

By Senator Geller

31-1180-05

1 A bill to be entitled

2 An act relating to condominiums; amending s.

3 718.117, F.S.; substantially revising

4 provisions relating to the termination of the

5 condominium form of ownership of a property;

6 providing grounds; providing powers and duties

7 of the board of administration of the

8 association; waiving certain notice

9 requirements following natural disasters;

10 providing requirements for a plan of

11 termination; providing for the allocation of

12 proceeds from the sale of condominium property;

13 providing powers and duties of a termination

14 trustee; providing notice requirements;

15 providing a procedure for contesting a plan of

16 termination; providing rules for the

17 distribution of property and sale proceeds;

18 providing for the association's status

19 following termination; allowing the creation of

20 another condominium by the trustee; providing

21 an effective date.

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23 Be It Enacted by the Legislature of the State of Florida:

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25 Section 1. Section 718.117, Florida Statutes, is

26 amended to read:

27 (Substantial rewording of section. See

28 s. 718.117, F.S., for present text.)

29 718.117 Termination of condominium.--

30 (1) TERMINATION BECAUSE OF ECONOMIC WASTE OR

31 IMPOSSIBILITY.--Notwithstanding any provision to the contrary

1 in the declaration, the condominium form of ownership of a
2 property may be terminated by a plan of termination approved
3 by the lesser of a majority of the total voting interests or
4 as otherwise provided in the declaration for approval of
5 termination, in the following circumstances:

6 (a) When the total estimated cost of repairs necessary
7 to restore the improvements to their former condition or bring
8 them into compliance with applicable laws or regulations
9 exceeds the combined fair market value of all units in the
10 condominium after completion of the repairs; or

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

14 (2) OPTIONAL TERMINATION.--Except as provided in
15 subsection (1) and unless otherwise provided in the
16 declaration, the condominium form of ownership of the property
17 may be terminated pursuant to a plan of termination approved
18 by at least 80 percent of the total voting interests of the
19 condominium. If the plan is not approved and less than 20
20 percent of the total voting interests vote to disapprove a
21 plan of termination, the condominium may be terminated
22 pursuant to the same plan at a meeting conducted within 6
23 months after the prior vote, if the meeting is attended in
24 person or by proxy of at least 60 percent of the voting
25 interests and at least 85 percent of those voting approve the
26 plan.

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

29 (4) MORTGAGE LIENHOLDERS.--Notwithstanding any
30 provision to the contrary in the declaration or this chapter,
31 approval of a plan of termination by the holder of a recorded

1 mortgage lien affecting a condominium parcel is not required
2 unless the plan of termination will result in less than the
3 full satisfaction of the mortgage lien affecting the parcel.

4 (5) POWERS IN CONNECTION WITH TERMINATION.--The
5 association shall continue in existence following approval of
6 the plan of termination, with all powers it had before
7 approval of the plan. Notwithstanding any contrary provision
8 in the declaration or bylaws, after approval of the plan, the
9 board has the power and duty:

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

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

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

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

17 (e) To sue in the name of the association for all sums
18 due or owed to the association or to recover any of its
19 property.

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

23 (g) To sell at public or private sale or to exchange,
24 convey, or otherwise dispose of assets of the association for
25 an amount deemed to be in the best interest of the
26 association, and to execute bills of sale and deeds of
27 conveyance in the name of the association.

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

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1 (i) To contract and do anything in the name of the
2 association which is proper or convenient to terminate the
3 affairs of the association.

4 (6) NATURAL DISASTERS.--

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

14 (b) The receiver shall have all powers given to the
15 board pursuant to the declaration, bylaws, or subsection (5),
16 and any other powers that are necessary to conclude the
17 affairs of the association and are set forth in the order of
18 appointment. The appointment of the receiver is subject to
19 the bonding requirements of such order. The order shall also
20 provide for the payment of a reasonable fee to the receiver
21 from the sources identified in the order, which may include
22 rents, profits, incomes, maintenance fees, or special
23 assessments collected from the condominium property.

24 (7) PLAN OF TERMINATION.--The plan of termination must
25 be a written document executed in the same manner as a deed by
26 unit owners having the requisite percentage of voting
27 interests to approve the plan and by the termination trustee.
28 A unit owner may document assent to the plan of termination by
29 executing the plan or consent to or joinder in the plan in the
30 manner of a deed. A plan of termination and the consents or
31 joinders of unit owners and, if required, consents or joinders

1 of mortgagees must be recorded in the public records of each
2 county in which any portion of the condominium is located.
3 The plan of termination is effective only upon recordation or
4 at a later date specified in the plan.

