

By Senator Geller

31-274A-06

See HB 543

1 A bill to be entitled
2 An act relating to condominiums; amending s.
3 718.117, F.S.; substantially revising
4 provisions relating to the termination of the
5 condominium form of ownership of a property;
6 providing legislative findings; providing
7 grounds; providing powers and duties of the
8 board of administration of the association;
9 waiving certain notice requirements following
10 natural disasters; providing requirements for a
11 plan of termination; providing for the
12 allocation of proceeds from the sale of
13 condominium property; providing powers and
14 duties of a termination trustee; providing
15 notice requirements; providing a procedure for
16 contesting a plan of termination; providing
17 rules for the distribution of property and sale
18 proceeds; providing for the association's
19 status following termination; allowing the
20 creation of another condominium by the trustee;
21 specifying an exclusion; providing an effective
22 date.

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24 Be It Enacted by the Legislature of the State of Florida:

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26 Section 1. Section 718.117, Florida Statutes, is
27 amended to read:

28 (Substantial rewording of section. See
29 s. 718.117, F.S., for present text.)
30 718.117 Termination of condominium.--
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1 (1) LEGISLATIVE FINDINGS.--The Legislature finds that
2 it is contrary to the public policy of this state to require
3 the 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.

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
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1 equitable distribution of the interests of unit owners prior
2 to approving the plan of termination.

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

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

7 (6) MORTGAGE LIENHOLDERS.--Notwithstanding any
8 provision to the contrary in the declaration or this chapter,
9 approval of a plan of termination by the holder of a recorded
10 mortgage lien affecting a condominium parcel in which fewer
11 than 75 percent of the units are timeshare units is not
12 required unless the plan of termination will result in less
13 than the full satisfaction of the mortgage lien affecting the
14 parcel.

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

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

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

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

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

28 (e) To sue in the name of the association for all sums
29 due or owed to the association or to recover any of its
30 property.

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

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

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

12 (i) To contract and do anything in the name of the
13 association which is proper or convenient to terminate the
14 affairs of the association.

15 (8) NATURAL DISASTERS.--

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

25 (b) The receiver shall have all powers given to the
26 board pursuant to the declaration, bylaws, and subsection (7),
27 and any other powers that are necessary to conclude the
28 affairs of the association and are set forth in the order of
29 appointment. The appointment of the receiver is subject to the
30 bonding requirements of such order. The order shall also
31 provide for the payment of a reasonable fee to the receiver

1 from the sources identified in the order, which may include
2 rents, profits, incomes, maintenance fees, or special
3 assessments collected from the condominium property.

4 (9) PLAN OF TERMINATION.--The plan of termination must
5 be a written document executed in the same manner as a deed by
6 unit owners having the requisite percentage of voting
7 interests to approve the plan and by the termination trustee.

8 A copy of the proposed plan of termination shall be given to
9 all unit owners, in the same manner as for notice of an annual
10 meeting, at least 14 days prior to the meeting at which the
11 plan of termination is to be voted upon or prior to or
12 simultaneously with the distribution of the solicitation
13 seeking execution of the plan of termination or written
14 consent to or joinder in the plan. A unit owner may document
15 assent to the plan of termination by executing the plan or by
16 consent to or joinder in the plan in the manner of a deed. A
17 plan of termination and the consents or joinders of unit
18 owners and, if required, consents or joinders of mortgagees
19 must be recorded in the public records of each county in which
20 any portion of the condominium is located. The plan of
21 termination is effective only upon recordation or at a later
22 date specified in the plan.

23 (10) 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 interests 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

1 interests of the unit owners in the common elements
2 immediately before the termination, unless otherwise provided
3 in the declaration.

4 (d) The interests of the respective unit owners in any
5 proceeds from any sale of the condominium property. The plan
6 of termination may apportion those proceeds pursuant to any of
7 the methods prescribed in subsection (12). If, pursuant to the
8 plan of termination, condominium property or real property
9 owned by the association is to be sold following termination,
10 the plan must provide for the sale and may establish any
11 minimum sale terms.

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

19 (11) PLAN OF TERMINATION; OPTIONAL PROVISIONS;
20 CONDITIONAL TERMINATION.--

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

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

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1 requisite percentage of the voting interests, have been
2 recorded.

3 (12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM
4 PROPERTY.--

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

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

17 1. The respective values of the units based on the
18 fair-market values of the units immediately before the
19 termination, as determined by one or more independent
20 appraisers selected by the association or termination trustee;

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

24 3. The respective interests of the units in the common
25 elements specified in the declaration immediately before the
26 termination.

