

Bill No. HB 291, 1st Eng.

Barcode 072352

CHAMBER ACTION

Senate

House

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Senator Geller moved the following amendment:

**Senate Amendment (with title amendment)**

On page 1, between lines 10 and 11,

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 them into compliance with applicable laws or regulations

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1 exceeds the combined fair market value of all units in the  
2 condominium after completion of the repairs; or

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

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

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

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

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

1 termination.

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

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

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

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

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

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

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

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

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

29 (g) To sell at public or private sale or to exchange,  
30 convey, or otherwise dispose of assets of the association for  
31 an amount deemed to be in the best interest of the

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1 association, and to execute bills of sale and deeds of  
2 conveyance in the name of the association.

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

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

9 (7) NATURAL DISASTERS.--

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

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

29 (8) PLAN OF TERMINATION.--The plan of termination must  
30 be a written document executed in the same manner as a deed by  
31 unit owners having the requisite percentage of voting

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

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

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

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

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

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

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

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1 those proceeds pursuant to the methods prescribed in  
2 subsection (11).

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

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

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

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

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

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

31 1. The respective value of the units based on the

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1 fair-market values of the units immediately before the  
2 termination, as determined by one or more independent  
3 appraisers selected by the association or termination trustee;

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

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

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

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

22       (12) TERMINATION TRUSTEE.--The association shall serve  
23 as termination trustee unless another person is appointed in  
24 the plan of termination. If the association is unable,  
25 unwilling, or fails to act as trustee, any unit owner may  
26 petition the court to appoint a trustee. Upon recording or at  
27 a later date specified in the plan, title to the condominium  
28 property vests in the trustee. Unless prohibited by the plan,  
29 the trustee shall be vested with the powers given to the board  
30 pursuant to the declaration, bylaws, and subsection (6). If  
31 the association is not the termination trustee, the trustee's

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

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

23 (14) NOTICE.--

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



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1 upon written request, and notice that the unit owner or lienor  
2 has the right to contest the fairness of the plan.

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

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

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

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

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

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

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1 costs, and attorney's fees and costs.

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

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

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

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

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

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

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

31 (d) Assets held by an association upon a valid

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

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

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

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

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

28  
 29 (Redesignate subsequent sections.)  
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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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