

STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: CS/CS/SB 1556

INTRODUCER: Judiciary Committee, Regulated Industries Committee, and Senator Geller

SUBJECT: Condominiums

DATE: March 23, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Luczynski</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill substantially revises the provisions of the statute governing the termination of the condominium form of ownership of a property.

Legislative Findings

The Legislature finds that it is the public policy of the state to provide a method to preserve the value of the property interests and the rights of alienation thereof that owners have in the condominium property before and after termination.

Plan of Termination

The bill requires a plan of termination to be prepared and presented to the unit owners in the condominium for approval before termination can occur. The plan must provide for the valuation of the individual units, the common elements, and the other assets of the condominium based upon their respective fair market values. The plan must further set out the share that each unit owner will receive if the plan of termination is adopted, and if the property is to be sold, it must state the minimum sale terms.

Termination Approval

The bill provides three methods of approval of a plan of termination of the condominium form of ownership.

1. **Economic Waste or Impossibility:** The plan of termination may be approved by the lesser of the majority of the total voting interests or as otherwise provided in the declaration for approval when the costs to repair and restore the property to its prior condition are more than the fair market value of the property after the repairs or when it is impossible to reconstruct the physical configuration of the condominium because of the current land use laws.¹
2. **Court Approval (subsection heading: “Jurisdiction For Plan of Termination Review”):** The bill provides that termination approval may be pursued in circuit court by one or more unit owners if the plan of termination did not receive approval by at least 80 percent the community, and fewer than 20 percent of the total voting interests voted against the plan.
3. **Optional Termination:** Except as provided in methods one and two or unless the declaration provides for a lower percentage, the plan of termination may be approved by 80 percent or more of the total voting interests.

The plan of termination becomes effective upon recording of the plan with the Clerk of the Circuit Court. Within 90 days of the recording, any owner who does not agree that the apportionment of the proceeds from the sale among the unit owner was fair and reasonable may bring an action in circuit court contesting the plan of termination.

Reports and Replacement of Receiver

The bill provides for quarterly reports prepared by the association, receiver, or termination trustee following the approval of the termination plan. The report shall provide the status and progress of the termination, costs and fees incurred, the expected completion date of termination, and the current financial condition of the association, receivership or trusteeship. Unit owners may recall or remove members of the board of administration with or without cause, and lienors of an association in termination representing at least 50 percent of the outstanding amounts of liens may petition the court for the appointment of a termination trustee upon a showing of good cause.

Notices

A copy of the proposed plan of termination must be given to all of the unit owners (in the same manner as for notice of the annual meeting) at least 14 days prior to the meeting at which the plan will be voted upon. Once a plan of termination is approved, each unit owner and the holders of liens on property in condominiums must be mailed notice of the plan’s adoption and the right to contest the plan within 30 days of the recording with the Clerk. Within 90 days after the effective date of the plan, a certified copy of the recorded plan must be provided to the Division of Land Sales, Condominiums, and Mobile Homes. The bill also requires distribution notice. Not less than 30 days prior to the first distribution, notice of the estimated distribution shall be provided to all unit owners, lienors of the condominium property, and lienors of each unit.

¹ Under this subsection of the bill (Termination Because of Economic Waste or Impossibility), the bill also provides the method for approval of a plan of termination when 75 percent or more of the units are timeshare units. See Effect of Proposed Changes: Termination Approval section for additional details.

Termination Trustee and Title to the Property

Unless another person is appointed as trustee in the plan of termination, the condominium association shall serve as the “termination trustee.” Once the plan is effective, the termination trustee is vested with the title to the condominium property, and the unit owners become the beneficiaries of the proceeds realized from the plan of termination. The trustee is obligated to protect and maintain the property, to sell the assets of the condominium, and disburse the proceeds to the unit owners and the mortgagees as provided for in the plan.

Valuation of the Property

Under the bill, the value of each unit must be determined based upon the fair market value of the units immediately before the termination by one or more independent appraisers or based upon the values maintained by the county property appraiser. Unit owners are also entitled to the fair market value of their share of the common elements, association property, and the common surplus. Each unit’s total share of the proceeds must be set out in the plan of termination.

