



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 subsections (1) and (3) 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.

20 (3) If 80 percent of the total voting interests fail  
21 to approve the plan of termination but fewer than 20 percent  
22 of the total voting interests disapprove of the plan, the  
23 circuit court shall have jurisdiction to entertain a petition  
24 by the association or by one or more unit owners and approve  
25 the plan of termination, and the action may be a class action.

26 (a) All unit owners and the association must be joined  
27 as parties to the action. Service of process on unit owners  
28 may be by publication, but the plaintiff must furnish each  
29 unit owner not personally served with process a copy of the  
30 petition and plan of termination and the final decree of the  
31 court by mail at the owner's last known residence address.

1        (b) Upon determination that the rights and interests  
2 of unit owners are equitably set forth in the plan of  
3 termination as required by this section, the plan of  
4 termination may be approved by the court. Consistent with the  
5 provisions of this section, the court may modify the plan of  
6 termination to provide for an equitable distribution of the  
7 interest of unit owners prior to approving the plan of  
8 termination.

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

11        (5) MORTGAGE LIENHOLDERS.--Notwithstanding any  
12 provision to the contrary in the declaration or this chapter,  
13 approval of a plan of termination by the holder of a recorded  
14 mortgage lien affecting a condominium parcel is not required  
15 unless the plan of termination will result in less than the  
16 full satisfaction of the mortgage lien affecting the parcel.

17        (6) POWERS IN CONNECTION WITH TERMINATION.--The  
18 association shall continue in existence following approval of  
19 the plan of termination, with all powers it had before  
20 approval of the plan. Notwithstanding any contrary provision  
21 in the declaration or bylaws, after approval of the plan, the  
22 board has the power and duty:

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

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

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

29        (d) To defend suits brought against the association.  
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1           (e) To sue in the name of the association for all sums  
2 due or owed to the association or to recover any of its  
3 property.

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

7           (g) To sell at public or private sale or to exchange,  
8 convey, or otherwise dispose of assets of the association for  
9 an amount deemed to be in the best interest of the  
10 association, and to execute bills of sale and deeds of  
11 conveyance in the name of the association.

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

15           (i) To contract and do anything in the name of the  
16 association which is proper or convenient to terminate the  
17 affairs of the association.

18           (7) NATURAL DISASTERS.--

19           (a) If, after a natural disaster, the identity of the  
20 directors or their right to hold office is in doubt, if they  
21 are deceased or unable to act, if they fail or refuse to act,  
22 or if they cannot be located, any interested person may  
23 petition the circuit court to determine the identity of the  
24 directors or, if found to be in the best interest of the unit  
25 owners, to appoint a receiver to conclude the affairs of the  
26 association after a hearing following notice to such persons  
27 as the court directs.

28           (b) The receiver shall have all powers given to the  
29 board pursuant to the declaration, bylaws, or subsection (5),  
30 and any other powers that are necessary to conclude the  
31 affairs of the association and are set forth in the order of

1 appointment. The appointment of the receiver is subject to  
2 the bonding requirements of such order. The order shall also  
3 provide for the payment of a reasonable fee to the receiver  
4 from the sources identified in the order, which may include  
5 rents, profits, incomes, maintenance fees, or special  
6 assessments collected from the condominium property.

7 (8) PLAN OF TERMINATION.--The plan of termination must  
8 be a written document executed in the same manner as a deed by  
9 unit owners having the requisite percentage of voting  
10 interests to approve the plan and by the termination trustee.  
11 A unit owner may document assent to the plan of termination by  
12 executing the plan or consent to or joinder in the plan in the  
13 manner of a deed. A plan of termination and the consents or  
14 joinders of unit owners and, if required, consents or joinders  
15 of mortgagees must be recorded in the public records of each  
16 county in which any portion of the condominium is located.  
17 The plan of termination is effective only upon recordation or  
18 at a later date specified in the plan.

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

21 (a) The name, address, and powers of the termination  
22 trustee;

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

25 (c) The interest of the respective unit owners in the  
26 association property, common surplus, and other assets of the  
27 association, which shall be the same as the respective  
28 interests of the unit owners in the common elements  
29 immediately before the termination;

30 (d) The interests of the respective unit owners in any  
31 proceeds from any sale of the condominium property. If,

1 pursuant to the plan of termination, condominium property or  
2 real property owned by the association is to be sold following  
3 termination, the plan must provide for the sale and may  
4 establish any minimum sale terms; and

5 (e) Any interests of the respective unit owners in any  
6 insurance proceeds or condemnation proceeds that are not used  
7 for repair or reconstruction. Unless the declaration  
8 expressly addresses the distribution of insurance proceeds or  
9 condemnation proceeds, the plan of termination may apportion  
10 those proceeds pursuant to the methods prescribed in  
11 subsection (11).

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

14 (a) That each unit owner retains the exclusive right  
15 of possession to the portion of the real estate that formerly  
16 constituted the unit, in which case the plan must specify the  
17 conditions of possession.

