

Bill No. CS for SB 1492

Barcode 970226

CHAMBER ACTION

Senate

House

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The Committee on Judiciary (Geller) recommended the following amendment:

Senate Amendment (with title amendment)

On page 1, between lines 12 and 13,

insert:

Section 1. Section 718.117, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 718.117, F.S., for present text.)

718.117 Termination of condominium.--

(1) TERMINATION BECAUSE OF ECONOMIC WASTE OR

IMPOSSIBILITY.--Notwithstanding any provision to the contrary in the declaration, the condominium form of ownership of a property may be terminated by a plan of termination approved by the lesser of a majority of the total voting interests or as otherwise provided in the declaration for approval of termination, in the following circumstances:

(a) When the total estimated cost of repairs necessary to restore the improvements to their former condition or bring

Bill No. CS for SB 1492

Barcode 970226

1 them into compliance with applicable laws or regulations
2 exceeds the combined fair market value of all units in the
3 condominium after completion of the repairs; or

4 (b) When it becomes impossible to operate a
5 condominium in its prior physical configuration because of
6 land-use laws or regulations.

7 (2) OPTIONAL TERMINATION.--Except as provided in
8 subsections (1) and (3) and unless otherwise provided in the
9 declaration, the condominium form of ownership of the property
10 may be terminated pursuant to a plan of termination approved
11 by at least 80 percent of the total voting interests of the
12 condominium.

13 (3) If 80 percent of the total voting interests fail
14 to approve the plan of termination but less than 20 percent of
15 the total voting interests disapprove of the plan, the circuit
16 court shall have jurisdiction to entertain a petition by the
17 association or by one or more unit owners and approve the plan
18 of termination, and the action may be a class action.

19 (a) All unit owners and the association must be joined
20 as parties to the action. Service of process on unit owners
21 may be by publication, but the plaintiff must furnish every
22 unit owner not personally served with process with a copy of
23 the petition and plan of termination and the final decree of
24 the court by mail at the unit owner's last known residential
25 address.

26 (b) Upon determining that the rights and interests of
27 the unit owners are equitably set forth in the plan of
28 termination as required by this section, the plan of
29 termination may be approved by the court. Consistent with the
30 provisions of this section, the court may modify the plan of
31 termination to provide for an equitable distribution of the

Bill No. CS for SB 1492

Barcode 970226

1 interest of unit owners before approving the plan of
2 termination.

3 (4) EXEMPTION.--A plan of termination is not an
4 amendment subject to s. 718.110(4).

5 (5) MORTGAGE LIENHOLDERS.--Notwithstanding any
6 provision to the contrary in the declaration or this chapter,
7 approval of a plan of termination by the holder of a recorded
8 mortgage lien affecting a condominium parcel is not required
9 unless the plan of termination will result in less than the
10 full satisfaction of the mortgage lien affecting the parcel.

11 (6) POWERS IN CONNECTION WITH TERMINATION.--The
12 association shall continue in existence following approval of
13 the plan of termination, with all powers it had before
14 approval of the plan. Notwithstanding any contrary provision
15 in the declaration or bylaws, after approval of the plan, the
16 board has the power and duty:

17 (a) To employ directors, agents, attorneys, and other
18 professionals to liquidate or conclude its affairs.

19 (b) To conduct the affairs of the association as
20 necessary for the liquidation or termination.

21 (c) To carry out contracts and collect, pay, and
22 settle debts and claims for and against the association.

23 (d) To defend suits brought against the association.

24 (e) To sue in the name of the association for all sums
25 due or owed to the association or to recover any of its
26 property.

27 (f) To perform any act necessary to maintain, repair,
28 or demolish unsafe or uninhabitable improvements or other
29 condominium property in compliance with applicable codes.

30 (g) To sell at public or private sale or to exchange,
31 convey, or otherwise dispose of assets of the association for

Bill No. CS for SB 1492

Barcode 970226

1 an amount deemed to be in the best interest of the
2 association, and to execute bills of sale and deeds of
3 conveyance in the name of the association.

4 (h) To collect and receive rents, profits, accounts
5 receivable, income, maintenance fees, special assessments, or
6 insurance proceeds for the association.

7 (i) To contract and do anything in the name of the
8 association which is proper or convenient to terminate the
9 affairs of the association.

10 (7) NATURAL DISASTERS.--

11 (a) If, after a natural disaster, the identity of the
12 directors or their right to hold office is in doubt, if they
13 are deceased or unable to act, if they fail or refuse to act,
14 or if they cannot be located, any interested person may
15 petition the circuit court to determine the identity of the
16 directors or, if found to be in the best interest of the unit
17 owners, to appoint a receiver to conclude the affairs of the
18 association after a hearing following notice to such persons
19 as the court directs.