Mortgagee Approval

The consent of mortgagees is not required for the adoption of a plan of termination under the provisions of the bill unless the proceeds under the plan are less than the full satisfaction of the mortgage lien encumbering the unit.

This bill substantially amends section 718.117, Florida Statutes.

II. Present Situation:

Termination of a Condominium Property

Section 718.117(1), F.S., requires consent of the unit owners and all of the holders of all recorded liens to agree in order to terminate a condominium unless otherwise provided in the declaration. The board of directors must notify the Division of Land Sales, Condominiums, and Mobile Homes within the Department of Business and Professional Regulation (division), before taking any action to terminate or merge the condominium or the association.

In cases of natural disaster, s. 718.117(4), F.S., provides that if the identity of the directors or their right to hold office is in doubt, or if they are dead or unable to act, or refuse or fail to act, or their whereabouts cannot be ascertained, any interested person may petition the circuit court to determine the identity of the directors or appoint a receiver.

Section 718.118, F.S., provides that in the event of substantial damage to or destruction of all or a substantial part of the condominium property, and if the property is not repaired, reconstructed, or rebuilt within a reasonable period of time, any unit owner may petition a court for equitable relief, which may include a termination of the condominium and a partition.

Problems have arisen from the destruction of condominium property caused by hurricanes. As noted in *Florida Condominium Law and Practice* published by the Florida Bar:

In South Dade County, some condominiums were automatically terminated after Hurricane Andrew. Most were not terminated because the unit owners made an informed choice to do so; they were terminated because their associations were unable to communicate with unit owners in sufficient numbers to obtain enough votes to forestall the termination, within the short time period (usually 60 days) allowed before automatic termination. It was virtually impossible 60 days after Hurricane Andrew to find competent contractors for reconstruction. Additionally, many insurance claims were not yet filed, let alone settled, and some associations did not even know where to find their owners.²

Section 718.117(5), F.S., provides that after determining that all known debts and liabilities of an association in the process of winding up have been paid or adequately provided for, the board, or other person or persons appointed by the court, shall distribute all the remaining assets.

Section 718.117(9), F.S., provides that an association that has been terminated nevertheless continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it, collecting and discharging its obligations, disposing and conveying its property, and collecting and dividing its assets.

According to the Condominium and Planned Development Committee of the Real Property, Probate and Trust Law Section of the Florida Bar (RPPT), obtaining 100 percent agreement of all unit owners has proven to be an impossibility in many cases. A representative of the section stated that, as condominiums have aged, become obsolete, or suffered serious hurricane or other casualty damage, it has become apparent that the current statute is an impediment to terminating a condominium. Missing or intransigent owners or unresponsive mortgagees can veto termination through inaction.

The subcommittee of the Condominium and Planned Development Committee began working on revising the provisions of s. 718.117, F.S., in February 2003. Its recommendations were reviewed by the RPPT Section of the Condominium and Planned Development Committee and then the full Executive Council in November 2004. In November 2005 the initiative was approved by the section as a legislative position pursuant to the Rules Regulating the Florida Bar.³ The Advisory Council on Condominiums has also given their approval to the bill.⁴

III. Effect of Proposed Changes:

This bill substantially revises the provisions of the statute governing the termination of the condominium form of ownership of a property.

According to the Legislative Counsel for the Real Property, Probate and Trust Law Section of the Florida Bar (RPPT), the bill has two primary purposes:

² The Florida Bar, Florida Condominium Law and Practice §13.52 (3d ed. 2003).

³ R. Regulating Fla. Bar 2-7.5.

⁴ In 2004, the Advisory Council on Condominiums was created, in part, to receive public input regarding issues of concern with respect to condominiums and recommendations for changes in the condominium law. See s. 718.50151, F.S., which provides for the composition and functions of the council.

1. The first objective is to provide an equitable method of termination following a natural disaster or in other circumstances that fully values the interests of each unit, as well as the common elements. (Currently, the law does not contemplate valuation of the units, and places unit owners in a position of not being able to receive the market value of their investments.)
2. The second objective is to eliminate the ability of an owner or a small minority of owners from extracting an excessive portion of the termination proceeds at the expense of the other unit owners in the community. (Currently, the law allows one or more owners to withhold approval to obtain additional money and does not provide a remedy for other owners to challenge the conduct.)

