

A bill to be entitled

An act relating to condominiums; amending s. 718.117, F.S.; substantially revising provisions relating to the termination of the condominium form of ownership of a property; providing legislative findings; providing grounds; providing powers and duties of the board of administration of the association; waiving certain notice requirements following natural disasters; providing requirements for a plan of termination; providing for the allocation of proceeds from the sale of condominium property; providing powers and duties of a termination trustee; providing notice requirements; providing a procedure for contesting a plan of termination; providing rules for the distribution of property and sale proceeds; providing for the association's status following termination; allowing the creation of another condominium by the trustee; specifying an exclusion; providing an effective date.

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

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 it is contrary to the public policy of this state to require the

29 continued operation of a condominium when to do so would
 30 constitute economic waste or when the ability to do so is made
 31 impossible by law or regulation. The provisions of this section
 32 shall apply to all condominiums in this state in existence on or
 33 after the effective date of this act.

34 (2) TERMINATION BECAUSE OF ECONOMIC WASTE OR
 35 IMPOSSIBILITY.--

36 (a) Notwithstanding any provision to the contrary in the
 37 declaration, the condominium form of ownership of a property may
 38 be terminated by a plan of termination approved by the lesser of
 39 a majority of the total voting interests or as otherwise
 40 provided in the declaration for approval of termination, in the
 41 following circumstances:

42 1. When the total estimated cost of repairs necessary to
 43 restore the improvements to their former condition or bring them
 44 into compliance with applicable laws or regulations exceeds the
 45 combined fair market value of all units in the condominium after
 46 completion of the repairs; or

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

50 (b) Notwithstanding paragraph (a), a condominium in which
 51 75 percent or more of the units are timeshare units may only be
 52 terminated pursuant to a plan of termination approved by 80
 53 percent of the total voting interests of the association and the
 54 holders of 80 percent of the original principal amount of
 55 outstanding recorded mortgage liens of timeshare estates in the
 56 condominium, unless the declaration provides for a lower voting

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57 percentage.

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

65 (4) JURISDICTION.--

66 (a) If 80 percent of the total voting interests fail to
67 approve the plan of termination but fewer than 20 percent of the
68 total voting interests vote to disapprove of the plan, the
69 circuit court shall have jurisdiction to entertain a petition by
70 the association or by one or more unit owners and approve the
71 plan of termination, and the action may be a class action.

72 (b) All unit owners and the association must be parties to
73 the action. The action may be brought against the nonconsenting
74 unit owners as a class action. Service of process on unit owners
75 may be by publication, but the plaintiff must furnish each unit
76 owner not personally served with process a copy of the petition
77 and plan of termination, and after entry of judgment, a copy of
78 the final decree of the court, by mail at the owner's last known
79 address.

80 (c) After the consideration of whether the rights and
81 interests of unit owners are equitably set forth in the plan of
82 termination as required by this section, the plan of termination
83 may be approved or rejected by the court. Consistent with the
84 provisions of this section, the court may also modify the plan

85 of termination to provide for an equitable distribution of the
 86 interests of unit owners prior to approving the plan of
 87 termination.

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

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

92 (6) MORTGAGE LIENHOLDERS.--Notwithstanding any provision
 93 to the contrary in the declaration or this chapter, approval of
 94 a plan of termination by the holder of a recorded mortgage lien
 95 affecting a condominium parcel in which fewer than 75 percent of
 96 the units are timeshare units is not required unless the plan of
 97 termination will result in less than the full satisfaction of
 98 the mortgage lien affecting the parcel.

99 (7) POWERS IN CONNECTION WITH TERMINATION.--The
 100 association shall continue in existence following approval of
 101 the plan of termination, with all powers it had before approval
 102 of the plan. Notwithstanding any contrary provision in the
 103 declaration or bylaws, after approval of the plan, the board has
 104 the power and duty:

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

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

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

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

112 (e) To sue in the name of the association for all sums due

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113 or owed to the association or to recover any of its property.

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

117 (g) To sell at public or private sale or to exchange,
118 convey, or otherwise dispose of assets of the association for an
119 amount deemed to be in the best interests of the association,
120 and to execute bills of sale and deeds of conveyance in the name
121 of the association.