18 (b) In the case of a conditional termination, the plan  
19 must specify the conditions for termination. A conditional  
20 plan will not vest title in the termination trustee until the  
21 plan and a certificate executed by the association with the  
22 formalities of a deed, confirming that the conditions in the  
23 conditional plan have been satisfied or waived by the  
24 requisite percentage of the voting interests, has been  
25 recorded.

26 (11) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM  
27 PROPERTY.--

28 (a) Unless the declaration expressly provides for the  
29 allocation of the proceeds of sale of condominium property,  
30 the plan of termination must first apportion the proceeds  
31 between the aggregate value of all units and the value of the

1 common elements, based on their respective fair-market values  
2 immediately before the termination, as determined by one or  
3 more independent appraisers selected by the association or  
4 termination trustee.

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

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

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

16 3. The respective interests of the units in the common  
17 elements specified in the declaration immediately before the  
18 termination.

19 (c) The methods of apportionment in paragraph (b) do  
20 not prohibit any other method of apportioning the proceeds of  
21 sale allocated to the units agreed upon in the plan of  
22 termination. The portion of the proceeds allocated to the  
23 common elements shall be apportioned among the units based  
24 upon their respective interests in the common elements as  
25 provided in the declaration.

26 (d) Liens that encumber a unit shall be transferred to  
27 the proceeds of sale of the condominium property attributable  
28 to such unit in their same priority. The proceeds of any sale  
29 of condominium property pursuant to a plan of termination may  
30 not be deemed to be common surplus or association property.

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1           (12) TERMINATION TRUSTEE.--The association shall serve  
2 as termination trustee unless another person is appointed in  
3 the plan of termination. If the association is unable,  
4 unwilling, or fails to act as trustee, any unit owner may  
5 petition the court to appoint a trustee. Upon recording or at  
6 a later date specified in the plan, title to the condominium  
7 property vests in the trustee. Unless prohibited by the plan,  
8 the trustee shall be vested with the powers given to the board  
9 pursuant to the declaration, bylaws, and subsection (6). If  
10 the association is not the termination trustee, the trustee's  
11 powers shall be co-extensive with those of the association to  
12 the extent not prohibited in the plan of termination or the  
13 order of appointment. If the association is not the trustee,  
14 the association shall transfer any association property to the  
15 trustee. If the association is dissolved, the trustee shall  
16 also have such other powers necessary to conclude the affairs  
17 of the association.

18           (13) TITLE VESTED IN TERMINATION TRUSTEE.--If  
19 termination is pursuant to a plan of termination under  
20 subsection (1) or subsection (2), the unit owners' rights as  
21 tenants in common in undivided interests in the condominium  
22 property vest in the termination trustee when the plan is  
23 recorded or at a later date specified in the plan. The unit  
24 owners thereafter become the beneficiaries of proceeds  
25 realized from any plan of termination. The termination  
26 trustee may deal with the condominium property or any interest  
27 therein if the plan confers to the trustee the authority to  
28 protect, conserve, manage, sell, or dispose of the condominium  
29 property. The trustee, on behalf of the unit owners, may  
30 contract for the sale of real property, but the contract is  
31



1 not binding on the unit owners until the plan is approved  
2 pursuant to subsection (1) or subsection (2).

3 (14) NOTICE.--

4 (a) Within 30 days after a plan of termination has  
5 been recorded, the termination trustee shall deliver by  
6 certified mail, return receipt requested, notice to all unit  
7 owners, lienors of the condominium property, and lienors of  
8 all units at their last known addresses that a plan of  
9 termination has been recorded. The notice shall include the  
10 book and page number of the public records where the plan is  
11 recorded, notice that a copy of the plan shall be furnished  
12 upon written request, and notice that the unit owner or lienor  
13 has the right to contest the fairness of the plan.

14 (b) The trustee, within 30 days after the effective  
15 date of the plan, shall provide to the division a certified  
16 copy of the recorded plan, the date the plan was recorded, and  
17 the county, book, and page number of the public records where  
18 it was recorded.

19 (15) RIGHT TO CONTEST.--A unit owner or lienor may  
20 contest a plan of termination by initiating a summary  
21 procedure pursuant to s. 51.011 within 90 days after the date  
22 the plan is recorded. A unit owner or lienor who does not  
23 contest the plan is barred from asserting or prosecuting a  
24 claim against the association, the termination trustee, any  
25 unit owner, or any successor in interest to the condominium  
26 property. In an action contesting a plan of termination, the  
27 person contesting the plan has the burden of pleading and  
28 proving that the apportionment of the proceeds from the sale  
29 among the unit owners was not fair and reasonable. The  
30 apportionment of sale proceeds is presumed fair and reasonable  
31 if it was determined pursuant to the methods prescribed in

1 subsection (11). The court shall adjudge the rights and  
2 interests of the parties and order the plan of termination to  
3 be implemented if it is fair and reasonable. The court shall  
4 void a plan that is determined not to be fair and reasonable.  
5 In such action the prevailing party may recover reasonable  
6 attorney's fees and costs.

7 (16) DISTRIBUTION.--Following termination of the  
8 condominium, the condominium property, association property,  
9 common surplus, and other assets of the association shall be  
10 held by the termination trustee, as trustee for unit owners  
11 and holders of liens on the units, in their order of priority.