Legislative Findings

This bill provides that it is the public policy of the state to provide a method to preserve the value of the property interests and the rights of alienation thereof that owners have in the condominium property before and after termination. It is also contrary to the public policy of this state to require the continued operation of a condominium when to do so would constitute economic waste or when the ability to do so is made impossible by law or regulation. The provisions of the section apply to all condominiums in Florida in existence on or after the effective date of the act.

Termination Approval

The bill provides three methods of approval of a plan of termination of the condominium form of ownership.

1. **Economic Waste or Impossibility:** The plan of termination may be approved by the lesser of the majority of the total voting interests or as otherwise provided in the declaration for approval when the costs to repair and restore the property to its prior condition are more than the fair market value of the property after the repairs or when it is impossible to reconstruct the physical configuration of the condominium because of the current land use laws.
2. **Court Approval (subsection heading: "Jurisdiction For Plan of Termination Review"):** The bill provides that if 80 percent of the total voting interests fail to approve the plan of termination but fewer than 20 percent of the total voting interests disapprove of the plan, the circuit court shall have jurisdiction to entertain a petition by the association or by one or more unit owners and approve the plan of termination, and the action may be a class action.

The bill provides that all unit owners and the association must be joined as parties to the action. The action may be brought against the non-consenting unit owners as a class action. The bill provides service of process requirements.

The bill also provides that after the consideration of whether the rights and interests of unit owners are equitably set forth in the plan of termination, the plan may be approved or rejected by the court. The court may modify the plan of termination to provide for an

- equitable distribution of the interest of unit owners prior to approving the plan of termination.
3. Optional Termination: Except as provided in methods one and two or unless the declaration provides for a lower percentage, the plan of termination may be approved by 80 percent or more of the total voting interests.

However, the bill provides that these three methods of approval of termination do not apply to condominiums in which 75 percent or more of the units are timeshare units. In this situation, a condominium may only be terminated pursuant to a plan of termination approved by 80 percent of the total voting interests of the association and the holders of 80 percent of the original principal amount of outstanding recorded mortgage liens of timeshare estates in the condominium, unless the declaration provides for a lower voting percentage.

Exemption

The bill provides that a plan of termination is not an amendment subject to s. 718.110(4), F.S., governing material alterations to the appurtenances to the unit. Appurtenances are identified in ss. 718.106 and 718.110(4), F.S. Under these provisions, rights such as ownership interest in the common elements and other appurtenant rights may not be changed except upon unanimous approval of the owners and lienholders, unless otherwise provided in the declaration as originally recorded.

Mortgage Lienholders

The bill provides that notwithstanding any provision to the contrary in the declaration or this chapter, approval of a plan of termination by the holder of a recorded mortgage lien affecting a condominium parcel in which fewer than 75 percent of the units are timeshare units is not required unless the plan of termination will result in less than the full satisfaction of the mortgage lien affecting the parcel.

Powers in Connection with Termination

The bill provides that the association shall continue in existence following approval of the plan of termination, with all powers it had before approval of the plan. Notwithstanding any contrary provision in the declaration or bylaws, after approval of the plan, the board has certain powers in connection with termination, which powers are necessary to continue with the business and operation of the association. These powers include the power to conduct the affairs of the association as necessary for termination or liquidation.

Natural Disasters

The bill provides that, if after a natural disaster, where the board of directors cannot be located, identified, or refuses to act, any interested person may petition the court to determine the identity of the directors or, if found to be in the best interests of the unit owners, to appoint a receiver to conclude the affairs of the association following notice to persons as directed by the court. Lienholders shall be given notice of the petition and shall have the right to propose persons for the consideration by the court as receiver.

The receiver shall have all the powers given to the board by the condominium documents, by the provisions of the bill concerning the powers in connection with termination, and by any other powers that are necessary to conclude the affairs of the association and are set forth in the order of appointment.

Reports and Replacement of Receiver

The bill provides that the association, receiver, or termination trustee prepares quarterly reports following the approval of the plan of termination. It shall provide the status and progress of the termination, costs and fees incurred, the date the termination is expected to be completed, and the current financial condition of the association, receivership, or trusteeship. Copies are provided by regular mail to the unit owners and lienors at the mailing address provided to the association by the unit owners and the lienors.

