

TERMINATION OF CONDOMINIUMS
IN THE AFTERMATH OF A CASUALTY
AND/OR FOR REDEVELOPMENT

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I. Voluntary Termination

Historically, voluntary termination of the condominium regime most often occurred when older buildings began deteriorating and the cost of repair or replacement exceeded the relative value of the improvements. More recently, as the demand for oceanfront property increases, and the price per square foot for new luxury condominiums escalates, unit owners are finding that they can sell their units at 2 to 3 times market value, if they collectively agree to do so.

A. Issues Facing Owners who want to Voluntarily Terminate:

1. Vote required
2. Procedure which needs to be followed
3. Dealing with reluctant owners, or owners who refuse to sell.

B. Vote Required/Procedure to Terminate:

1. Document:

Termination of Condominium. The Condominium shall continue until (i) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (ii) such time as withdrawal of the Condominium Property from the provisions of the Act is authorized by a vote of Owners owning at least eighty-five (85%) percent of the applicable interests in the Common Elements and by the primary Institutional First Mortgagee. When the Board of Directors of the Association intends to terminate the Condominium, or dissolve the Association, the Board of Directors shall so notify the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation (the "Division") before taking any action to terminate the Condominium or the Association.

In the event such withdrawal is authorized as aforesaid, the Condominium Property shall be owned in common by the Unit Owners in the same individual shares as each Unit Owner previously owned in the Common Elements, in which even the net proceeds of sale shall be divided among all Unit Owners in proportion to their respective interests in the Common Elements, provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such net proceeds all mortgages and liens on his Unit in the order of their priority. The termination of the Condominium, as aforesaid, shall be evidenced by a certificate of the Association executed by its President and Secretary, certifying as to the basis of the termination and said certificate shall be recorded among the Public Records of Miami-Dade County. Upon recordation of the termination certificate, the Association within thirty (30) business days shall notify the Division of the termination and the date the certificate was recorded, the county where the document was recorded, and the book and page number of the public records where the document was recorded, and shall provide the Division a copy of the recorded termination certificate notice certified by the clerk.

This Section may not be amended without the consent of the Primary Institutional First Mortgagee and the Developer as long as it owns at least one (1) Unit.

Towers of Porto Vita North Tower Condominium,
Aventura, Florida

2. Statutory:

a. Uniform Condominium Act (1980), Section 2-118

§ 2-118. [Termination of Condominium].

(a) Except in the case of a taking of all the units by eminent domain (Section 1-107), a condominium may be terminated only by agreement of unit owners of units to which at least 80 percent of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to non-residential uses.

(b) An agreement to terminate must be evidenced by the execution of a termination agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the

agreement will be void unless it is recorded before that date. A termination agreement and all ratification thereof must be recorded in every [county] in which a portion of the condominium is situated, and is effective only upon recordation.

(c) In the case of a condominium containing only units having horizontal boundaries described in the declaration, a termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real estate in the condominium is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

(d) In the case of a condominium containing any units not having horizontal boundaries described in the declaration, a termination agreement may provide for sale of the common elements, but may not require that the units be sold following termination, unless the declaration as originally recorded provided otherwise or unless all the unit owners consent to the sale.

(e) The association, on behalf of the unit owners, may contract for the sale of real estate in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections (a) and (b). If any real estate in the condominium is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lien holders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (h). Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit. During the period of that occupancy, each unit owner and his successors in interest remain liable for all assessments and other obligations imposed on unit owners by this Act or the declaration.

(f) If the real estate constituting the condominium is not to be sold following termination, title to the common elements and, in a condominium containing only units having horizontal boundaries described in the declaration, title to all the real estate in the condominium, vests in the unit owners upon termination as tenants

in common in proportion to their respective interests as provided in subsection (h), and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit.

(g) Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and builders of liens on the units as their interests may appear. Following termination, creditors of the association holding liens on the units, which were [recorded] [docketed] [(insert other procedures required under state law to perfect a lien on real estate as a result of a judgment)] before termination, may enforce those liens in the same manner as any lien holder. All other creditors of the association are to be treated as if they had perfected liens on the units immediately before termination.

(h) The respective interests of unit owners referred to in subsections (e), (f) and (g) are as follows:

(1) Except as provided in paragraph (2), the respective interests of unit owners are the fair market values of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved within 30 days after distribution by unit owners of units to which 25 percent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements.