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

125 (i) To contract and do anything in the name of the
126 association which is proper or convenient to terminate the
127 affairs of the association.

128 (8) NATURAL DISASTERS.--

129 (a) If, after a natural disaster, the identity of the
130 directors or their right to hold office is in doubt, if they are
131 deceased or unable to act, if they fail or refuse to act, or if
132 they cannot be located, any interested person may petition the
133 circuit court to determine the identity of the directors or, if
134 found to be in the best interests of the unit owners, to appoint
135 a receiver to conclude the affairs of the association after a
136 hearing following notice to such persons as the court directs.

137 (b) The receiver shall have all powers given to the board
138 pursuant to the declaration, bylaws, and subsection (7), and any
139 other powers that are necessary to conclude the affairs of the
140 association and are set forth in the order of appointment. The

141 appointment of the receiver is subject to the bonding
 142 requirements of such order. The order shall also provide for the
 143 payment of a reasonable fee to the receiver from the sources
 144 identified in the order, which may include rents, profits,
 145 incomes, maintenance fees, or special assessments collected from
 146 the condominium property.

147 (9) PLAN OF TERMINATION.--The plan of termination must be
 148 a written document executed in the same manner as a deed by unit
 149 owners having the requisite percentage of voting interests to
 150 approve the plan and by the termination trustee. A copy of the
 151 proposed plan of termination shall be given to all unit owners,
 152 in the same manner as for notice of an annual meeting, at least
 153 14 days prior to the meeting at which the plan of termination is
 154 to be voted upon or prior to or simultaneously with the
 155 distribution of the solicitation seeking execution of the plan
 156 of termination or written consent to or joinder in the plan. A
 157 unit owner may document assent to the plan of termination by
 158 executing the plan or by consent to or joinder in the plan in
 159 the manner of a deed. A plan of termination and the consents or
 160 joinders of unit owners and, if required, consents or joinders
 161 of mortgagees must be recorded in the public records of each
 162 county in which any portion of the condominium is located. The
 163 plan of termination is effective only upon recordation or at a
 164 later date specified in the plan.

165 (10) PLAN OF TERMINATION; REQUIRED PROVISIONS.--The plan
 166 of termination must specify:

167 (a) The name, address, and powers of the termination
 168 trustee.

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

171 (c) The interests of the respective unit owners in the
172 association property, common surplus, and other assets of the
173 association, which shall be the same as the respective interests
174 of the unit owners in the common elements immediately before the
175 termination, unless otherwise provided in the declaration.

176 (d) The interests of the respective unit owners in any
177 proceeds from any sale of the condominium property. The plan of
178 termination may apportion those proceeds pursuant to any of the
179 methods prescribed in subsection (12). If, pursuant to the plan
180 of termination, condominium property or real property owned by
181 the association is to be sold following termination, the plan
182 must provide for the sale and may establish any minimum sale
183 terms.

184 (e) Any interests of the respective unit owners in any
185 insurance proceeds or condemnation proceeds that are not used
186 for repair or reconstruction. Unless the declaration expressly
187 addresses the distribution of insurance proceeds or condemnation
188 proceeds, the plan of termination may apportion those proceeds
189 pursuant to any of the methods prescribed in subsection (12).

190 (11) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL
191 TERMINATION.--

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

196 (b) In the case of a conditional termination, the plan

197 must specify the conditions for termination. A conditional plan
 198 will not vest title in the termination trustee until the plan
 199 and a certificate executed by the association with the
 200 formalities of a deed, confirming that the conditions in the
 201 conditional plan have been satisfied or waived by the requisite
 202 percentage of the voting interests, have been recorded.

203 (12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM
 204 PROPERTY.--

205 (a) Unless the declaration expressly provides for the
 206 allocation of the proceeds of sale of condominium property, the
 207 plan of termination must first apportion the proceeds between
 208 the aggregate value of all units and the value of the common
 209 elements, based on their respective fair-market values
 210 immediately before the termination, as determined by one or more
 211 independent appraisers selected by the association or
 212 termination trustee.