The bill provides that unit owners may recall or remove members of the board of administration with or without cause at any time as provided in s. 718.112(2)(j), F.S. The lienors of an association in termination representing at least 50 percent of the outstanding amount of liens may petition the court for the appointment of a termination trustee which shall be granted upon good cause shown.

Plan of Termination

The plan must be a written document executed in the same manner as a deed by unit owners having the requisite percentage of voting interests to approve the plan and by the termination trustee. A copy of the proposed plan must be given to all unit owners in the same manner as for notice of an annual meeting. Notice must be provided at least 14 days prior to the meeting during which the plan is to be voted upon or it must be provided prior to or simultaneously with the distribution of the solicitation seeking execution of the plan or written consent to or joinder in the plan. A unit owner may agree to the plan by executing the plan or by consent to or joinder in the plan in the manner of a deed. A plan of termination and the consents or joinders of unit owners and, if required, consents or joinders of mortgagees must be recorded in the public records of each county in which any portion of the condominium is located. The plan is effective only upon recordation or at a later date specified in the plan.

A plan must specify:

- The name, address, and powers of the termination trustee;
- A date after which the plan of termination is void if it has not been recorded;
- The interests of the respective unit owners in the association property, common surplus, and other assets of the association;
- The interests of the respective unit owners in any proceeds from any sale of the condominium property. The plan of termination may apportion those proceeds pursuant to any of the methods prescribed in the Allocation of Proceeds section as described below. If the condominium property or real property owned by the association is to be sold following termination, the plan must provide for the sale and may establish any minimum sale terms; and

- Any interests of the respective unit owners in any insurance proceeds or condemnation proceeds that are not used for repair or reconstruction. Unless the declaration expressly addresses the distribution of insurance proceeds or condemnation proceeds, the plan of termination may apportion those proceeds pursuant to any of the methods prescribed in the Allocation of Proceeds section as described below.

The plan may provide that each unit owner retains the exclusive right of possession to the portion of the real estate that formerly constituted the unit, in which case the plan must specify the conditions of possession.

In the case of a conditional termination, the plan must specify the conditions for termination. A conditional plan will not vest title in the termination trustee until the plan and a certificate executed by the association with the formalities of a deed have been recorded that confirm the conditions in the conditional plan have been satisfied or waived by the requisite percentage of the voting interests.

Allocation of Proceeds of Sale of Condominium Property

Unless the declaration expressly provides for the allocation of the proceeds of sale of condominium property, the plan must first apportion the proceeds between the aggregate value of all units and the value of the common elements, based on their respective fair-market values immediately before the termination. The market values are to be determined by one or more independent appraisers selected by the association or termination trustee.

The portion of proceeds allocated to the units will be further apportioned among the individual units. The apportionment is deemed fair and reasonable if it is determined by any of the following methods: 1) the respective values of the units based on the fair-market values of the units immediately before the termination; 2) the respective values of the units based on the most recent market value of the units before the termination; or 3) the respective interests of the units in the common elements specified in the declaration immediately before the termination.

The three methods of apportionment listed above do not prohibit any other method of apportioning the proceeds of sale allocated to the units agreed upon in the plan of termination. However, the portion of the proceeds from the common elements will be divided among the units based upon their respective interests in the common elements as provided in the declaration.

Liens that encumber a unit are transferred to the proceeds of the sale of the condominium property and the proceeds of sale or other distribution of association property, common surplus, or other association assets attributable to such unit in their same priority.

Termination Trustee

The association will serve as termination trustee unless another person is appointed in the plan of termination. In certain circumstances, any unit owner may petition the court to appoint a trustee. Upon recording or at a later date specified in the plan, title to the condominium property vests in the trustee. Generally, the termination trustee will be vested with the powers given to the board.

If the association does not serve as the termination trustee, the trustee's powers are usually coextensive with those of the association. If the association is dissolved, the trustee will also have the powers necessary to conclude the affairs of the association.