27 (c) The methods of apportionment in paragraph (b) do
28 not prohibit any other method of apportioning the proceeds of
29 sale allocated to the units agreed upon in the plan of
30 termination. The portion of the proceeds allocated to the
31 common elements shall be apportioned among the units based

1 upon their respective interests in the common elements as
2 provided in the declaration.

3 (d) Liens that encumber a unit shall be transferred to
4 the proceeds of sale of the condominium property and the
5 proceeds of sale or other distribution of association
6 property, common surplus, or other association assets
7 attributable to such unit in their same priority. The proceeds
8 of any sale of condominium property pursuant to a plan of
9 termination may not be deemed to be common surplus or
10 association property.

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

28 (14) TITLE VESTED IN TERMINATION TRUSTEE.--If
29 termination is pursuant to a plan of termination under
30 subsection (2) or subsection (3), the unit owners' rights and
31 title as tenants in common in undivided interests in the

1 condominium property vest in the termination trustee when the
2 plan is recorded or at a later date specified in the plan. The
3 unit owners thereafter become the beneficiaries of the
4 proceeds realized from the plan of termination. The
5 termination trustee may deal with the condominium property or
6 any interest therein if the plan confers on the trustee the
7 authority to protect, conserve, manage, sell, or dispose of
8 the condominium property. The trustee, on behalf of the unit
9 owners, may contract for the sale of real property, but the
10 contract is not binding on the unit owners until the plan is
11 approved pursuant to subsection (2) or subsection (3).

12 (15) NOTICE.--

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

23 (b) The trustee, within 90 days after the effective
24 date of the plan, shall provide to the division a certified
25 copy of the recorded plan, the date the plan was recorded, and
26 the county, book, and page number of the public records in
27 which the plan was recorded.

28 (16) RIGHT TO CONTEST.--A unit owner or lienor may
29 contest a plan of termination by initiating a summary
30 procedure pursuant to s. 51.011 within 90 days after the date
31 the plan is recorded. A unit owner or lienor who does not

1 contest the plan within such 90-day period is barred from
2 asserting or prosecuting a claim against the association, the
3 termination trustee, any unit owner, or any successor in
4 interest to the condominium property. In an action contesting
5 a plan of termination, the person contesting the plan has the
6 burden of pleading and proving that the apportionment of the
7 proceeds from the sale among the unit owners was not fair and
8 reasonable. The apportionment of sale proceeds is presumed
9 fair and reasonable if it was determined pursuant to the
10 methods prescribed in subsection (12). The court shall adjudge
11 the rights and interests of the parties and order the plan of
12 termination to be implemented if it is fair and reasonable.
13 The court shall void a plan that is determined not to be fair
14 and reasonable. In such action, the prevailing party may
15 recover reasonable attorney's fees and costs.

16 (17) DISTRIBUTION.--

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

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

1 sent with or after the notice required by subsection (15). If
2 a unit owner or lienor files a timely objection with the
3 termination trustee, the trustee does not have to distribute
4 the funds and property allocated to the respective unit owner
5 or lienor until the trustee has had a reasonable time to
6 determine the validity of the adverse claim. In the
7 alternative, the trustee may interplead the unit owner,
8 lienor, and any other person claiming an interest in the unit
9 and deposit the funds allocated to the unit in the court
10 registry, at which time the condominium property, association
11 property, common surplus, and other assets of the association
12 are free of all claims and liens of the parties to the suit.
13 In an interpleader action, the trustee and prevailing party
14 may recover reasonable attorney's fees and costs and court
15 costs.

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

20 1. To pay the costs of implementing the plan of
21 termination, including demolition, removal, and disposal fees,
22 termination trustee's fees and costs, accounting fees and
23 costs, and attorney's fees and costs.

24 2. To lienholders of liens recorded prior to the
25 recording of the declaration.

26 3. To lienholders of liens of the association which
27 have been consented to under s. 718.121(1).

28 4. To creditors of the association, as their interests
29 appear.

30 5. To unit owners, the proceeds of any sale of
31 condominium property subject to satisfaction of liens on each

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

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

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

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

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

30 (f) Distribution may be made in money, property, or
31 securities and in installments or as a lump sum, if it can be

1 done fairly and ratably and in conformity with the plan of
2 termination. Distribution shall be made as soon as is
3 reasonably consistent with the beneficial liquidation of the
4 assets.

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

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

17 (20) EXCLUSION.--This section does not apply to the
18 termination of a condominium incident to a merger of that
19 condominium with one or more other condominiums under s.
20 718.110(7).

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