5 (8) PLAN OF TERMINATION; REQUIRED PROVISIONS.--The
6 plan of termination must specify:

7 (a) The name, address, and powers of the termination
8 trustee;

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

11 (c) The interest of the respective unit owners in the
12 association property, common surplus, and other assets of the
13 association, which shall be the same as the respective
14 interests of the unit owners in the common elements
15 immediately before the termination;

16 (d) The interests of the respective unit owners in any
17 proceeds from any sale of the condominium property. If,
18 pursuant to the plan of termination, condominium property or
19 real property owned by the association is to be sold following
20 termination, the plan must provide for the sale and may
21 establish any minimum sale terms; and

22 (e) Any interests of the respective unit owners in any
23 insurance proceeds or condemnation proceeds that are not used
24 for repair or reconstruction. Unless the declaration
25 expressly addresses the distribution of insurance proceeds or
26 condemnation proceeds, the plan of termination may apportion
27 those proceeds pursuant to the methods prescribed in
28 subsection (10).

29 (9) PLAN OF TERMINATION; OPTIONAL PROVISIONS.--The
30 plan of termination may provide:

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1 (a) That each unit owner retains the exclusive right
2 of possession to the portion of the real estate that formerly
3 constituted the unit, in which case the plan must specify the
4 conditions of possession.

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

13 (10) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM
14 PROPERTY.--

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

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

27 1. The respective value of the units based on the
28 fair-market values of the units immediately before the
29 termination, as determined by one or more independent
30 appraisers selected by the association or termination trustee;
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1 2. The respective value of the units based on the most
2 recent market value of the units before the termination, as
3 provided in the county property appraiser's records; or

4 3. The respective interests of the units in the common
5 elements specified in the declaration immediately before the
6 termination.

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

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

19 (11) TERMINATION TRUSTEE.--The association shall serve
20 as termination trustee unless another person is appointed in
21 the plan of termination. If the association is unable,
22 unwilling, or fails to act as trustee, any unit owner may
23 petition the court to appoint a trustee. Upon recording or at
24 a later date specified in the plan, title to the condominium
25 property vests in the trustee. Unless prohibited by the plan,
26 the trustee shall be vested with the powers given to the board
27 pursuant to the declaration, bylaws, and subsection (5). If
28 the association is not the termination trustee, the trustee's
29 powers shall be co-extensive with those of the association to
30 the extent not prohibited in the plan of termination or the
31 order of appointment. If the association is not the trustee,

1 the association shall transfer any association property to the
2 trustee. If the association is dissolved, the trustee shall
3 also have such other powers necessary to conclude the affairs
4 of the association.

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

20 (13) NOTICE.--

21 (a) Within 30 days after a plan of termination has
22 been recorded, the termination trustee shall deliver by
23 certified mail, return receipt requested, notice to all unit
24 owners, lienors of the condominium property, and lienors of
25 all units at their last known addresses that a plan of
26 termination has been recorded. The notice shall include the
27 book and page number of the public records where the plan is
28 recorded, notice that a copy of the plan shall be furnished
29 upon written request, and notice that the unit owner or lienor
30 has the right to contest the fairness of the plan.

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

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

25 (15) DISTRIBUTION.--Following termination of the
26 condominium, the condominium property, association property,
27 common surplus, and other assets of the association shall be
28 held by the termination trustee, as trustee for unit owners
29 and holders of liens on the units, in their order of priority.

30 (a) Not less than 30 days prior to the first
31 distribution, the termination trustee shall deliver by

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

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

27 1. To pay the costs of implementing the plan of
28 termination, including demolition, removal, and disposal fees,
29 termination trustee's fees and costs, accounting fees and
30 costs, and attorney's fees and costs.

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

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

5 4. To creditors of the association, as their interests
6 appear.

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

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

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

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

30 (d) Assets held by an association upon a valid
31 condition requiring return, transfer, or conveyance, which

1 condition has occurred or will occur, shall be returned,
2 transferred, or conveyed in accordance with the condition. The
3 remaining association assets shall be distributed pursuant to
4 paragraph (b).

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

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

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

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

27 Section 2. This act shall take effect July 1, 2005.
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SENATE SUMMARY

Substantially revises provisions relating to the termination of a condominium. Provides an orderly procedure, powers and duties of the board of administration of the association, unit owners, and the termination trustee. Provides notice requirements. Provides procedures to contest a plan of termination. (See bill for details.)