Title Vested in Termination Trustee

The bill provides that, if the termination plan is pursuant to a plan approved under the provisions for (1a) "Termination Because of Economic Waste or Impossibility," (1b) timeshare units, (2) "Optional Termination," or (3) court approval (subsection heading: "Jurisdiction For Plan of Termination Review") then the unit owners' rights and title vest in the termination trustee when the plan is recorded or at a later date specified in the plan. The unit owners thereafter become the beneficiaries of the proceeds realized from the plan of termination. The termination trustee may deal with the condominium property or any interest therein if the plan confers on the trustee the authority to protect, conserve, manage, sell, or dispose of the condominium property. The trustee may contract for the sale of real property.

Notice

Within 30 days after a plan has been recorded, the termination trustee must provide notice to all unit owners, lienors of the condominium property, and lienors of all units. The notice must include certain information including that the unit owner or lienor has the right to contest the fairness of the plan.

Within 90 days after the effective date of the plan, the trustee must provide to the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation (division) a certified copy of the recorded plan as well as certain recording information.

Right to Contest

A unit owner or lienor may contest a plan by initiating a summary procedure, pursuant to s. 51.011, F.S., within 90 days after the date the plan is recorded.

In an action contesting a plan, the person contesting the plan has the burden of pleading and proving that the apportionment of the proceeds from the sale among the unit owners was not fair and reasonable. The apportionment of sale proceeds is presumed fair and reasonable if it was determined pursuant to the methods prescribed in the bill.

The court must adjudge the rights and interests of the parties and order the plan to be implemented if it is fair and reasonable. If the court determines that the plan of termination is not fair and reasonable, the court may (i) void the plan or (ii) modify and approve the plan based on findings during the court proceedings. In such an action, the prevailing party may recover reasonable attorney's fees and costs.

Distribution

Following termination, the condominium property, association property, common surplus, and other assets of the association are held by the termination trustee.

Not less than 30 days prior to the first distribution, the termination trustee must deliver a notice of the estimated distribution to all unit owners, lienors of the condominium property, and lienors of each unit stating a good-faith estimate of the amount of the distributions to each class and the procedures and deadline for notifying the termination trustee of any objections to the amount.

If a unit owner or lienor files a timely objection with the termination trustee, the trustee does not have to distribute the funds and property allocated to the respective unit owner or lienor until the trustee has had a reasonable time to determine the validity of the adverse claim. In the alternative, the bill provides for an interpleader action.

The bill provides the order of priority for distributing the proceeds of any sale of condominium property or association property and any remaining condominium property or association property, common surplus, and other assets.

After determining that all known debts and liabilities of an association in the process of termination have been paid or adequately provided for, the termination trustee will distribute the remaining assets pursuant to the plan.

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

Association Status and Creation of Another Condominium

The termination of a condominium does not change the corporate status of the association that operated the condominium property, nor does it bar the creation of another condominium.

Exclusion

The provisions of this bill do not apply to the termination of a condominium incident to a merger of that condominium with one or more other condominiums.

Effective date

The act would take effect July 1, 2006.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Condominium declarations are contracts. This bill has the effect of re-writing previously recorded declarations that have termination provisions or that implement the protections provided by s. 718.110(4), F.S., and therefore might be an unconstitutional impairment of obligation of contract, under s. 10, Art. I, Fla. Const., which provides in relevant part, “No... law impairing the obligation of contracts shall be passed.” This provision empowers the courts to strike laws that retroactively burden or alter contractual relations. Article I, s. 10 of the United States Constitution provides in relevant part that “No state shall . . . pass any . . . law impairing the obligation of contracts.”

In *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 776 (Fla. 1979), the court stated that some degree of flexibility has developed over the last century in interpreting the contract clause in order to ameliorate the harshness of the original rigid application used by the United States Supreme Court. The court set forth several factors in balancing whether the state law has in fact operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear. The court stated that if there is minimal alteration of contractual obligations the inquiry can end at its first stage. Severe impairment can push the inquiry to a careful examination of the nature and purpose of the state legislation. The factors to be considered are:

- Whether the law was enacted to deal with a broad, generalized economic or social problem;
- Whether the law operates in an area that was already subject to state regulation at the time the contract was entered into; and
- Whether the effect on the contractual relationships is temporary or whether it is severe, permanent, immediate, and retroactive.⁵

The court in *United States Fidelity & Guaranty Co. v. Department of Insurance*, 453 So. 2d 1355 (Fla. 1984), also adopted the method used in *Pomponio*. The court stated that the method required a balancing of a person’s interest not to have his contracts impaired with the state’s interest in exercising its legitimate police power.

