

By the Committees on Judiciary; Regulated Industries; and
Senator Geller

590-1976-06

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 for termination; providing powers and
8 duties of the board of administration of the
9 association; waiving certain notice
10 requirements following natural disasters;
11 providing requirements for a plan of
12 termination; providing for the allocation of
13 proceeds from the sale of condominium property;
14 providing powers and duties of a termination
15 trustee; providing notice requirements;
16 providing a procedure for contesting a plan of
17 termination; providing rules for the
18 distribution of property and sale proceeds;
19 providing for the association's status
20 following termination; allowing the creation of
21 another condominium by the trustee; specifying
22 an exclusion; providing an effective date.

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

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.--

1 (1) LEGISLATIVE FINDINGS.--The Legislature finds that
2 condominiums are created as authorized by statute. In
3 circumstances that may create economic waste, areas of
4 disrepair, or obsolescence of the condominium property for its
5 intended use and thereby lower property tax values, the
6 Legislature further finds that it is the public policy of this
7 state to provide by statute a method to preserve the value of
8 the property interests and the rights of alienation thereof
9 that owners have in the condominium property before and after
10 termination. The Legislature further finds that it is contrary
11 to the public policy of this state to require the continued
12 operation of a condominium when to do so would constitute
13 economic waste or when the ability to do so is made impossible
14 by law or regulation. The provisions of this section shall
15 apply to all condominiums in this state in existence on or
16 after the effective date of this act.

17 (2) TERMINATION BECAUSE OF ECONOMIC WASTE OR
18 IMPOSSIBILITY.--

19 (a) Notwithstanding any provision to the contrary in
20 the declaration, the condominium form of ownership of a
21 property may be terminated by a plan of termination approved
22 by the lesser of a majority of the total voting interests or
23 as otherwise provided in the declaration for approval of
24 termination in the following circumstances:

25 1. When the total estimated cost of repairs necessary
26 to restore the improvements to their former condition or bring
27 them into compliance with applicable laws or regulations
28 exceeds the combined fair market value of all units in the
29 condominium after completion of the repairs; or
30
31

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

4 (b) Notwithstanding paragraph (a), a condominium in
5 which 75 percent or more of the units are timeshare units may
6 be terminated only pursuant to a plan of termination approved
7 by 80 percent of the total voting interests of the association
8 and the holders of 80 percent of the original principal amount
9 of outstanding recorded mortgage liens of timeshare estates in
10 the condominium, unless the declaration provides for a lower
11 voting percentage.

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

20 (4) JURISDICTION FOR PLAN-OF-TERMINATION REVIEW.--

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

28 (b) All unit owners and the association must be
29 parties to the action. The action may be brought against the
30 nonconsenting unit owners as a class action. Service of
31 process on unit owners may be by publication, but the

1 plaintiff must furnish each unit owner not personally served
2 with process a copy of the petition and plan of termination,
3 and after entry of judgment, a copy of the final decree of the
4 court, by mail at the owner's last known address.

5 (c) After the consideration of whether the rights and
6 interests of unit owners are equitably set forth in the plan
7 of termination as required by this section, the plan of
8 termination may be approved or rejected by the court.
9 Consistent with the provisions of this section, the court may
10 also modify the plan of termination to provide for an
11 equitable distribution of the interests of unit owners prior
12 to approving the plan of termination.

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

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

17 (6) MORTGAGE LIENHOLDERS.--Notwithstanding any
18 provision to the contrary in the declaration or this chapter,
19 approval of a plan of termination by the holder of a recorded
20 mortgage lien affecting a condominium parcel in which fewer
21 than 75 percent of the units are timeshare units is not
22 required unless the plan of termination will result in less
23 than the full satisfaction of the mortgage lien affecting the
24 condominium parcel. If such approval is required and not given
25 and if the holder of a recorded mortgage lien objects to the
26 plan of termination, such lienor may contest the plan as
27 provided in subsection (17). At the time of sale, the lien
28 shall be transferred to the proportionate share of the
29 proceeds assigned to the condominium parcel in the plan of
30 termination or as subsequently modified by the court.

