

Bill No. SB 1556

Barcode 084342

CHAMBER ACTION

Senate

House

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The Committee on Regulated Industries (Geller) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and 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) LEGISLATIVE FINDINGS.--The Legislature finds that condominiums are created as authorized by statute. In circumstances that may create economic waste, areas of disrepair, or obsolescence of the condominium property for its intended use and thereby lower property tax values, the Legislature further finds that it is the public policy of this state to provide by statute a method to preserve the value of the property interests and the rights of alienation thereof that owners have in the condominium property both before and

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1 after termination. The Legislature further finds that it is
 2 contrary to the public policy of this state to require the
 3 continued operation of a condominium when to do so would
 4 constitute economic waste or when the ability to do so is made
 5 impossible by law or regulation. The provisions of this
 6 section shall apply to all condominiums in this state in
 7 existence on or after the effective date of this act.

8 (2) TERMINATION BECAUSE OF ECONOMIC WASTE OR
 9 IMPOSSIBILITY.--

10 (a) Notwithstanding any provision to the contrary in
 11 the declaration, the condominium form of ownership of a
 12 property may be terminated by a plan of termination approved
 13 by the lesser of a majority of the total voting interests or
 14 as otherwise provided in the declaration for approval of
 15 termination, in the following circumstances:

16 1. When the total estimated cost of repairs necessary
 17 to restore the improvements to their former condition or bring
 18 them into compliance with applicable laws or regulations
 19 exceeds the combined fair market value of all units in the
 20 condominium after completion of the repairs; or

21 2. When it becomes impossible to operate or
 22 reconstruct a condominium in its prior physical configuration
 23 because of land-use laws or regulations.

24 (b) Notwithstanding paragraph (a), a condominium in
 25 which 75 percent or more of the units are timeshare units may
 26 only be terminated pursuant to a plan of termination approved
 27 by 80 percent of the total voting interests of the association
 28 and the holders of 80 percent of the original principal amount
 29 of outstanding recorded mortgage liens of timeshare estates in
 30 the condominium, unless the declaration provides for a lower
 31 voting percentage.

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1 (3) OPTIONAL TERMINATION.--Except as provided in
2 subsections (2) and (4) or unless the declaration provides for
3 a lower percentage, the condominium form of ownership of the
4 property may be terminated pursuant to a plan of termination
5 approved by at least 80 percent of the total voting interests
6 of the condominium. This subsection does not apply to
7 condominiums in which 75 percent or more of the units are
8 timeshare units.

9 (4) JURISDICTION.--

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

17 (b) All unit owners and the association must be
18 parties to the action. The action may be brought against the
19 nonconsenting unit owners as a class action. Service of
20 process on unit owners may be by publication, but the
21 plaintiff must furnish each unit owner not personally served
22 with process a copy of the petition and plan of termination,
23 and after entry of judgment, a copy of the final decree of the
24 court, by mail at the owner's last known address.

25 (c) After the consideration of whether the rights and
26 interests of unit owners are equitably set forth in the plan
27 of termination as required by this section, the plan of
28 termination may be approved or rejected by the court.
29 Consistent with the provisions of this section, the court may
30 also modify the plan of termination to provide for an
31 equitable distribution of the interests of unit owners prior

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1 to approving the plan of termination.

2 (d) This subsection does not apply to condominiums in
3 which 75 percent or more of the units are timeshare units.

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

6 (6) MORTGAGE LIENHOLDERS.--Notwithstanding any
7 provision to the contrary in the declaration or this chapter,
8 approval of a plan of termination by the holder of a recorded
9 mortgage lien affecting a condominium parcel in which fewer
10 than 75 percent of the units are timeshare units is not
11 required unless the plan of termination will result in less
12 than the full satisfaction of the mortgage lien affecting the
13 condominium parcel. Should such approval be required and not
14 given, and should the holder of a recorded mortgage lien
15 object to the plan of termination, such lienor may contest the
16 plan as provided in subsection (16). At the time of sale, the
17 lien shall be transferred to the proportionate share of the
18 proceeds assigned to the condominium parcel in the plan of
19 termination or as subsequently modified by the court.

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

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

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

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

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

2 (e) To sue in the name of the association for all sums
3 due or owed to the association or to recover any of its
4 property.

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

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

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

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

19 (8) NATURAL DISASTERS.--

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

31 (b) The receiver shall have all powers given to the

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

10 (9) REPORTS AND REPLACEMENT OF RECEIVER.--

11 (a) The association, receiver or termination trustee
 12 shall prepare reports each quarter following the approval of
 13 the plan of termination setting forth the status and progress
 14 of the termination, costs and fees incurred, the date the
 15 termination is expected to be completed and the current
 16 financial condition of the association, receivership or
 17 trusteeship and provide copies of the report by regular mail
 18 to the unit owners and lienors at the mailing address provided
 19 to the association by the unit owners and the lienors.

