

By the Committee on Regulated Industries; and Senator Latvala

580-03441-17

20171520c1

1                   A bill to be entitled  
2           An act relating to termination of a condominium  
3           association; amending s. 718.117, F.S.; revising  
4           legislative findings; requiring a plan of termination  
5           to be approved by the Division of Florida  
6           Condominiums, Timeshares, and Mobile Homes of the  
7           Department of Business and Professional Regulation and  
8           meet specified requirements for a condominium form of  
9           ownership to be terminated for all or a portion of the  
10          condominium property under certain circumstances;  
11          revising voting requirements for the rejection of a  
12          plan of termination; increasing the amount of time  
13          before a new plan of termination may be considered  
14          after a previous rejection under certain conditions;  
15          revising the requirements to qualify for payment as a  
16          homestead owner; revising and providing notice  
17          requirements; requiring the division to examine a plan  
18          of termination and provide specified notice within a  
19          certain timeframe; providing applicability; specifying  
20          that a plan of termination is presumed to be accepted  
21          if notice is not provided within the specified  
22          timeframe; providing an appropriation and authorizing  
23          a position; providing an effective date.

24  
25 Be It Enacted by the Legislature of the State of Florida:

26  
27           Section 1. Subsections (1) and (3) of section 718.117,  
28           Florida Statutes, are amended, and subsection (21) is added to  
29           that section, to read:

580-03441-17

20171520c1

30 718.117 Termination of condominium.—

31 (1) LEGISLATIVE FINDINGS.—The Legislature finds that:

32 (a) Condominiums are created as authorized by statute and  
33 are subject to covenants that encumber the land and restrict the  
34 use of real property.

35 (b) In some circumstances, the continued enforcement of  
36 those covenants that may create economic waste and, areas of  
37 disrepair which threaten the safety and welfare of the public,  
38 or cause obsolescence of the a condominium property for its  
39 intended use and thereby lower property tax values, and the  
40 ~~Legislature further finds that~~ it is the public policy of this  
41 state to provide by statute a method to preserve the value of  
42 the property interests and the rights of alienation thereof that  
43 owners have in the condominium property before and after  
44 termination.

45 ~~(c) The Legislature further finds that~~ It is contrary to  
46 the public policy of this state to require the continued  
47 operation of a condominium when to do so constitutes economic  
48 waste or when the ability to do so is made impossible by law or  
49 regulation.

50 (d) It is in the best interest of the state to provide for  
51 termination of the covenants of a declaration of condominium in  
52 certain circumstances in order to:

53 1. Ensure the continued maintenance, management, and repair  
54 of stormwater management systems, conservation areas, and  
55 conservation easements.

56 2. Avoid transferring the expense of maintaining  
57 infrastructure serving the condominium property, including, but  
58 not limited to, stormwater systems and conservation areas, to

580-03441-17

20171520c1

59 the general tax bases of the state and local governments.

60 3. Prevent covenants from impairing the continued  
61 productive use of the property.

62 4. Protect state residents from health and safety hazards  
63 created by derelict, damaged, obsolete, or abandoned condominium  
64 properties.

65 5. Provide fair treatment and just compensation for  
66 individuals and preserve property values and the local property  
67 tax base.

68 6. Preserve the state's long history of protecting  
69 homestead property and homestead property rights by ensuring  
70 that such protection is extended to homestead property owners in  
71 the context of a termination of the covenants of a declaration  
72 of condominium ~~This section applies to all condominiums in this~~  
73 ~~state in existence on or after July 1, 2007.~~

74 (3) OPTIONAL TERMINATION. ~~Except as provided in subsection~~  
75 ~~(2) or unless the declaration provides for a lower percentage,~~  
76 The condominium form of ownership may be terminated for all or a  
77 portion of the condominium property pursuant to a plan of  
78 termination meeting the requirements of this section and  
79 approved by the division. Before a residential association  
80 submits a plan to the division, the plan must be approved by at  
81 least 80 percent of the total voting interests of the  
82 condominium. However, if 5 ~~10~~ percent or more of the total  
83 voting interests of the condominium have rejected the plan of  
84 termination by negative vote or by providing written objections,  
85 the plan of termination may not proceed.