20 (b) The receiver shall have all powers given to the
21 board pursuant to the declaration, bylaws, or subsection (6),
22 and any other powers that are necessary to conclude the
23 affairs of the association and are set forth in the order of
24 appointment. The appointment of the receiver is subject to
25 the bonding requirements of such order. The order shall also
26 provide for the payment of a reasonable fee to the receiver
27 from the sources identified in the order, which may include
28 rents, profits, incomes, maintenance fees, or special
29 assessments collected from the condominium property.

30 (8) PLAN OF TERMINATION.--The plan of termination must
31 be a written document executed in the same manner as a deed by

Bill No. CS for SB 1492

Barcode 970226

1 unit owners having the requisite percentage of voting
 2 interests to approve the plan and by the termination trustee.
 3 A unit owner may document assent to the plan of termination by
 4 executing the plan or consent to or joinder in the plan in the
 5 manner of a deed. A plan of termination and the consents or
 6 joinders of unit owners and, if required, consents or joinders
 7 of mortgagees must be recorded in the public records of each
 8 county in which any portion of the condominium is located.
 9 The plan of termination is effective only upon recordation or
 10 at a later date specified in the plan.

11 (9) PLAN OF TERMINATION; REQUIRED PROVISIONS.--The
 12 plan of termination must specify:

13 (a) The name, address, and powers of the termination
 14 trustee;

15 (b) A date after which the plan of termination is void
 16 if it has not been recorded;

17 (c) The interest of the respective unit owners in the
 18 association property, common surplus, and other assets of the
 19 association, which shall be the same as the respective
 20 interests of the unit owners in the common elements
 21 immediately before the termination;

22 (d) The interests of the respective unit owners in any
 23 proceeds from any sale of the condominium property. If,
 24 pursuant to the plan of termination, condominium property or
 25 real property owned by the association is to be sold following
 26 termination, the plan must provide for the sale and may
 27 establish any minimum sale terms; and

28 (e) Any interests of the respective unit owners in any
 29 insurance proceeds or condemnation proceeds that are not used
 30 for repair or reconstruction. Unless the declaration
 31 expressly addresses the distribution of insurance proceeds or

Bill No. CS for SB 1492

Barcode 970226

1 condemnation proceeds, the plan of termination may apportion
2 those proceeds pursuant to the methods prescribed in
3 subsection (11).

4 (10) PLAN OF TERMINATION; OPTIONAL PROVISIONS.--The
5 plan of termination may provide:

6 (a) That each unit owner retains the exclusive right
7 of possession to the portion of the real estate that formerly
8 constituted the unit, in which case the plan must specify the
9 conditions of possession.

10 (b) In the case of a conditional termination, the plan
11 must specify the conditions for termination. A conditional
12 plan will not vest title in the termination trustee until the
13 plan and a certificate executed by the association with the
14 formalities of a deed, confirming that the conditions in the
15 conditional plan have been satisfied or waived by the
16 requisite percentage of the voting interests, has been
17 recorded.

18 (11) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM
19 PROPERTY.--

20 (a) Unless the declaration expressly provides for the
21 allocation of the proceeds of sale of condominium property,
22 the plan of termination must first apportion the proceeds
23 between the aggregate value of all units and the value of the
24 common elements, based on their respective fair-market values
25 immediately before the termination, as determined by one or
26 more independent appraisers selected by the association or
27 termination trustee.

28 (b) The portion of proceeds allocated to the units
29 shall be further apportioned among the individual units. The
30 apportionment is deemed fair and reasonable if it is
31 determined by any of the following methods:

Bill No. CS for SB 1492

Barcode 970226

1 1. The respective value of the units based on the
 2 fair-market values of the units immediately before the
 3 termination, as determined by one or more independent
 4 appraisers selected by the association or termination trustee;

5 2. The respective value of the units based on the most
 6 recent market value of the units before the termination, as
 7 provided in the county property appraiser's records; or

8 3. The respective interests of the units in the common
 9 elements specified in the declaration immediately before the
 10 termination.

11 (c) The methods of apportionment in paragraph (b) do
 12 not prohibit any other method of apportioning the proceeds of
 13 sale allocated to the units agreed upon in the plan of
 14 termination. The portion of the proceeds allocated to the
 15 common elements shall be apportioned among the units based
 16 upon their respective interests in the common elements as
 17 provided in the declaration.