20 (b) The unit owners of the association in termination
 21 may recall or remove members of the board of administration
 22 with or without cause at any time as provided in s.
 23 718.112(2)(f).

24 (c) The lienors of an association in termination
 25 representing at least fifty percent of the outstanding amount
 26 of liens may petition the court for the appointment of a
 27 termination trustee which shall be granted upon good cause
 28 shown.

29 (10) PLAN OF TERMINATION.--The plan of termination
 30 must be a written document executed in the same manner as a
 31 deed by 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 copy of the proposed plan of termination shall be given to
3 all unit owners, in the same manner as for notice of an annual
4 meeting, at least 14 days prior to the meeting at which the
5 plan of termination is to be voted upon or prior to or
6 simultaneously with the distribution of the solicitation
7 seeking execution of the plan of termination or written
8 consent to or joinder in the plan. A unit owner may document
9 assent to the plan of termination by executing the plan or by
10 consent to or joinder in the plan in the manner of a deed. A
11 plan of termination and the consents or joinders of unit
12 owners and, if required, consents or joinders of mortgagees
13 must be recorded in the public records of each county in which
14 any portion of the condominium is located. The plan of
15 termination is effective only upon recordation or at a later
16 date specified in the plan.

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

19 (a) The name, address, and powers of the termination
20 trustee.

21 (b) A date after which the plan of termination is void
22 if it has not been recorded.

23 (c) The interests of the respective unit owners in the
24 association property, common surplus, and other assets of the
25 association, which shall be the same as the respective
26 interests of the unit owners in the common elements
27 immediately before the termination, unless otherwise provided
28 in the declaration.

29 (d) The interests of the respective unit owners in any
30 proceeds from any sale of the condominium property. The plan
31 of termination may apportion those proceeds pursuant to any of

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1 the methods prescribed in subsection (12). If, pursuant to the
 2 plan of termination, condominium property or real property
 3 owned by the association is to be sold following termination,
 4 the plan must provide for the sale and may establish any
 5 minimum sale terms.

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

13 (12) PLAN OF TERMINATION; OPTIONAL PROVISIONS;
 14 CONDITIONAL TERMINATION.--

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

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

27 (13) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM
 28 PROPERTY.--

29 (a) Unless the declaration expressly provides for the
 30 allocation of the proceeds of sale of condominium property,
 31 the plan of termination must first apportion the proceeds

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1 between the aggregate value of all units and the value of the
 2 common elements, based on their respective fair-market values
 3 immediately before the termination, as determined by one or
 4 more independent appraisers selected by the association or
 5 termination trustee.

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

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

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

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

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

28 (d) Liens that encumber a unit shall be transferred to
 29 the proceeds of sale of the condominium property and the
 30 proceeds of sale or other distribution of association
 31 property, common surplus, or other association assets

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

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

22 (15) TITLE VESTED IN TERMINATION TRUSTEE.--If
 23 termination is pursuant to a plan of termination under
 24 subsection (2) or subsection (3), the unit owners' rights and
 25 title as tenants in common in undivided interests in the
 26 condominium property vest in the termination trustee when the
 27 plan is recorded or at a later date specified in the plan. The
 28 unit owners thereafter become the beneficiaries of the
 29 proceeds realized from the plan of termination. The
 30 termination trustee may deal with the condominium property or
 31 any interest therein if the plan confers on the trustee the

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

6 (16) NOTICE.--

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

17 (b) The trustee, within 90 days after the effective
 18 date of the plan, shall provide to the division a certified
 19 copy of the recorded plan, the date the plan was recorded, and
 20 the county, book, and page number of the public records in
 21 which the plan was recorded.

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

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1 proceeds from the sale among the unit owners was not fair and
2 reasonable. The apportionment of sale proceeds is presumed
3 fair and reasonable if it was determined pursuant to the
4 methods prescribed in subsection (12). The court shall adjudge
5 the rights and interests of the parties and order the plan of
6 termination to be implemented if it is fair and reasonable.
7 The court may modify the plan to apportion the proceeds in a
8 fair and reasonable manner as required by this section based
9 upon the proceedings and order the modified plan of
10 termination to be implemented. The court shall void a plan
11 that is determined not to be fair and reasonable. In such
12 action, the prevailing party may recover reasonable attorney's
13 fees and costs.

14 (18) DISTRIBUTION.--

15 (a) Following termination of the condominium, the
16 condominium property, association property, common surplus,
17 and other assets of the association shall be held by the
18 termination trustee, as trustee for unit owners and holders of
19 liens on the units, in their order of priority.