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

580-03441-17

20171520c1

88           1. The total voting interests of the condominium must  
89 include all voting interests for the purpose of considering a  
90 plan of termination. A voting interest of the condominium may  
91 not be suspended for any reason when voting on termination  
92 pursuant to this subsection.

93           2. If 5 ~~10~~ percent or more of the total voting interests of  
94 the condominium reject a plan of termination, a subsequent plan  
95 of termination pursuant to this subsection may not be considered  
96 for 24 ~~18~~ months after the date of the rejection.

97           (b) This subsection does not apply to any condominium  
98 created pursuant to part VI of this chapter until 10 ~~5~~ years  
99 after the recording of the declaration of condominium, unless  
100 there is no objection to the plan of termination.

101           (c) For purposes of this subsection, the term "bulk owner"  
102 means the single holder of such voting interests or an owner  
103 together with a related entity or entities that would be  
104 considered an insider, as defined in s. 726.102, holding such  
105 voting interests. If the condominium association is a  
106 residential association proposed for termination pursuant to  
107 this section and, at the time of recording the plan of  
108 termination, at least 80 percent of the total voting interests  
109 are owned by a bulk owner, the plan of termination is subject to  
110 the following conditions and limitations:

111           1. If the former condominium units are offered for lease to  
112 the public after the termination, each unit owner in occupancy  
113 immediately before the date of recording of the plan of  
114 termination may lease his or her former unit and remain in  
115 possession of the unit for 12 months after the effective date of  
116 the termination on the same terms as similar unit types within

580-03441-17

20171520c1

117 the property are being offered to the public. In order to obtain  
118 a lease and exercise the right to retain exclusive possession of  
119 the unit owner's former unit, the unit owner must make a written  
120 request to the termination trustee to rent the former unit  
121 within 90 days after the date the plan of termination is  
122 recorded. Any unit owner who fails to timely make such written  
123 request and sign a lease within 15 days after being presented  
124 with a lease is deemed to have waived his or her right to retain  
125 possession of his or her former unit and shall be required to  
126 vacate the former unit upon the effective date of the  
127 termination, unless otherwise provided in the plan of  
128 termination.

129       2. Any former unit owner whose unit was granted homestead  
130 exemption status by the applicable county property appraiser as  
131 of the date of the recording of the plan of termination shall be  
132 paid a relocation payment in an amount equal to 1 percent of the  
133 termination proceeds allocated to the owner's former unit. Any  
134 relocation payment payable under this subparagraph shall be paid  
135 by the single entity or related entities owning at least 80  
136 percent of the total voting interests. Such relocation payment  
137 shall be in addition to the termination proceeds for such  
138 owner's former unit and shall be paid no later than 10 days  
139 after the former unit owner vacates his or her former unit.

140       3. For their respective units, all unit owners other than  
141 the bulk owner must be compensated at least 100 percent of the  
142 fair market value of their units. The fair market value shall be  
143 determined as of a date that is no earlier than 90 days before  
144 the date that the plan of termination is recorded and shall be  
145 determined by an independent appraiser selected by the

580-03441-17

20171520c1

146 termination trustee. For a person ~~an original purchaser from the~~  
147 ~~developer who rejects the plan of termination~~ and whose unit was  
148 granted homestead exemption status by the applicable county  
149 property appraiser, or was an owner-occupied operating business,  
150 as of the date that the plan of termination is recorded and who  
151 is current in payment of both assessments and other monetary  
152 obligations to the association ~~and any mortgage encumbering the~~  
153 ~~unit~~ as of the date the plan of termination is recorded, the  
154 fair market value ~~for the unit owner rejecting the plan~~ shall be  
155 at least the original purchase price paid for the unit. For  
156 purposes of this subparagraph, the term "fair market value"  
157 means the price of a unit that a seller is willing to accept and  
158 a buyer is willing to pay on the open market in an arms-length  
159 transaction based on similar units sold in other condominiums,  
160 including units sold in bulk purchases but excluding units sold  
161 at wholesale or distressed prices. The purchase price of units  
162 acquired in bulk following a bankruptcy or foreclosure shall not  
163 be considered for purposes of determining fair market value.