31

1 (7) POWERS IN CONNECTION WITH TERMINATION.--The
2 association shall continue in existence following approval of
3 the plan of termination with all powers it had before approval
4 of the plan. Notwithstanding any contrary provision in the
5 declaration or bylaws, after approval of the plan the board
6 has the power and duty:

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

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

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

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

14 (e) To sue in the name of the association for all sums
15 due or owed to the association or to recover any of its
16 property.

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

20 (g) To sell at public or private sale or to exchange,
21 convey, or otherwise dispose of assets of the association for
22 an amount deemed to be in the best interests of the
23 association, and to execute bills of sale and deeds of
24 conveyance in the name of the association.

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

28 (i) To contract and do anything in the name of the
29 association which is proper or convenient to terminate the
30 affairs of the association.

31 (8) NATURAL DISASTERS.--

1 (a) If, after a natural disaster, the identity of the
2 directors or their right to hold office is in doubt, if they
3 are deceased or unable to act, if they fail or refuse to act,
4 or if they cannot be located, any interested person may
5 petition the circuit court to determine the identity of the
6 directors or, if found to be in the best interests of the unit
7 owners, to appoint a receiver to conclude the affairs of the
8 association after a hearing following notice to such persons
9 as the court directs. Lienholders shall be given notice of the
10 petition and have the right to propose persons for the
11 consideration by the court as receiver.

12 (b) The receiver shall have all powers given to the
13 board pursuant to the declaration, bylaws, and subsection (7),
14 and any other powers that are necessary to conclude the
15 affairs of the association and are set forth in the order of
16 appointment. The appointment of the receiver is subject to the
17 bonding requirements of such order. The order shall also
18 provide for the payment of a reasonable fee to the receiver
19 from the sources identified in the order, which may include
20 rents, profits, incomes, maintenance fees, or special
21 assessments collected from the condominium property.

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

23 (a) The association, receiver, or termination trustee
24 shall prepare reports each quarter following the approval of
25 the plan of termination setting forth the status and progress
26 of the termination, costs and fees incurred, the date the
27 termination is expected to be completed, and the current
28 financial condition of the association, receivership, or
29 trusteeship and provide copies of the report by regular mail
30 to the unit owners and lienors at the mailing address provided
31 to the association by the unit owners and the lienors.

1 (b) The unit owners of the association in termination
2 may recall or remove members of the board of administration
3 with or without cause at any time as provided in s.
4 718.112(2)(j).

5 (c) The lienors of an association in termination
6 representing at least 50 percent of the outstanding amount of
7 liens may petition the court for the appointment of a
8 termination trustee which shall be granted upon good cause
9 shown.

10 (10) PLAN OF TERMINATION.--The plan of termination
11 must be a written document executed in the same manner as a
12 deed by unit owners having the requisite percentage of voting
13 interests to approve the plan and by the termination trustee.
14 A copy of the proposed plan of termination shall be given to
15 all unit owners, in the same manner as for notice of an annual
16 meeting, at least 14 days prior to the meeting at which the
17 plan of termination is to be voted upon or prior to or
18 simultaneously with the distribution of the solicitation
19 seeking execution of the plan of termination or written
20 consent to or joinder in the plan. A unit owner may document
21 assent to the plan of termination by executing the plan or by
22 consent to or joinder in the plan in the manner of a deed. A
23 plan of termination and the consents or joinders of unit
24 owners and, if required, consents or joinders of mortgagees
25 must be recorded in the public records of each county in which
26 any portion of the condominium is located. The plan of
27 termination is effective only upon recordation or at a later
28 date specified in the plan.

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

31

1 (a) The name, address, and powers of the termination
2 trustee.

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

5 (c) The interests of the respective unit owners in the
6 association property, common surplus, and other assets of the
7 association, which shall be the same as the respective
8 interests of the unit owners in the common elements
9 immediately before the termination, unless otherwise provided
10 in the declaration.

