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# **BULLETIN**

## **FLORIDA BULLETIN 07-13**

To: All Agents and Title Plant Operations

From: Underwriting Department

Date: October 1, 2007

Re: Condominium Termination – Amendments to Florida Statutes, Section 718.117

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*Section 718.117* of the *Florida Statutes* governing the method and process of termination of a condominium has been substantially revised. The revisions became effective July 1, 2007, and they apply to all condominiums in existence as of this effective date. Unless the Declaration of Condominium requires otherwise, the provisions of the revised statute govern the termination of the condominium form of property ownership. The revisions were effectuated to provide a method to preserve the value of condominium owners' property interests when the costs of necessary repairs to the condominium after losses suffered as a result of natural disasters exceed the combined fair market value of all units after completion of the repair, or it becomes impossible to operate or reconstruct the condominium to its prior physical configuration because of land use laws or regulations. The amended statute sets forth the following provisions to be complied with in connection with the termination:

**1) Termination Because of Economic Waste or Impossibility.** *Section 718.117(2)(a)* requires the approval of the termination by the lesser of the lowest percentage of voting interest necessary to amend the declaration, or as otherwise provided for in the declaration.

*Section 718.117(2)(b)* provides that if 75 percent or more of the condominium units are timeshares, the condominium may only be terminated if there is approval by 80 percent of the total voting interests of the association and the holders of 80 percent of the original principal amount of outstanding recorded mortgage liens of timeshare estates in the condominium, unless the declaration provides for a lower voting percentage.

**2) Mortgage Lienholders.** *Section 718.117(5)* provides that notwithstanding any provision to the contrary in the declaration or *Chapter 718, F.S.*, approval of a plan of termination is not required by the holder of a recorded mortgage lien affecting a condominium parcel unless the holder will not be paid in full from the termination proceeds. In those instances that require the consent of the mortgage holder because it will either not be paid in full from the proceeds or more than 75 percent of the units are

timeshares, the mortgage holder has 90 days to contest the plan of termination, pursuant to *Section 718.117(16)*.

3) **Powers in Connection with Termination.** *Section 718.117(6)* provides that the association shall continue in existence after the approval of the plan of termination with all powers it had before approval of the plan. The association, notwithstanding any contrary provision in the declaration or by-laws, has certain powers in connection with the termination that are necessary for the continued business and operation of the association.

4) **Natural Disasters.** *Section 718.117(7)* allows the circuit court to appoint a receiver following a natural disaster if the directors are unable or unwilling to serve or cannot be located. It requires that the lienholders be given notice of the petition for appointment of a receiver following a natural disaster and an opportunity to propose candidates for the position.

5) **Plan of Termination.** *Section 718.117(9)* requires that the plan of termination be a written document executed in the **same manner as a deed** by unit owners having the requisite percentage of voting interests to approve the plan and by the termination trustee. A copy of the proposed plan must be given to all unit owners, in the same manner as for notice of an annual meeting, at least 14 days prior to the meeting at which the plan of termination is to be voted on, or prior to or simultaneously with the distribution of the solicitation seeking execution of the plan of termination or a written consent to or joinder in the plan. A plan approved by the required number of owners and mortgagees, if required, must be recorded in the public records. The plan is effective upon the date of recordation or at a later date specified in the plan.

6) **Plan of Termination, Required Provisions.** *Section 718.117(10)* lists the required provisions of the plan of termination:

- a) The name, address and powers of the termination trustee;
- b) A date after which the plan of termination is void if it has not been recorded;
- c) The interests of the respective unit owners in the association property, common surplus and other assets of the association. These interests are the same as the respective interests of the unit owners in the common elements immediately prior to the termination unless otherwise provided;
- d) The interests of the unit owners in any proceeds from the sale of the condominium property as provided for in *Section 718.117(12)* dealing with allocation of proceeds; and
- e) Any interests of the respective unit owners in insurance proceeds or condemnation proceeds that are not used for repair or reconstruction at the time of termination.

7) **Plan of Termination, Optional Provisions.** *Section 718.117(11)* states that the plan of termination may provide that each unit owner retains the exclusive right of possession to the portion of the real estate that formerly constituted the unit in which case the plan must detail the conditions of this possession, for example, payment of assessments or rent, responsibility for maintenance and insurance, when to vacate.

**Bulletin 07-13**

October 1, 2007

Page 3

8) **Termination Trustee.** *Section 718.117(13)* provides that the association serves as the termination trustee unless another person is appointed in the plan of termination. If the association is unable, unwilling, or fails to act as trustee then any unit owner may petition the court to appoint a trustee. Title to the condominium property vests in the trustee upon the effective date of the termination plan, unless a later date is specified in the plan, *Section 718.117(14)*. The trustee is given all the powers of the board to protect, conserve, sell, manage or otherwise dispose of the condominium property. If the association is not the trustee, the association shall transfer any association property to the trustee. Upon recordation of the plan, or at a later date if so provided in the plan, title to the condominium property is vested in the trustee and the unit owners become the beneficiaries of the proceeds of the sale of the condominium property.

9) **Notice.** *Section 718.117(15)* requires the Termination Trustee to send notice by certified mail, return receipt requested to all unit owners, lienors of the condominium property and lienors of all units at their last know address that a plan of termination has been recorded within 30 days of the recordation. The notice must include the recording information of the plan and inform the recipients of their right to contest its fairness within 90 days of the recordation, *Section 718.117(16)*. If a unit owner or lienor fails to contest the plan within this 90 day period, they have waived the right to do so and are barred from prosecuting a claim against the association, termination trustee, any other unit owner, or any successor in interest to the condominium property.

10) **Distribution.** *Section 718.117(17)* sets forth detailed specifics pertaining to the priority of distribution of proceeds of any condominium property or association property, common surplus and other assets. The termination trustee is required to deliver a notice of estimated distribution via certified mail return receipt requested to all unit owners, lienors of the condominium property, and lienors of each unit stating a good-faith estimate of the amount of distribution to each class not less than 30 days prior to the first distribution. This notice must also contain the procedures and deadline for notifying the termination trustee of any objections to the amount. This deadline must be at least 15 days after the date the notice was mailed.

11) **Association Status.** *Section 718.117(18)* provides that the corporate status of the association is not changed as a result of the termination. The association continues to exist to conclude the affairs of the condominium, prosecute and defend actions by or against it, collect and discharge obligations, dispose of and convey its property, collect and divide its assets. However, its actions are limited to those necessary to conclude its affairs.

Also important to note are the following:

- 1) The termination of a condominium **does not** bar the creation by the termination trustee of another condominium affecting any portion of the same property;
- 2) The provisions of amended *Section 718.117* **do not** apply to the termination of a condominium as a result of its merger with one or more other condominiums pursuant to *Section 718.110(7)* of the *Florida Statutes*; and

**Bulletin 07-13**

October 1, 2007

Page 4

3) In the event termination is sought for reasons other than economic waste or impossibility then the plan of termination must be approved by at least 80 percent of the total voting interests of the condominium if not more than 10 percent of the total voting interests of the condominium have rejected the plan of termination by negative vote or by providing written objection, unless the declaration provides for a lower percentage, *Section 718.117(3)*.

As you can see, these statutory amendments require strict adherence to details before a termination of condominium can be deemed effective. Agents that run their own searches should make certain that their examiners familiarize themselves with these new requirements and incorporate them in their review of condominium terminations under the Florida Statutes.

Should you have any questions, please contact your Old Republic Title Underwriting Department.