164 4. The plan of termination must provide for payment of a  
165 first mortgage encumbering a unit to the extent necessary to  
166 satisfy the lien, but the payment may not exceed the unit's  
167 share of the proceeds of termination under the plan. If the unit  
168 owner is current in payment of both assessments and other  
169 monetary obligations to the association and any mortgage  
170 encumbering the unit as of the date the plan of termination is  
171 recorded, the receipt by the holder of the unit's share of the  
172 proceeds of termination under the plan or the outstanding  
173 balance of the mortgage, whichever is less, shall be deemed to  
174 have satisfied the first mortgage in full.

580-03441-17

20171520c1

175           5. Before a plan of termination is presented to the unit  
176 owners for consideration pursuant to this paragraph, the plan  
177 must include the following written disclosures in a sworn  
178 statement:

179           a. The identity of any person or entity that owns or  
180 controls 25 ~~50~~ percent or more of the units in the condominium  
181 and, if the units are owned by an artificial entity or entities,  
182 a disclosure of the natural person or persons who, directly or  
183 indirectly, manage or control the entity or entities and the  
184 natural person or persons who, directly or indirectly, own or  
185 control 10 ~~20~~ percent or more of the artificial entity or  
186 entities that constitute the bulk owner.

187           b. The units acquired by any bulk owner, the date each unit  
188 was acquired, and the total amount of compensation paid to each  
189 prior unit owner by the bulk owner, regardless of whether  
190 attributed to the purchase price of the unit.

191           c. The relationship of any board member to the bulk owner  
192 or any person or entity affiliated with the bulk owner subject  
193 to disclosure pursuant to this subparagraph.

194           d. The factual circumstances that show that the plan  
195 complies with the requirements of this section and that the plan  
196 supports the expressed public policies of this section.

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

201           (e) The division shall examine the plan of termination to  
202 determine its procedural sufficiency and, within 45 days after  
203 receipt of the initial filing, the division shall notify the

580-03441-17

20171520c1

204 association by mail of any procedural deficiencies or that the  
205 filing is accepted. If the notice is not given within 45 days  
206 after the receipt of the filing, the plan of termination is  
207 presumed to be accepted. If the division determines that the  
208 conditions required by this section have been met and that the  
209 plan complies with the procedural requirements of this section,  
210 the division shall authorize the termination, and the  
211 termination may proceed pursuant to this section.

212 (f) Subsection (2) does not apply to optional termination  
213 pursuant to this subsection.

214 (21) APPLICABILITY.—This section applies to all  
215 condominiums in this state in existence on or after July 1,  
216 2007.

217 Section 2. The amendments made by this act to s. 718.117,  
218 Florida Statutes, are intended to clarify existing law, are  
219 remedial in nature and intended to address the rights and  
220 liabilities of the affected parties, and apply to all  
221 condominiums created under the Condominium Act.

222 Section 3. For the 2017-2018 fiscal year, the sums of  
223 \$85,006 in recurring funds and \$4,046 in nonrecurring funds from  
224 the Division of Florida Condominiums, Timeshares, and Mobile  
225 Homes Trust Fund are appropriated to the Department of Business  
226 and Professional Regulation, and one full-time equivalent  
227 position with associated salary rate of 56,791 is authorized,  
228 for the purpose of implementing this act.

229 Section 4. This act shall take effect July 1, 2017.