(2) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

(i) Except as provided in subsection (j), foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a

portion of the condominium, other than withdrawable real estate, does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the condominium, but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real estate from the condominium.

(j) If a lien or encumbrance against a portion of the real estate comprising the condominium has priority over the declaration, and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance may upon foreclosure, record an instrument excluding the real estate subject to that lien or encumbrance from the condominium.

b. Florida:

718.117 Termination.

(1) Unless otherwise provided in the declaration, the condominium property may be removed from the provisions of this chapter only by consent of all of the unit owners, evidenced by a recorded instrument to that effect, and upon the written consent by all of the holders of recorded liens affecting any of the condominium parcels. When the board of directors intends to terminate or merge the condominium, or dissolve or merge the association, the boards shall so notify the division before taking any action to terminate or merge the condominium or the association. Upon recordation of the instrument evidencing consent of all of the unit owners to terminate the condominium, the association within 30 business days shall notify the division of the termination and the date the document was recorded, the county where the document was recorded, and the book and page number of the public records where the document was recorded, and shall provide the division a copy of the recorded termination notice certified by the clerk.

(2) Notwithstanding any contrary provision in the declaration or the bylaws, the powers and duties of the directors, or other person or persons appointed by the court pursuant to the subsection (4), after the commencement of a termination proceeding include, but are not limited to, the following acts in the name and on behalf of the association:

- (a) To employ directors, agents, and attorneys to liquidate or wind up its affairs.
 - (b) To continue the conduct of the affairs of the association insofar as necessary for the disposal or winding up thereof.
 - (c) To carry out contracts and collect, pay, compromise, and settle debts and claims for and against the association.
 - (d) To defend suits brought against the association.
 - (e) To sue in the name of the association, for all sums due or owing to the association or to recover any of its property.
 - (f) To perform any act necessary to maintain, repair, or demolish unsafe and uninhabitable structures, or other condominium property in compliance with applicable codes.
 - (g) To sell a public or private sale, exchange, convey, or otherwise dispose of all or any part of the assets of the association for an amount deemed in the best interest of the association, and to execute bills of sale and deeds of conveyance in the name of the association.
 - (h) To collect and receive any and all rents, profits, accounts receivable, income, maintenance fees, special assessments, and insurance proceeds for the association.
 - (i) In general, to make contracts and to do any and all things in the name of the association which may be proper or convenient for the purposes of winding up, selling, and liquidating the affairs of the association.
- (3) Unless the declaration or the bylaws provide otherwise, a vacancy in the board during a winding up proceeding, resulting from the resignation or expiration of term of any director, may be filled by a majority vote of the unit owners.
- (4) If, after a natural disaster, the identity of the directors or their right to hold office is in doubt, or if they are dead or unable to act, or if they fail or refuse to act or their whereabouts cannot be ascertained, any interested person may petition the circuit court to determine the identity of the directors, or, if determined to be in the best interest of the unit owners, to appoint a receiver to wind up the affairs of the association after hearing upon such notice to such

persons as the court may direct. The receiver shall be vested with those powers as are given to the board of directors pursuant to the declaration and bylaws and subsection (2) and such others which may be necessary to wind up the affairs of the association and set forth in the order of appointment. The appointment of the receiver shall be subject to such bonding requirements as the court may direct in the order of appointment. The order shall also provide for the payment of a reasonable fee for the services of the receiver from the sources identified in the order, which may include rents, profits, incomes, maintenance fees, or special assessments collected from the condominium property.

- (5) After determining that all known debts and liabilities of an association in the process of winding up have been paid or adequately provided for, the board, or other person or persons appointed by the court, pursuant to subsection (4), shall distribute all the remaining assets in the manner set forth in subsection (6). If the winding up is by court proceeding or subject to court supervision, the distribution shall not be made until after the expiration of any period for the presentation of claims that has been prescribed by order of the court.
- (6) Assets held by an association upon a valid condition requiring return, transfer, or conveyance, which condition has occurred or will occur, shall be returned, transferred or conveyed in accordance with the condition. The remaining assets of an association shall be distributed as follows:
 - (a) If the declaration or bylaws provides the manner of disposition the assets shall be disposed in that manner.
 - (b) If the declaration or bylaws do not provide the manner of disposition, the assets shall be distributed among the unit owners in accordance with their respective rights herein, as set forth in subsection (7).
- (7) Unless otherwise provided in the declaration as originally recorded or as amended pursuant to s. 718.110(5), upon removal of the condominium property from the provisions of this chapter, the condominium property is owned by the unit owners in the same share as each owner previously

owned in the common elements. All liens shall be transferred to the share in the condominium property attributable to the unit originally encumbered by the lien in its same priority.

