

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Regulated Industries Committee

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BILL: CS/SB 2360

SPONSOR: Regulated Industries Committee and Senator Geller

SUBJECT: Condominiums

DATE: April 26, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Imhof	RI	<b>Fav/CS</b>
2.			JU	
3.				
4.				
5.				
6.				

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## I. Summary:

The Committee Substitute (CS) provides for:

- The termination of a condominium due to economic waste or operational impossibility caused by changes in land use;
- The appointment of a receiver in cases of natural disaster;
- A plan of termination and allocation of proceeds of sale of condominium property;
- A termination trustee;
- Distribution of condominium property, association property, common surplus, and other assets of the association.

This CS substantially amends section 718.117, Florida Statutes.

## II. Present Situation:

### Termination of a condominium property

Section 718.117(1), F.S., requires consent of the unit owners and all of the holders of all recorded liens to agree in order to terminate a condominium unless otherwise provided in the declaration. The board of directors must notify the Division of Land Sales, Condominiums and Mobile Homes within the Department of Business and Professional Regulation (division), before taking any action to terminate or merge the condominium or the association.

In cases of natural disaster, s. 718.117(4), F.S., provides that if the identity of the directors or their right to hold office is in doubt, or if they are dead or unable to act, or refuse or fail to act, or

their whereabouts cannot be ascertained, any interested person may petition the circuit court to determine the identity of the directors, or appoint a receiver.

Section 718.117(5), F.S., provides that the person or persons appointed by the court shall distribute all remaining assets held by the association after determining that all known debts and liabilities of an association in the process of winding up have been paid or adequately provided for.

Section 718.117(9), F.S., provides that 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, collecting and discharging its obligations, disposing and conveying its property, and collecting and dividing its assets.

According to the Florida Bar Condominium and Planned Development Committee of the Real Property, Probate and Trust Law Section of the Florida Bar (RPPT), obtaining 100 percent agreement of all unit owners has proven to be an impossibility in many cases. A representative of the section stated that as condominiums have aged, become obsolete or suffered serious hurricane or other casualty damage, it has become apparent that the current statute is an impediment to terminating a condominium. Missing or intransigent owners or unresponsive mortgagees can veto termination merely through inaction.

The RPPT began working on revising the provisions of 718.117, F.S. in February 2003. Their recommendations were also reviewed by the Condominium and Cluster Housing Committee and then the Full Executive Council in November, 2004. This CS is the result of their work.

### **III. Effect of Proposed Changes:**

#### **Section 1**

##### **Termination of condominium**

Section 718.117(1), F.S., is replaced and substantially rewritten to provide that 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:

- When the total estimated cost of repairs necessary to restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of all units in the condominium after completion of the repairs; or
- When it becomes impossible to operate a condominium in its prior physical configuration because of land-use laws or regulations.

##### **Optional Termination**

Section 718.117(2), F.S., is replaced and substantially rewritten to provide that except as provided in subsection (1) and (3) and unless otherwise provided in the declaration, the

condominium form of ownership of the property may be terminated pursuant to a plan of termination approved by at least 80 percent of the total voting interests of the condominium.

Section 718.117(3), F.S., is replaced and substantially rewritten to provide that if 80 percent of the total voting interests fails to approve the plan of termination but fewer than 20 percent of the total voting interests disapprove of the plan, the circuit court shall have jurisdiction to entertain a petition by the association or by one or more unit owners and approve the plan of termination, and the action may be a class action.

Section 718.117(3)(a), F.S., is created to read that all unit owners and the association must be joined as parties to the action. Service of process on unit owners may be by publication, but if the unit owner is not personally served, a copy of the petition and plan of termination and the final decree of the court must be furnished by mail at the owner's last known residence address.

Section 718.117(3)(b), F.S., is created to provide that upon determination that the rights and interests of unit owners are equitably set forth in the plan of termination as required by the section, the plan of termination may be approved by the court. The court may modify the plan of termination to provide for an equitable distribution of the interest of unit owners prior to approving the plan of termination.

### **Exemption**

#### **Mortgage Lienholders**

Section 718.117(4), F.S., is amended to provide that notwithstanding any provision to the contrary in the declaration or this chapter, approval of a plan of termination by the holder of a recorded mortgage lien affecting a condominium parcel is not required unless the plan of termination will result in less than the full satisfaction of the mortgage lien affecting the parcel.