18 (d) Liens that encumber a unit shall be transferred to
 19 the proceeds of sale of the condominium property attributable
 20 to such unit in their same priority. The proceeds of any sale
 21 of condominium property pursuant to a plan of termination may
 22 not be deemed to be common surplus or association property.

23 (12) TERMINATION TRUSTEE.--The association shall serve
 24 as termination trustee unless another person is appointed in
 25 the plan of termination. If the association is unable,
 26 unwilling, or fails to act as trustee, any unit owner may
 27 petition the court to appoint a trustee. Upon recording or at
 28 a later date specified in the plan, title to the condominium
 29 property vests in the trustee. Unless prohibited by the plan,
 30 the trustee shall be vested with the powers given to the board
 31 pursuant to the declaration, bylaws, and subsection (6). If

Bill No. CS for SB 1492

Barcode 970226

1 the association is not the termination trustee, the trustee's
 2 powers shall be co-extensive with those of the association to
 3 the extent not prohibited in the plan of termination or the
 4 order of appointment. If the association is not the trustee,
 5 the association shall transfer any association property to the
 6 trustee. If the association is dissolved, the trustee shall
 7 also have such other powers necessary to conclude the affairs
 8 of the association.

9 (13) TITLE VESTED IN TERMINATION TRUSTEE.--If
 10 termination is pursuant to a plan of termination under
 11 subsection (1) or subsection (2), the unit owners' rights as
 12 tenants in common in undivided interests in the condominium
 13 property vest in the termination trustee when the plan is
 14 recorded or at a later date specified in the plan. The unit
 15 owners thereafter become the beneficiaries of proceeds
 16 realized from any plan of termination. The termination
 17 trustee may deal with the condominium property or any interest
 18 therein if the plan confers to the trustee the authority to
 19 protect, conserve, manage, sell, or dispose of the condominium
 20 property. The trustee, on behalf of the unit owners, may
 21 contract for the sale of real property, but the contract is
 22 not binding on the unit owners until the plan is approved
 23 pursuant to subsection (1) or subsection (2).

24 (14) NOTICE.--
 25 (a) Within 30 days after a plan of termination has
 26 been recorded, the termination trustee shall deliver by
 27 certified mail, return receipt requested, notice to all unit
 28 owners, lienors of the condominium property, and lienors of
 29 all units at their last known addresses that a plan of
 30 termination has been recorded. The notice shall include the
 31 book and page number of the public records where the plan is

Bill No. CS for SB 1492

Barcode 970226

1 recorded, notice that a copy of the plan shall be furnished
2 upon written request, and notice that the unit owner or lienor
3 has the right to contest the fairness of the plan.

4 (b) The trustee, within 30 days after the effective
5 date of the plan, shall provide to the division a certified
6 copy of the recorded plan, the date the plan was recorded, and
7 the county, book, and page number of the public records where
8 it was recorded.

9 (15) RIGHT TO CONTEST.--A unit owner or lienor may
10 contest a plan of termination by initiating a summary
11 procedure pursuant to s. 51.011 within 90 days after the date
12 the plan is recorded. A unit owner or lienor who does not
13 contest the plan is barred from asserting or prosecuting a
14 claim against the association, the termination trustee, any
15 unit owner, or any successor in interest to the condominium
16 property. In an action contesting a plan of termination, the
17 person contesting the plan has the burden of pleading and
18 proving that the apportionment of the proceeds from the sale
19 among the unit owners was not fair and reasonable. The
20 apportionment of sale proceeds is presumed fair and reasonable
21 if it was determined pursuant to the methods prescribed in
22 subsection (11). The court shall adjudge the rights and
23 interests of the parties and order the plan of termination to
24 be implemented if it is fair and reasonable. The court shall
25 void a plan that is determined not to be fair and reasonable.
26 In such action the prevailing party may recover reasonable
27 attorney's fees and costs.

28 (16) DISTRIBUTION.--Following termination of the
29 condominium, the condominium property, association property,
30 common surplus, and other assets of the association shall be
31 held by the termination trustee, as trustee for unit owners

Bill No. CS for SB 1492

Barcode 970226

1 and holders of liens on the units, in their order of priority.

