located. The plan is effective
162 only upon recordation or at a later date specified in the plan.
163 If the plan of termination fails to receive the required
164 approval, the plan shall not be recorded and a new attempt to
165 terminate the condominium may not be proposed at a meeting or by
166 solicitation for joinder and consent for 18 months ~~180 days~~
167 after the date that such failed plan of termination was first
168 given to all unit owners in the manner as provided in this
169 subsection.

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

176 (b) If the plan of termination is approved by written
177 consent or joinder without a meeting of the unit owners, any
178 unit owner desiring to object to the plan must deliver a written
179 objection to the association within 20 days after the date that
180 the association notifies the nonconsenting owners, in the manner
181 provided in paragraph (15) (a), that the plan of termination has
182 been approved by written action in lieu of a unit owner meeting.



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183 (11) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL
 184 TERMINATION; WITHDRAWAL; ERRORS.—

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



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209 property specified in the plan of termination remain vested in
210 the ownership shown in the public records and do not vest in the
211 termination trustee.

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

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

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

234 (12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM



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235 PROPERTY.—

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

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

257 1. The respective values of the units based on the fair
258 market values of the units immediately before the termination,
259 as determined by one or more independent appraisers selected by
260 the association or termination trustee;



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

264 3. The respective interests of the units in the common
265 elements specified in the declaration immediately before the
266 termination.

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

274 (d) Liens that encumber a unit shall, unless otherwise
275 provided in the plan of termination, be transferred to the
276 proceeds of sale of the condominium property and the proceeds of
277 sale or other distribution of association property, common
278 surplus, or other association assets attributable to such unit
279 in their same priority. In a partial termination, liens that
280 encumber a unit being terminated must be transferred to the
281 proceeds of sale of that portion of the condominium property
282 being terminated which are attributable to such unit. The
283 proceeds of any sale of condominium property pursuant to a plan
284 of termination may not be deemed to be common surplus or
285 association property. The holder of a lien that encumbers a unit
286 at the time of recording a plan must, within 30 days after the



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287 written request from the termination trustee, deliver a
288 statement to the termination trustee confirming the outstanding
289 amount of any obligations of the unit owner secured by the lien.

290 (e) The termination trustee may setoff against, and reduce
291 the share of, the termination proceeds allocated to a unit by
292 the following amounts, which may include attorney fees and
293 costs:

294 1. All unpaid assessments, taxes, late fees, interest,
295 finances, charges, and other amounts due and owing to the
296 association associated with the unit, its owner, or the owner's
297 family members, guests, tenants, occupants, licensees, invitees,
298 or other persons.

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

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

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

312 5. All costs arising out of, or related to, the removal



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313 and storage of all personal property remaining in a unit, other
314 than personal property owned by the association, so that the
315 unit may be delivered vacant and clear of the owner or the
316 owner's family members, guests, tenants, occupants, licensees,
317 invitees, or other persons as required by the plan.

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

322 (16) RIGHT TO CONTEST.—A unit owner or lienor may contest
323 a plan of termination by initiating a petition for mandatory
324 nonbinding arbitration ~~summary procedure~~ pursuant to s. 718.1255
325 ~~51.011~~ within 90 days after the date the plan is recorded. A
326 unit owner or lienor may only contest the fairness and
327 reasonableness of the apportionment of the proceeds from the
328 sale among the unit owners, that the liens of the first
329 mortgages of unit owners other than the bulk owner have not or
330 will not be satisfied to the extent required by subsection (3),
331 or that the required vote to approve the plan was not obtained.

332 A unit owner or lienor who does not contest the plan within the
333 90-day period is barred from asserting or prosecuting a claim
334 against the association, the termination trustee, any unit
335 owner, or any successor in interest to the condominium property.
336 In an action contesting a plan of termination, the person
337 contesting the plan has the burden of pleading and proving that
338 the apportionment of the proceeds from the sale among the unit



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339 | owners was not fair and reasonable or that the required vote was
340 | not obtained. The apportionment of sale proceeds is presumed
341 | fair and reasonable if it was determined pursuant to the methods
342 | prescribed in subsection (12). The arbitrator ~~court~~ shall
343 | determine the rights and interests of the parties in the
344 | apportionment of the sale proceeds ~~and order the plan of~~
345 | ~~termination to be implemented if it is fair and reasonable~~. If
346 | the arbitrator ~~court~~ determines that the apportionment of sales
347 | proceeds ~~plan of termination~~ is not fair and reasonable, the
348 | arbitrator ~~court~~ may void the plan or may modify the plan to
349 | apportion the proceeds in a fair and reasonable manner pursuant
350 | to this section based upon the proceedings and order the
351 | modified plan of termination to be implemented. If the
352 | arbitrator determines that the plan was not properly approved,
353 | or that the procedures to adopt the plan were not properly
354 | followed, the arbitrator may void the plan or grant other relief
355 | it deems just and proper. The arbitrator shall automatically
356 | void the plan upon a finding that any of the disclosures
357 | required in subparagraph (3)(c)5. are omitted, misleading,
358 | incomplete, or inaccurate. Any challenge to a plan, other than a
359 | challenge that the required vote was not obtained, does not
360 | affect title to the condominium property or the vesting of the
361 | condominium property in the trustee, but shall only be a claim
362 | against the proceeds of the plan. In any such action, the
363 | prevailing party shall recover reasonable attorney ~~attorney's~~
364 | fees and costs.



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

367 718.1255 Alternative dispute resolution; voluntary
368 mediation; mandatory nonbinding arbitration; legislative
369 findings.—

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

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

374
375 "Dispute" does not include any disagreement that primarily
376 involves: title to any unit or common element; the
377 interpretation or enforcement of any warranty; the levy of a fee
378 or assessment, or the collection of an assessment levied against
379 a party; the eviction or other removal of a tenant from a unit;
380 alleged breaches of fiduciary duty by one or more directors; or
381 claims for damages to a unit based upon the alleged failure of
382 the association to maintain the common elements or condominium
383 property.

384 Section 3. This act shall take effect upon becoming a law.