11 (d) The interests of the respective unit owners in any
12 proceeds from any sale of the condominium property. The plan
13 of termination may apportion those proceeds pursuant to any of
14 the methods prescribed in subsection (13). If, pursuant to the
15 plan of termination, condominium property or real property
16 owned by the association is to be sold following termination,
17 the plan must provide for the sale and may establish any
18 minimum sale terms.

19 (e) Any interests of the respective unit owners in any
20 insurance proceeds or condemnation proceeds that are not used
21 for repair or reconstruction at the time of termination.
22 Unless the declaration expressly addresses the distribution of
23 insurance proceeds or condemnation proceeds, the plan of
24 termination may apportion those proceeds pursuant to any of
25 the methods prescribed in subsection (13).

26 (12) PLAN OF TERMINATION; OPTIONAL PROVISIONS;
27 CONDITIONAL TERMINATION.--

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

1 (b) In the case of a conditional termination, the plan
2 must specify the conditions for termination. A conditional
3 plan does not vest title in the termination trustee until the
4 plan and a certificate executed by the association with the
5 formalities of a deed, confirming that the conditions in the
6 conditional plan have been satisfied or waived by the
7 requisite percentage of the voting interests, have been
8 recorded.

9 (13) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM
10 PROPERTY.--

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

19 (b) The portion of proceeds allocated to the units
20 shall be further apportioned among the individual units. The
21 apportionment is deemed fair and reasonable if it is
22 determined by the unit owners approving the plan of
23 termination by any of the following methods:

24 1. The respective values of the units based on the
25 fair-market values of the units immediately before the
26 termination, as determined by one or more independent
27 appraisers selected by the association or termination trustee;

28 2. The respective values of the units based on the
29 most recent market value of the units before the termination,
30 as provided in the county property appraiser's records; or
31

1 3. The respective interests of the units in the common
2 elements specified in the declaration immediately before the
3 termination.

4 (c) The methods of apportionment in paragraph (b) do
5 not prohibit any other method of apportioning the proceeds of
6 sale allocated to the units agreed upon in the plan of
7 termination. The portion of the proceeds allocated to the
8 common elements shall be apportioned among the units based
9 upon their respective interests in the common elements as
10 provided in the declaration.

11 (d) Liens that encumber a unit shall be transferred to
12 the proceeds of sale of the condominium property and the
13 proceeds of sale or other distribution of association
14 property, common surplus, or other association assets
15 attributable to such unit in their same priority. The proceeds
16 of any sale of condominium property pursuant to a plan of
17 termination may not be deemed to be common surplus or
18 association property.

19 (14) TERMINATION TRUSTEE.--The association shall serve
20 as termination trustee unless another person is appointed in
21 the plan of termination. If the association is unable,
22 unwilling, or fails to act as trustee, any unit owner may
23 petition the court to appoint a trustee. Upon the date of the
24 recording or at a later date specified in the plan, title to
25 the condominium property vests in the trustee. Unless
26 prohibited by the plan, the termination trustee shall be
27 vested with the powers given to the board pursuant to the
28 declaration, bylaws, and subsection (7). If the association is
29 not the termination trustee, the trustee's powers shall be
30 coextensive with those of the association to the extent not
31 prohibited in the plan of termination or the order of

1 appointment. If the association is not the termination
2 trustee, the association shall transfer any association
3 property to the trustee. If the association is dissolved, the
4 trustee shall also have such other powers necessary to
5 conclude the affairs of the association.

6 (15) TITLE VESTED IN TERMINATION TRUSTEE.--If
7 termination is pursuant to a plan of termination under
8 subsection (2), subsection (3), or subsection (4), the unit
9 owners' rights and title as tenants in common in undivided
10 interests in the condominium property vest in the termination
11 trustee when the plan is recorded or at a later date specified
12 in the plan. The unit owners thereafter become the
13 beneficiaries of the proceeds realized from the plan of
14 termination. The termination trustee may deal with the
15 condominium property or any interest therein if the plan
16 confers on the trustee the authority to protect, conserve,
17 manage, sell, or dispose of the condominium property. The
18 trustee, on behalf of the unit owners, may contract for the
19 sale of real property, but the contract is not binding on the
20 unit owners until the plan is approved pursuant to subsection
21 (2), subsection (3), or subsection (4).