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

217 1. The respective values of the units based on the fair-
 218 market values of the units immediately before the termination,
 219 as determined by one or more independent appraisers selected by
 220 the association or termination trustee;

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

224 3. The respective interests of the units in the common

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225 elements specified in the declaration immediately before the
226 termination.

227 (c) The methods of apportionment in paragraph (b) do not
228 prohibit any other method of apportioning the proceeds of sale
229 allocated to the units agreed upon in the plan of termination.
230 The portion of the proceeds allocated to the common elements
231 shall be apportioned among the units based upon their respective
232 interests in the common elements as provided in the declaration.

233 (d) Liens that encumber a unit shall be transferred to the
234 proceeds of sale of the condominium property and the proceeds of
235 sale or other distribution of association property, common
236 surplus, or other association assets attributable to such unit
237 in their same priority. The proceeds of any sale of condominium
238 property pursuant to a plan of termination may not be deemed to
239 be common surplus or association property.

240 (13) TERMINATION TRUSTEE.--The association shall serve as
241 termination trustee unless another person is appointed in the
242 plan of termination. If the association is unable, unwilling, or
243 fails to act as trustee, any unit owner may petition the court
244 to appoint a trustee. Upon recording or at a later date
245 specified in the plan, title to the condominium property vests
246 in the trustee. Unless prohibited by the plan, the termination
247 trustee shall be vested with the powers given to the board
248 pursuant to the declaration, bylaws, and subsection (7). If the
249 association is not the termination trustee, the trustee's powers
250 shall be coextensive with those of the association to the extent
251 not prohibited in the plan of termination or the order of
252 appointment. If the association is not the termination trustee,

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253 the association shall transfer any association property to the
254 trustee. If the association is dissolved, the trustee shall also
255 have such other powers necessary to conclude the affairs of the
256 association.

257 (14) TITLE VESTED IN TERMINATION TRUSTEE.--If termination
258 is pursuant to a plan of termination under subsection (2) or
259 subsection (3), the unit owners' rights and title as tenants in
260 common in undivided interests in the condominium property vest
261 in the termination trustee when the plan is recorded or at a
262 later date specified in the plan. The unit owners thereafter
263 become the beneficiaries of the proceeds realized from the plan
264 of termination. The termination trustee may deal with the
265 condominium property or any interest therein if the plan confers
266 on the trustee the authority to protect, conserve, manage, sell,
267 or dispose of the condominium property. The trustee, on behalf
268 of the unit owners, may contract for the sale of real property,
269 but the contract is not binding on the unit owners until the
270 plan is approved pursuant to subsection (2) or subsection (3).

271 (15) NOTICE.--

272 (a) Within 30 days after a plan of termination has been
273 recorded, the termination trustee shall deliver by certified
274 mail, return receipt requested, notice to all unit owners,
275 lienors of the condominium property, and lienors of all units at
276 their last known addresses that a plan of termination has been
277 recorded. The notice shall include the book and page number of
278 the public records in which the plan was recorded, notice that a
279 copy of the plan shall be furnished upon written request, and
280 notice that the unit owner or lienor has the right to contest

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281 the fairness of the plan.

282 (b) The trustee, within 90 days after the effective date
283 of the plan, shall provide to the division a certified copy of
284 the recorded plan, the date the plan was recorded, and the
285 county, book, and page number of the public records in which the
286 plan was recorded.

287 (16) RIGHT TO CONTEST.--A unit owner or lienor may contest
288 a plan of termination by initiating a summary procedure pursuant
289 to s. 51.011 within 90 days after the date the plan is recorded.
290 A unit owner or lienor who does not contest the plan within such
291 90-day period is barred from asserting or prosecuting a claim
292 against the association, the termination trustee, any unit
293 owner, or any successor in interest to the condominium property.
294 In an action contesting a plan of termination, the person
295 contesting the plan has the burden of pleading and proving that
296 the apportionment of the proceeds from the sale among the unit
297 owners was not fair and reasonable. The apportionment of sale
298 proceeds is presumed fair and reasonable if it was determined
299 pursuant to the methods prescribed in subsection (12). The court
300 shall adjudge the rights and interests of the parties and order
301 the plan of termination to be implemented if it is fair and
302 reasonable. The court shall void a plan that is determined not
303 to be fair and reasonable. In such action, the prevailing party
304 may recover reasonable attorney's fees and costs.