12 (a) Not less than 30 days prior to the first  
13 distribution, the termination trustee shall deliver by  
14 certified mail, return receipt requested, a notice of the  
15 estimated distribution to all unit owners, lienors of the  
16 condominium property, and lienors of each unit at their last  
17 known address stating a good-faith estimate of the amount of  
18 the distributions to each class and the procedures and  
19 deadline for notifying the termination trustee of any  
20 objections to the amount. The deadline must be at least 15  
21 days after the date the notice was mailed. The notice may be  
22 sent with or after the notice required by subsection (14). If  
23 a unit owner or lienor files an objection with the termination  
24 trustee, the trustee does not have to distribute the funds and  
25 property allocated to the respective unit owner and lienor  
26 until the trustee has had a reasonable time to determine the  
27 validity of the adverse claims. In the alternative, the  
28 trustee may interplead the unit owner, lienor, and any other  
29 person claiming an interest in the unit and deposit the funds  
30 allocated to the unit in the court registry, at which time the  
31 condominium property, association property, common surplus,

1 and other assets of the association are free of all claims and  
2 liens of the parties to the suit. In an interpleader action,  
3 the trustee and prevailing party may recover reasonable  
4 attorney's fees and costs and court costs.

5 (b) The proceeds of any sale of condominium or  
6 association property and any remaining condominium or  
7 association property, common surplus, and other assets shall  
8 be distributed in the following priority:

9 1. To pay the costs of implementing the plan of  
10 termination, including demolition, removal, and disposal fees,  
11 termination trustee's fees and costs, accounting fees and  
12 costs, and attorney's fees and costs.

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

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

17 4. To creditors of the association, as their interests  
18 appear.

19 5. To unit owners, the proceeds of any sale of  
20 condominium property subject to satisfaction of liens on each  
21 unit in their order of priority, in shares specified in the  
22 plan of termination, unless objected to by a unit owner or  
23 lienor.

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

28 7. To unit owners, the proceeds of any sale of  
29 association property, the remaining association property,  
30 common surplus, and other assets of the association, subject  
31 to satisfaction of liens on each unit in their order of

1 priority, in shares specified in the plan of termination,  
2 unless objected to by a unit owner or a lienor.

3 (c) After determining that all known debts and  
4 liabilities of an association in the process of termination  
5 have been paid or adequately provided for, the termination  
6 trustee shall distribute the remaining assets pursuant to the  
7 plan of termination. If the termination is by court  
8 proceeding or subject to court supervision, the distribution  
9 may not be made until any period for the presentation of  
10 claims ordered by the court has passed.

11 (d) Assets held by an association upon a valid  
12 condition requiring return, transfer, or conveyance, which  
13 condition has occurred or will occur, shall be returned,  
14 transferred, or conveyed in accordance with the condition. The  
15 remaining association assets shall be distributed pursuant to  
16 paragraph (b).

17 (e) Distribution may be made in money, property, or  
18 securities and in installments or as a lump sum, if it can be  
19 done fairly and ratably and in conformity with the plan of  
20 termination. Distribution shall be made as soon as is  
21 reasonably consistent with the beneficial liquidation of the  
22 assets.

23 (17) ASSOCIATION STATUS.--The termination of a  
24 condominium does not change the corporate status of the  
25 association that operated the condominium property. The  
26 association continues to exist to conclude its affairs,  
27 prosecute and defend actions by or against it, collect and  
28 discharge obligations, dispose of and convey its property, and  
29 collect and divide its assets, but not to act except as  
30 necessary to conclude its affairs.

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1           (18) CREATION OF ANOTHER CONDOMINIUM.--The termination  
2 of a condominium does not bar the creation, by the termination  
3 trustee, of another condominium affecting any portion of the  
4 same property.

5           (19) EXCLUSION.--This section does not apply to the  
6 termination of a condominium incident to a merger of that  
7 condominium with one or more other condominiums under s.  
8 718.110(7).

9           Section 2. This act shall take effect July 1, 2005.

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11                           STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
12   COMMITTEE SUBSTITUTE FOR  
13   Senate Bill 2360

14           The Committee Substitute (CS) provides that if 80 percent of  
15           the total voting interests fail to approve the plan of  
16           termination but fewer than 20 percent of the total voting  
17           interests had disapproved of the plan, then the circuit court  
18           shall have jurisdiction to entertain a petition by the  
19           association or by one or more unit owners to approve the plan  
20           of termination. It provides that the action may be a class  
21           action.

22           It provides that all unit owners and the association must be  
23           joined as parties to the action. Service of process on unit  
24           owners may be by publication, but the plaintiff must furnish  
25           every unit owner not personally served with a copy of the  
26           petition and plan of termination and the final decree of the  
27           court must be furnished by mail at the owner's last know  
28           residence address.

29           It provides that upon determination that the rights and  
30           interests of unit owners are equitably set forth in the plan  
31           of termination as required by the section, the plan of  
32           termination may be approved by the court. The court may  
33           modify the plan of termination to provide for an equitable  
34           distribution of the interest of unit owners prior to approving  
35           the plan of termination.