20 (b) Not less than 30 days prior to the first
21 distribution, the termination trustee shall deliver by
22 certified mail, return receipt requested, a notice of the
23 estimated distribution to all unit owners, lienors of the
24 condominium property, and lienors of each unit at their last
25 known addresses stating a good-faith estimate of the amount of
26 the distributions to each class and the procedures and
27 deadline for notifying the termination trustee of any
28 objections to the amount. The deadline must be at least 15
29 days after the date the notice was mailed. The notice may be
30 sent with or after the notice required by subsection (15). If
31 a unit owner or lienor files a timely objection with the

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1 termination trustee, the trustee does not have to distribute
2 the funds and property allocated to the respective unit owner
3 or lienor until the trustee has had a reasonable time to
4 determine the validity of the adverse claim. In the
5 alternative, the trustee may interplead the unit owner,
6 lienor, and any other person claiming an interest in the unit
7 and deposit the funds allocated to the unit in the court
8 registry, at which time the condominium property, association
9 property, common surplus, and other assets of the association
10 are free of all claims and liens of the parties to the suit.
11 In an interpleader action, the trustee and prevailing party
12 may recover reasonable attorney's fees and costs and court
13 costs.

14 (c) The proceeds of any sale of condominium property
15 or association property and any remaining condominium property
16 or association property, common surplus, and other assets
17 shall be distributed in the following priority:

18 1. To pay the reasonable termination trustee's fees
19 and costs, accounting fees and costs.

20 2. To lienholders of liens recorded prior to the
21 recording of the declaration.

22 3. To purchase money lienholders on units to the
23 extent necessary to satisfy their liens.

24 4. To lienholders of liens of the association which
25 have been consented to under s. 718.121(1).

26 5. To creditors of the association, as their interests
27 appear.

28 6. To unit owners, the proceeds of any sale of
29 condominium property subject to satisfaction of liens on each
30 unit in their order of priority, in shares specified in the
31 plan of termination, unless objected to by a unit owner or

1 lienor.

2 7. To unit owners, the remaining condominium property,
3 subject to satisfaction of liens on each unit in their order
4 of priority, in shares specified in the plan of termination,
5 unless objected to by a unit owner or a lienor as provided in
6 paragraph (b).

7 8. To unit owners, the proceeds of any sale of
8 association property, the remaining association property,
9 common surplus, and other assets of the association, subject
10 to satisfaction of liens on each unit in their order of
11 priority, in shares specified in the plan of termination,
12 unless objected to by a unit owner or a lienor as provided in
13 paragraph (b).

14 (d) After determining that all known debts and
15 liabilities of an association in the process of termination
16 have been paid or adequately provided for, the termination
17 trustee shall distribute the remaining assets pursuant to the
18 plan of termination. If the termination is by court proceeding
19 or subject to court supervision, the distribution may not be
20 made until any period for the presentation of claims ordered
21 by the court has elapsed.

22 (e) Assets held by an association upon a valid
23 condition requiring return, transfer, or conveyance, which
24 condition has occurred or will occur, shall be returned,
25 transferred, or conveyed in accordance with the condition. The
26 remaining association assets shall be distributed pursuant to
27 paragraph (c).

28 (f) Distribution may be made in money, property, or
29 securities and in installments or as a lump sum, if it can be
30 done fairly and ratably and in conformity with the plan of
31 termination. Distribution shall be made as soon as is

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1 reasonably consistent with the beneficial liquidation of the
2 assets.

3 (19) ASSOCIATION STATUS.--The termination of a
4 condominium does not change the corporate status of the
5 association that operated the condominium property. The
6 association continues to exist to conclude its affairs,
7 prosecute and defend actions by or against it, collect and
8 discharge obligations, dispose of and convey its property, and
9 collect and divide its assets, but not to act except as
10 necessary to conclude its affairs.

11 (20) CREATION OF ANOTHER CONDOMINIUM.--The termination
12 of a condominium does not bar the creation, by the termination
13 trustee, of another condominium affecting any portion of the
14 same property.

15 (21) EXCLUSION.--This section does not apply to the
16 termination of a condominium incident to a merger of that
17 condominium with one or more other condominiums under s.
18 718.110(7).

19 Section 2. This act shall take effect July 1, 2006.

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21

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

23 And the title is amended as follows:

24 Delete everything before the enacting clause

25

26 and insert:

27 A bill to be entitled
28 An act relating to condominiums; amending s.
29 718.117, F.S.; substantially revising
30 provisions relating to the termination of the
31 condominium form of ownership of a property;

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1 providing legislative findings; providing
2 grounds; providing powers and duties of the
3 board of administration of the association;
4 waiving certain notice requirements following
5 natural disasters; providing requirements for a
6 plan of termination; providing for the
7 allocation of proceeds from the sale of
8 condominium property; providing powers and
9 duties of a termination trustee; providing
10 notice requirements; providing a procedure for
11 contesting a plan of termination; providing
12 rules for the distribution of property and sale
13 proceeds; providing for the association's
14 status following termination; allowing the
15 creation of another condominium by the trustee;
16 specifying an exclusion; providing an effective
17 date.

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