305 (17) DISTRIBUTION.--

306 (a) Following termination of the condominium, the
307 condominium property, association property, common surplus, and
308 other assets of the association shall be held by the termination

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309 trustee, as trustee for unit owners and holders of liens on the
310 units, in their order of priority.

311 (b) Not less than 30 days prior to the first distribution,
312 the termination trustee shall deliver by certified mail, return
313 receipt requested, a notice of the estimated distribution to all
314 unit owners, lienors of the condominium property, and lienors of
315 each unit at their last known addresses stating a good-faith
316 estimate of the amount of the distributions to each class and
317 the procedures and deadline for notifying the termination
318 trustee of any objections to the amount. The deadline must be at
319 least 15 days after the date the notice was mailed. The notice
320 may be sent with or after the notice required by subsection
321 (15). If a unit owner or lienor files a timely objection with
322 the termination trustee, the trustee does not have to distribute
323 the funds and property allocated to the respective unit owner or
324 lienor until the trustee has had a reasonable time to determine
325 the validity of the adverse claim. In the alternative, the
326 trustee may interplead the unit owner, lienor, and any other
327 person claiming an interest in the unit and deposit the funds
328 allocated to the unit in the court registry, at which time the
329 condominium property, association property, common surplus, and
330 other assets of the association are free of all claims and liens
331 of the parties to the suit. In an interpleader action, the
332 trustee and prevailing party may recover reasonable attorney's
333 fees and costs and court costs.

334 (c) The proceeds of any sale of condominium property or
335 association property and any remaining condominium property or
336 association property, common surplus, and other assets shall be

337 distributed in the following priority:

338 1. To pay the costs of implementing the plan of
339 termination, including demolition, removal, and disposal fees,
340 termination trustee's fees and costs, accounting fees and costs,
341 and attorney's fees and costs.

342 2. To lienholders of liens recorded prior to the recording
343 of the declaration.

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

346 4. To creditors of the association, as their interests
347 appear.

348 5. To unit owners, the proceeds of any sale of condominium
349 property subject to satisfaction of liens on each unit in their
350 order of priority, in shares specified in the plan of
351 termination, unless objected to by a unit owner or lienor.

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

357 7. To unit owners, the proceeds of any sale of association
358 property, the remaining association property, common surplus,
359 and other assets of the association, subject to satisfaction of
360 liens on each unit in their order of priority, in shares
361 specified in the plan of termination, unless objected to by a
362 unit owner or a lienor as provided in paragraph (b).

363 (d) After determining that all known debts and liabilities
364 of an association in the process of termination have been paid

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365 or adequately provided for, the termination trustee shall
366 distribute the remaining assets pursuant to the plan of
367 termination. If the termination is by court proceeding or
368 subject to court supervision, the distribution may not be made
369 until any period for the presentation of claims ordered by the
370 court has elapsed.

371 (e) Assets held by an association upon a valid condition
372 requiring return, transfer, or conveyance, which condition has
373 occurred or will occur, shall be returned, transferred, or
374 conveyed in accordance with the condition. The remaining
375 association assets shall be distributed pursuant to paragraph
376 (c).

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

382 (18) ASSOCIATION STATUS.--The termination of a condominium
383 does not change the corporate status of the association that
384 operated the condominium property. The association continues to
385 exist to conclude its affairs, prosecute and defend actions by
386 or against it, collect and discharge obligations, dispose of and
387 convey its property, and collect and divide its assets, but not
388 to act except as necessary to conclude its affairs.

389 (19) CREATION OF ANOTHER CONDOMINIUM.--The termination of
390 a condominium does not bar the creation, by the termination
391 trustee, of another condominium affecting any portion of the
392 same property.

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393 (20) EXCLUSION.--This section does not apply to the
394 termination of a condominium incident to a merger of that
395 condominium with one or more other condominiums under s.
396 718.110(7).

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