22 (16) NOTICE.--

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

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

3 (b) The trustee, within 90 days after the effective
4 date of the plan, shall provide to the division a certified
5 copy of the recorded plan, the date the plan was recorded, and
6 the county, book, and page number of the public records in
7 which the plan was recorded.

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

31 (18) DISTRIBUTION.--

1 (a) Following termination of the condominium, the
2 condominium property, association property, common surplus,
3 and other assets of the association shall be held by the
4 termination trustee, as trustee for unit owners and holders of
5 liens on the units, in their order of priority.

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

30 (c) The proceeds of any sale of condominium property
31 or association property and any remaining condominium property

1 or association property, common surplus, and other assets
2 shall be distributed in the following priority:
3 1. To pay the reasonable termination trustee's fees
4 and costs and accounting fees and costs.
5 2. To lienholders of liens recorded prior to the
6 recording of the declaration.
7 3. To purchase money lienholders on units to the
8 extent necessary to satisfy their liens.
9 4. To lienholders of liens of the association which
10 have been consented to under s. 718.121(1).
11 5. To creditors of the association, as their interests
12 appear.
13 6. To unit owners, the proceeds of any sale of
14 condominium property subject to satisfaction of liens on each
15 unit in their order of priority, in shares specified in the
16 plan of termination, unless objected to by a unit owner or
17 lienor.
18 7. To unit owners, the remaining condominium property,
19 subject to satisfaction of liens on each unit in their order
20 of priority, in shares specified in the plan of termination,
21 unless objected to by a unit owner or a lienor as provided in
22 paragraph (b).
23 8. To unit owners, the proceeds of any sale of
24 association property, the remaining association property,
25 common surplus, and other assets of the association, subject
26 to satisfaction of liens on each unit in their order of
27 priority, in shares specified in the plan of termination,
28 unless objected to by a unit owner or a lienor as provided in
29 paragraph (b).
30 (d) After determining that all known debts and
31 liabilities of an association in the process of termination

1 have been paid or adequately provided for, the termination
2 trustee shall distribute the remaining assets pursuant to the
3 plan of termination. If the termination is by court proceeding
4 or subject to court supervision, the distribution may not be
5 made until any period for the presentation of claims ordered
6 by the court has elapsed.

7 (e) Assets held by an association upon a valid
8 condition requiring return, transfer, or conveyance, which
9 condition has occurred or will occur, shall be returned,
10 transferred, or conveyed in accordance with the condition. The
11 remaining association assets shall be distributed pursuant to
12 paragraph (c).

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

19 (19) ASSOCIATION STATUS.--The termination of a
20 condominium does not change the corporate status of the
21 association that operated the condominium property. The
22 association continues to exist to conclude its affairs,
23 prosecute and defend actions by or against it, collect and
24 discharge obligations, dispose of and convey its property, and
25 collect and divide its assets, but not to act except as
26 necessary to conclude its affairs.

27 (20) CREATION OF ANOTHER CONDOMINIUM.--The termination
28 of a condominium does not bar the creation by the termination
29 trustee of another condominium affecting any portion of the
30 same property.

31

1 (21) EXCLUSION.--This section does not apply to the
2 termination of a condominium incident to a merger of that
3 condominium with one or more other condominiums under s.
4 718.110(7).

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

6
7 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
8 COMMITTEE SUBSTITUTE FOR
9 CS for Senate Bill 1556

10 Clarifies that if the plan of termination is contested and the
11 court finds that it is not fair and reasonable, the court has
12 the discretion to (i) void the plan or (ii) modify and approve
13 the plan based on findings during the court proceedings.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31