#### **Powers in Connection with Termination**

Section 718.117(5), F.S., is amended to provide that the association shall continue in existence following approval of the plan of termination, with all powers it had before approval of the plan. Notwithstanding any contrary provision in the declaration or bylaws, after approval of the plan, the board has the power and duty:

- To employ directors, agents, attorneys, and other professionals to liquidate or conclude its affairs;
- To conduct the affairs of the association as necessary for the liquidation or termination;
- To carry out contracts and collect, pay, and settle debts and claims for and against the association;
- To defend suits brought against the association;
- To sue in the name of the association for all sums due or owed to the association or to recover any of its property;
- To perform any act necessary to maintain, repair, or demolish unsafe or uninhabitable improvements or other condominium property in compliance with applicable codes;
- To sell at public or private sale or to exchange, convey, or otherwise dispose of assets of the association or to recover any of its property;

- To perform any act necessary to maintain, repair, or demolish unsafe or uninhabitable improvements or other condominium property in compliance with applicable codes;
- To sell at public or private sale or to exchange, convey, or otherwise dispose of assets of the association for an amount deemed to be in the best interest of the association, and to execute bills of sale and deeds of conveyance in the name of the association;
- To collect and receive rents, profits, accounts receivable, income, maintenance fees, special assessments, or insurance proceeds for the association;
- To contract and do anything in the name of the association which is proper or convenient to terminate the affairs of the association.

**Natural Disasters**

Section 718.117(6), F.S., is amended to provide that, if after a natural disaster, where the board of directors cannot be located, identified, or refuses to act, any interested person may petition the court for the appointment of a receiver to conclude the affairs of the association.

This provision parallels the current s. 718.117(4) and (5), F.S.

**Termination**

Sections 718.117(7) through (15), F.S., are amended to address the requirements for the plan of termination and procedures for the termination process. The plan and the consents or joinders of unit owners and, if required, consents or joinders of mortgages must be recorded in the public records of each county where the condominium is located. The plan is effective only upon recordation or at a later date specified in the plan.

The plan must include provisions relating to powers of the termination trustee, if the plan is void, interest of the owners in the association property, interests in the proceeds from any sale of the condominium property, and interest in any insurance proceeds or condemnation proceeds.

Optional provisions to the plan include provisions relating to whether each unit owner retains the exclusive right of possession to the portion of the real estate that formerly constituted the unit, or in the case of a conditional termination, the conditions of termination.

Allocation of the proceeds from the sale of the condominium must first be apportioned between the aggregate value of all units and the value of the common elements based on the fair market value before termination and further apportioned among the individual units by a prescribed method.

The association serves as the termination trustee unless another person is appointed. Title to the condominium property vests in the trustee when the plan is recorded or at a later date specified in the plan. The unit owners become the beneficiaries of proceeds from the plan of termination. Thirty days after a termination plan has been recorded, the trustee must deliver notice to all unit owners, lienors of the condominium property, and lienors of all units. A unit owner may contest a plan of termination by initiating a summary procedure within 90 days after the date the plan is

recorded. The person contesting the plan has the burden to prove that the apportionment of the proceeds was not fair and reasonable.

Following the termination of the condominium, the condominium property, association property, common surplus, and other assets of the association shall be held by the termination trustee, as trustee for unit owners and holders of liens on the units, in their order of priority. The trustee shall distribute proceeds in their order of priority:

- First is given to the costs of administration of the termination plan (the trustee, the attorneys, and the accountants);
- Second to lienholders of liens recorded prior to the recording of the declaration of condominium;
- Third to lienholders for liens of the association which have been consented to under s. 718.121, F.S.;
- Fourth to creditors of the association, as their interests appear;
- Fifth to unit owners, the proceeds of any sale of condominium property subject to satisfaction of liens on each unit in their order of priority;
- Sixth to unit owners, the remaining condominium property, subject to satisfaction of liens on each unit in their order of priority, in shares specified in the plan of termination, unless objected to by a unit owner or a lienor;
- Seventh to unit owners, the proceeds of any sale of association property, the remaining association property, common surplus, and other assets of the association, subject to satisfaction of liens on each unit in their order of priority.

The remaining assets shall be distributed pursuant to the plan of termination. If the termination is by court proceeding or subject to court supervision, the distribution may not be made until any period for the presentation of claims ordered by the court has passed.

Assets held by an association upon a valid condition that requires return, transfer, or conveyance shall be returned once the condition has occurred or will occur. Distribution may be made in money, property, or securities and in installments or as a lump, if it can be done fairly and ratably and in conformity with the plan of termination.

#### **Association Status and Creation of Another Condominium**

The termination of a condominium does not change the corporate status of the association that operated the condominium property, nor does it bar the creation of another condominium.

#### **Exclusion**

The section does not apply to the termination of a condominium incident to a merger of that condominium with one or more other condominiums

#### **Section 2.**

The act takes effect July 1, 2005

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

According to the department, since the bill does not exclude the termination procedures from the jurisdiction of the Division of Land Sales, Condominiums, and Mobile Homes (division) either in compliance or in arbitration, if the division receives complaints regarding the new termination procedures, the division may be required to expend investigative resources for these purposes. The department states that any fiscal impact should be accommodated within current resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The department states that the intended interplay, if any, between the main termination provisions contained in the new subsection (1), (2), and (6) of s. 718.117, F.S., is unclear. The department states that the first two subsections address terminations due to economic factors and operational factors and come into play when the association determines to pursue termination, while subsection (6) appears to set forth a procedure where a single owner may petition for an appointment of a receiver “to conclude” the affairs of an association after a natural disaster.

## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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