

Bill No. HB 291, 1st Eng.

Barcode 442442

CHAMBER ACTION

Senate

House

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Senator Geller moved the following **substitute for amendment**
(072352):

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 in which fewer than 75 percent of the units are

timeshare units 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

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1 to restore the improvements to their former condition or bring
 2 them into compliance with applicable laws or regulations
 3 exceeds the combined fair market value of all units in the
 4 condominium after completion of the repairs; or

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

8 (2) OPTIONAL TERMINATION.--Except as provided in
 9 subsections (1) and (3) and unless otherwise provided in the
 10 declaration, the condominium form of ownership of the property
 11 may be terminated pursuant to a plan of termination approved
 12 by at least 80 percent of the total voting interests of the
 13 condominium. Unless the declaration of a condominium
 14 containing timeshare units provides for lower percentages, a
 15 condominium in which 75 percent or more of the units are
 16 timeshare units may only be terminated pursuant to a plan of
 17 termination approved by 80 percent of the total voting
 18 interests of the association and the holders of 80 percent of
 19 the original principal amount of outstanding recorded mortgage
 20 liens on timeshare estates in the condominium.

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

27 (a) All unit owners and the association must be joined
 28 as parties to the action. Service of process on unit owners
 29 may be by publication, but the plaintiff must furnish every
 30 unit owner not personally served with process with a copy of
 31 the petition and plan of termination and the final decree of

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1 the court by mail at the unit owner's last known residential
2 address.

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

11 (c) This subsection does not apply to condominiums in
12 which 75 percent or more of the units are timeshare units.

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

15 (5) MORTGAGE LIENHOLDERS.--Notwithstanding any
16 provision to the contrary in the declaration or this chapter,
17 approval of a plan of termination by the holder of a recorded
18 mortgage lien affecting a condominium parcel in which fewer
19 than 75 percent of the units are timeshare units is not
20 required unless the plan of termination will result in less
21 than the full satisfaction of the mortgage lien affecting the
22 parcel.

23 (6) POWERS IN CONNECTION WITH TERMINATION.--The
24 association shall continue in existence following approval of
25 the plan of termination, with all powers it had before
26 approval of the plan. Notwithstanding any contrary provision
27 in the declaration or bylaws, after approval of the plan, the
28 board has the power and duty:

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

31 (b) To conduct the affairs of the association as

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1 necessary for the liquidation or termination.

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

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

5 (e) To sue in the name of the association for all sums
6 due or owed to the association or to recover any of its
7 property.

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

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

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

19 (i) To contract and do anything in the name of the
20 association which is proper or convenient to terminate the
21 affairs of the association.

22 (7) NATURAL DISASTERS.--

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

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1 (b) The receiver shall have all powers given to the
2 board pursuant to the declaration, bylaws, or subsection (6),
3 and any other powers that are necessary to conclude the
4 affairs of the association and are set forth in the order of
5 appointment. The appointment of the receiver is subject to
6 the bonding requirements of such order. The order shall also
7 provide for the payment of a reasonable fee to the receiver
8 from the sources identified in the order, which may include
9 rents, profits, incomes, maintenance fees, or special
10 assessments collected from the condominium property.

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

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

25 (a) The name, address, and powers of the termination
26 trustee;

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

29 (c) The interest of the respective unit owners in the
30 association property, common surplus, and other assets of the
31 association, which shall be the same as the respective

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1 interests of the unit owners in the common elements
2 immediately before the termination;

3 (d) The interests of the respective unit owners in any
4 proceeds from any sale of the condominium property. If,
5 pursuant to the plan of termination, condominium property or
6 real property owned by the association is to be sold following
7 termination, the plan must provide for the sale and may
8 establish any minimum sale terms; and

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

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

18 (a) That each unit owner retains the exclusive right
19 of possession to the portion of the real estate that formerly
20 constituted the unit, in which case the plan must specify the
21 conditions of possession.

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

30 (11) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM
31 PROPERTY.--

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1 (a) Unless the declaration expressly provides for the
2 allocation of the proceeds of sale of condominium property,
3 the plan of termination must first apportion the proceeds
4 between the aggregate value of all units and the value of the
5 common elements, based on their respective fair-market values
6 immediately before the termination, as determined by one or
7 more independent appraisers selected by the association or
8 termination trustee.

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

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

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

20 3. The respective interests of the units in the common
21 elements specified in the declaration immediately before the
22 termination.

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

30 (d) Liens that encumber a unit shall be transferred to
31 the proceeds of sale of the condominium property attributable

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1 to such unit in their same priority. The proceeds of any sale
2 of condominium property pursuant to a plan of termination may
3 not be deemed to be common surplus or association property.

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

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

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1 property. The trustee, on behalf of the unit owners, may
 2 contract for the sale of real property, but the contract is
 3 not binding on the unit owners until the plan is approved
 4 pursuant to subsection (1) or subsection (2).

5 (14) NOTICE.--

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

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

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

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

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

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

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1 allocated to the unit in the court registry, at which time the
 2 condominium property, association property, common surplus,
 3 and other assets of the association are free of all claims and
 4 liens of the parties to the suit. In an interpleader action,
 5 the trustee and prevailing party may recover reasonable
 6 attorney's fees and costs and court costs.

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

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

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

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

19 4. To creditors of the association, as their interests
 20 appear.

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

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

30 7. To unit owners, the proceeds of any sale of
 31 association property, the remaining association property,

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1 common surplus, and other assets of the association, subject
 2 to satisfaction of liens on each unit in their order of
 3 priority, in shares specified in the plan of termination,
 4 unless objected to by a unit owner or a lienor.

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

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

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

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

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1 necessary to conclude its affairs.

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

6 (19) EXCLUSION.--This section does not apply to the
7 termination of a condominium incident to a merger of that
8 condominium with one or more other condominiums under s.
9 718.110(7).

10

11 (Redesignate subsequent sections.)

12

13

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

15 And the title is amended as follows:

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

17

18 insert:

19 amending s. 718.117, F.S.; substantially
20 revising provisions relating to the termination
21 of the condominium form of ownership of a
22 property; providing grounds; providing powers
23 and duties of the board of administration of
24 the association; waiving certain notice
25 requirements following natural disasters;
26 providing requirements for a plan of
27 termination; providing for the allocation of
28 proceeds from the sale of condominium property;
29 providing powers and duties of a termination
30 trustee; providing notice requirements;
31 providing a procedure for contesting a plan of

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1 termination; providing rules for the
2 distribution of property and sale proceeds;
3 providing for the association's status
4 following termination; allowing the creation of
5 another condominium by the trustee; providing
6 exceptions for certain condominiums containing
7 a certain percentage of timeshare units;

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