Adopting the method of analysis used by the U.S. Supreme Court, the court outlined the main factors to be considered in applying this balancing test.

⁵ *Pomponio*, 378 So. 2d at 779.

- The threshold inquiry is “whether the state law has, in fact, operated as a substantial impairment of a contractual relationship.”⁶ The severity of the impairment increases the level of scrutiny.
- In determining the extent of the impairment, the court considered whether the industry the complaining party entered has been regulated in the past. This is a consideration because if the party was already subject to regulation at the time the contract was entered, then it is understood that it would be subject to further legislation upon the same topic.⁷
- If the state regulation constitutes a substantial impairment, the state needs a significant and legitimate public purpose behind the regulation.⁸
- Once the legitimate public purpose is identified, the next inquiry is whether the adjustment of the rights and responsibilities of the contracting parties are appropriate to the public purpose justifying the legislation.⁹

The bill addresses termination of a condominium and is therefore permanent and retroactive in nature since it could change the plan of termination originally entered into in the declaration. Thus, as to the threshold inquiry, at least on an as-applied-basis, the bill seems to operate as a substantial impairment of a contractual relationship. However, the bill does so by providing an equitable method of termination following a natural disaster or in other circumstances that fully values the interests of each unit, as well as the common elements. The bill also eliminates the ability of an owner or a small minority of owners from extracting an excessive portion of the termination proceeds at the expense of the other unit owners in the community.

Condominiums were created by statute and therefore the law operates in an area that is already subject to extensive regulation.

The legislative purpose of the statute seems to indicate that the law was enacted to deal with broad economic problems by stating that the Legislature finds that it is contrary to the public policy of the state to require the continued operation of a condominium when to do so would constitute economic waste or when the ability to do so is made impossible by law or regulation.

The last inquiry, whether the adjustment of the rights and responsibilities of the contracting parties are appropriate to the public purpose justifying the legislation, seems to be true for the “economic waste or impossibility” method of approving a plan of termination. Where there are situations involving economic waste or impossibility, the adjustments of the rights of condominium owners concerning approval of termination of the condominium form of ownership seems reasonable and of a character appropriate to the Legislature’s findings for this legislation. The other methods for approving a plan of termination may be considered unreasonable because in some circumstances they could

⁶ *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360 (quoting *Allied Structural Steel Co., v. Spannaus*, 438 U.S. 234, 244 (1978)).

⁷ *Id.* (citing *Allied Structural Steel Co.*, 438 U.S. at 242, n. 13).

⁸ *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360 (citing *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 22 (1977)).

⁹ *Id.*

be used for any reason to override the provisions of the declaration. Furthermore, when one of these other methods is used to override the provisions of the declaration, such use appears not to be of a character appropriate to the Legislature's finding for this legislation. Nevertheless, the adjustment of the rights and responsibilities of the contracting parties may be reasonable and appropriate because these other methods address deficiencies in the current law. As previously discussed, the current law, s. 718.117(7), F.S., places unit holders in the position of not being able to receive the market value of their investments and allowing one or more owners to withhold approval for the sale of the property¹⁰ (after termination of the condominium) to obtain a disproportionate share of the proceeds.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will affect the condominium owners by changing the options to terminate the condominium they had originally contracted for in the declarations of condominium.

C. Government Sector Impact:

The bill appears to leave the termination procedures within the jurisdiction of the Division of Land Sales, Condominiums, and Mobile Homes (division) in compliance and arbitration cases. If the division receives complaints regarding the new termination procedures, it may be required to expend investigative resources for these purposes; however, the Department of Business and Professional Regulation has indicated that any fiscal impact should be accommodated within current resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁰ After termination of the condominium form of ownership, the current law, s. 718.117(7), F.S., provides that the property is owned by the unit owners in the same shares as each owner previously owned in the common elements, which is typically based on the square footage of the unit, not the market value. Because all of the property is owned as tenants in common after the termination of the condominium form of ownership, one or more owners could withhold approval for the sale of the property to extract a disproportionate share of the proceeds.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