2 (a) Not less than 30 days prior to the first
3 distribution, the termination trustee shall deliver by
4 certified mail, return receipt requested, a notice of the
5 estimated distribution to all unit owners, lienors of the
6 condominium property, and lienors of each unit at their last
7 known address stating a good-faith estimate of the amount of
8 the distributions to each class and the procedures and
9 deadline for notifying the termination trustee of any
10 objections to the amount. The deadline must be at least 15
11 days after the date the notice was mailed. The notice may be
12 sent with or after the notice required by subsection (14). If
13 a unit owner or lienor files an objection with the termination
14 trustee, the trustee does not have to distribute the funds and
15 property allocated to the respective unit owner and lienor
16 until the trustee has had a reasonable time to determine the
17 validity of the adverse claims. In the alternative, the
18 trustee may interplead the unit owner, lienor, and any other
19 person claiming an interest in the unit and deposit the funds
20 allocated to the unit in the court registry, at which time the
21 condominium property, association property, common surplus,
22 and other assets of the association are free of all claims and
23 liens of the parties to the suit. In an interpleader action,
24 the trustee and prevailing party may recover reasonable
25 attorney's fees and costs and court costs.

26 (b) The proceeds of any sale of condominium or
27 association property and any remaining condominium or
28 association property, common surplus, and other assets shall
29 be distributed in the following priority:

- 30 1. To pay the costs of implementing the plan of
31 termination, including demolition, removal, and disposal fees,

Bill No. CS for SB 1492

Barcode 970226

1 termination trustee's fees and costs, accounting fees and
2 costs, and attorney's fees and costs.

3 2. To lienholders for liens recorded prior to the
4 recording of the declaration.

5 3. To lienholders for liens of the association which
6 have been consented to under s. 718.121.

7 4. To creditors of the association, as their interests
8 appear.

9 5. To unit owners, the proceeds of any sale of
10 condominium property subject to satisfaction of liens on each
11 unit in their order of priority, in shares specified in the
12 plan of termination, unless objected to by a unit owner or
13 lienor.

14 6. To unit owners, the remaining condominium property,
15 subject to satisfaction of liens on each unit in their order
16 of priority, in shares specified in the plan of termination,
17 unless objected to by a unit owner or a lienor.

18 7. To unit owners, the proceeds of any sale of
19 association property, the remaining association property,
20 common surplus, and other assets of the association, subject
21 to satisfaction of liens on each unit in their order of
22 priority, in shares specified in the plan of termination,
23 unless objected to by a unit owner or a lienor.

24 (c) After determining that all known debts and
25 liabilities of an association in the process of termination
26 have been paid or adequately provided for, the termination
27 trustee shall distribute the remaining assets pursuant to the
28 plan of termination. If the termination is by court
29 proceeding or subject to court supervision, the distribution
30 may not be made until any period for the presentation of
31 claims ordered by the court has passed.

Bill No. CS for SB 1492

Barcode 970226

1 (d) Assets held by an association upon a valid
2 condition requiring return, transfer, or conveyance, which
3 condition has occurred or will occur, shall be returned,
4 transferred, or conveyed in accordance with the condition. The
5 remaining association assets shall be distributed pursuant to
6 paragraph (b).

7 (e) Distribution may be made in money, property, or
8 securities and in installments or as a lump sum, if it can be
9 done fairly and ratably and in conformity with the plan of
10 termination. Distribution shall be made as soon as is
11 reasonably consistent with the beneficial liquidation of the
12 assets.

13 (17) ASSOCIATION STATUS.--The termination of a
14 condominium does not change the corporate status of the
15 association that operated the condominium property. The
16 association continues to exist to conclude its affairs,
17 prosecute and defend actions by or against it, collect and
18 discharge obligations, dispose of and convey its property, and
19 collect and divide its assets, but not to act except as
20 necessary to conclude its affairs.

21 (18) CREATION OF ANOTHER CONDOMINIUM.--The termination
22 of a condominium does not bar the creation, by the termination
23 trustee, of another condominium affecting any portion of the
24 same property.

25 (19) EXCLUSION.--This section does not apply to the
26 termination of a condominium incident to a merger of that
27 condominium with one or more other condominiums under s.
28 718.110(7).

29
30 (Redesignate subsequent sections.)x

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Bill No. CS for SB 1492

Barcode 970226

1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 On page 1, line 2, after the semicolon,

4

5 insert:

6 amending s. 718.117, F.S.; substantially

7 revising provisions relating to the termination

8 of the condominium form of ownership of a

9 property; providing grounds; providing powers

10 and duties of the board of administration of

11 the association; waiving certain notice

12 requirements following natural disasters;

13 providing requirements for a plan of

14 termination; providing for the allocation of

15 proceeds from the sale of condominium property;

16 providing powers and duties of a termination

17 trustee; providing notice requirements;

18 providing a procedure for contesting a plan of

19 termination; providing rules for the

20 distribution of property and sale proceeds;

21 providing for the association's status

22 following termination; allowing the creation of

23 another condominium by the trustee;

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