- (8) Distribution may be made either in money or in property or securities and either in installments from time to time or as a whole, if this can be done fairly and ratably and in conformity with the declaration and shall be made as soon as reasonably consistent with the beneficial liquidation of the assets.
- (9) An association that has been terminated nevertheless continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it, and enabling it to collect and discharge obligations, dispose of and convey its property, and collect and divide its assets, but not for the purpose of conducting its activities except so far as necessary for the winding up thereof.
- (10) The termination of a condominium does not bar the creation of another condominium affecting all or any portion of the same property.
- (11) This section does not apply to the termination of a condominium incident to a merger of that condominium with one or more other condominiums under s. 718.110(7).

C. Dealing with Unit Owners who are Reluctant to Sell or Outright Refuse to do so.

II. Involuntary Terminations:

- A. Eminent Domain
- B. Casualty

In the recent deluge of Hurricanes which hit the State of Florida in 2004 several condominiums found themselves involuntarily dissolved as the result of provisions within the condominium documents which required an affirmative action to rebuild, otherwise the condominium was terminated.

C. Condominium Documents:

Example: Types of Insurance Provisions in Declaration of Condominium.

Reconstruction After Casualty ...

... Major Damage ...

... If the damaged improvements is one of the apartment buildings and if fifty (50%) percent of said building is found by the Board of Administration to be not tenantable (habitable), then the damaged property will not be reconstructed or repaired, and the condominium ownership of said owners will be terminated without agreement upon payment of insurance proceeds as elsewhere provided unless within sixty (60) days after the casualty the owners of seventy-five (75%) percent of the apartment units in said building so affected agree in writing to such reconstruction or repair. In the event of such termination, the owners affected shall, at the election of the Association, convey their remaining interests in the condominium either to the Association or to the remaining owners in the condominium.

D. Statutory Provisions:

1. New York

§ 339-cc. Repair or reconstruction

1. Except as hereinafter provided, damage to or destruction of the building shall be promptly repaired and reconstructed by the board of managers using the proceeds of insurance, if any, on the building for that purpose, and any deficiency shall constitute common expenses; provided, however, that if three-fourths or more of the building is destroyed or substantially damaged and seventy-five per cent or more of the unit owners do not duly and promptly resolve to proceed with repair or restoration, then and in that event the property or so much thereof as shall remain, shall be subject to an action for partition at the suit of any unit owner or lienor as if owned in common, in which event the net proceeds of sale, together with the net proceeds of insurance policies, if any, shall be considered as one fund and shall be divided among all the unit owners in proportion to their respective common interests, provided, however, that no payment shall be made to a unit owner until there has first been paid off out of his share of such fund all liens on his unit.

2. Notwithstanding the provisions of subdivision one hereof, in the case of a qualified leasehold condominium, any damage to or destruction of the building shall be promptly repaired and reconstructed by the board of managers, and the proceeds of the insurance policy or policies required for qualified leasehold condominiums pursuant to the provisions of section three hundred thirty-nine-bb of this chapter shall first be applied to such repair and reconstruction.

Article 9-B, New York

2. **California**

§ 1359. Condominium projects. Partition actions.

(a) Except as provided in this section, the common areas in a condominium project shall remain undivided, and there shall be no judicial partition thereof. Nothing in this section shall be deemed to prohibit partition of a cotenancy in a condominium.

(b) The owner of a separate interest in a condominium project may maintain a partition action as to the entire project as if the owners of all of the separate interests in the project were tenants in common in the entire project in the same proportion as their interests in the common areas. The court shall order partition under this subdivision only by sale of the entire condominium project and only upon a showing of one of the following:

(1) More than three years before the filing of the action, the condominium project was damaged or destroyed, so that a material part was rendered unfit for its prior use, and the condominium project has not been rebuilt or repaired substantially to its state prior to the damage or destruction.

(2) Three-fourths or more of the project is destroyed or substantially damaged and owners of separate interests holding in the aggregate more than a 50-percent interest in the common areas oppose repair or restoration of the project.

(3) The project has been in existence more than 50 years, is obsolete and uneconomic, and owners of separate interests holding in the aggregate more than a 50-percent interest in the common area oppose repair or restoration of the project.

(4) The conditions for such a sale, set forth in the declaration, have been met.