

## CHAMBER ACTION

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1 The Civil Justice Committee recommends the following:

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3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

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

25  
26 Section 1. Section 718.117, Florida Statutes, is amended  
27 to read:

28 (Substantial rewording of section. See  
29 s. 718.117, F.S., for present text.)  
30 718.117 Termination of condominium.--

31 (1) LEGISLATIVE FINDINGS.--The Legislature finds that it  
32 is contrary to the public policy of this state to require the  
33 continued operation of a condominium when to do so would  
34 constitute economic waste or when the ability to do so is made  
35 impossible by law or regulation. The provisions of this section  
36 shall apply to all condominiums in this state in existence on or  
37 after the effective date of this act.

38 (2) TERMINATION BECAUSE OF ECONOMIC WASTE OR  
39 IMPOSSIBILITY.--

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

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

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

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

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

69        (4) JURISDICTION.--

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

76        (b) All unit owners and the association must be parties to  
77 the action. The action may be brought against the nonconsenting  
78 unit owners as a class action. Service of process on unit owners

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79 may be by publication, but the plaintiff must furnish each unit  
80 owner not personally served with process a copy of the petition  
81 and plan of termination, and after entry of judgment, a copy of  
82 the final decree of the court, by mail at the owner's last known  
83 address.

84 (c) After the consideration of whether the rights and  
85 interests of unit owners are equitably set forth in the plan of  
86 termination as required by this section, the plan of termination  
87 may be approved or rejected by the court. Consistent with the  
88 provisions of this section, the court may also modify the plan  
89 of termination to provide for an equitable distribution of the  
90 interests of unit owners prior to approving the plan of  
91 termination.

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

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

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

103 (7) POWERS IN CONNECTION WITH TERMINATION.--The  
104 association shall continue in existence following approval of  
105 the plan of termination, with all powers it had before approval  
106 of the plan. Notwithstanding any contrary provision in the

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107 declaration or bylaws, after approval of the plan, the board has  
108 the power and duty:

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

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

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

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

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

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

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

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

129 (i) To contract and do anything in the name of the  
130 association which is proper or convenient to terminate the  
131 affairs of the association.

132 (8) NATURAL DISASTERS.--

133 (a) If, after a natural disaster, the identity of the  
134 directors or their right to hold office is in doubt, if they are

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135 deceased or unable to act, if they fail or refuse to act, or if  
136 they cannot be located, any interested person may petition the  
137 circuit court to determine the identity of the directors or, if  
138 found to be in the best interests of the unit owners, to appoint  
139 a receiver to conclude the affairs of the association after a  
140 hearing following notice to such persons as the court directs.

141 (b) The receiver shall have all powers given to the board  
142 pursuant to the declaration, bylaws, and subsection (7), and any  
143 other powers that are necessary to conclude the affairs of the  
144 association and are set forth in the order of appointment. The  
145 appointment of the receiver is subject to the bonding  
146 requirements of such order. The order shall also provide for the  
147 payment of a reasonable fee to the receiver from the sources  
148 identified in the order, which may include rents, profits,  
149 incomes, maintenance fees, or special assessments collected from  
150 the condominium property.

151 (9) PLAN OF TERMINATION.--The plan of termination must be  
152 a written document executed in the same manner as a deed by unit  
153 owners having the requisite percentage of voting interests to  
154 approve the plan and by the termination trustee. A copy of the  
155 proposed plan of termination shall be given to all unit owners,  
156 in the same manner as for notice of an annual meeting, at least  
157 14 days prior to the meeting at which the plan of termination is  
158 to be voted upon or prior to or simultaneously with the  
159 distribution of the solicitation seeking execution of the plan  
160 of termination or written consent to or joinder in the plan. A  
161 unit owner may document assent to the plan of termination by  
162 executing the plan or by consent to or joinder in the plan in

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163 the manner of a deed. A plan of termination and the consents or  
164 joinders of unit owners and, if required, consents or joinders  
165 of mortgagees must be recorded in the public records of each  
166 county in which any portion of the condominium is located. The  
167 plan of termination is effective only upon recordation or at a  
168 later date specified in the plan.

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

171 (a) The name, address, and powers of the termination  
172 trustee.

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

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

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

188 (e) Any interests of the respective unit owners in any  
189 insurance proceeds or condemnation proceeds that are not used  
190 for repair or reconstruction at the time of termination. Unless

191 the declaration expressly addresses the distribution of  
 192 insurance proceeds or condemnation proceeds, the plan of  
 193 termination may apportion those proceeds pursuant to any of the  
 194 methods prescribed in subsection (12).

195 (11) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL  
 196 TERMINATION.--

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

201 (b) In the case of a conditional termination, the plan  
 202 must specify the conditions for termination. A conditional plan  
 203 will not vest title in the termination trustee until the plan  
 204 and a certificate executed by the association with the  
 205 formalities of a deed, confirming that the conditions in the  
 206 conditional plan have been satisfied or waived by the requisite  
 207 percentage of the voting interests, have been recorded.

208 (12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM  
 209 PROPERTY.--

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



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218 (b) The portion of proceeds allocated to the units shall  
219 be further apportioned among the individual units. The  
220 apportionment is deemed fair and reasonable if it is determined  
221 by the unit owners approving the plan of termination by any of  
222 the following methods:

223 1. The respective values of the units based on the fair-  
224 market values of the units immediately before the termination,  
225 as determined by one or more independent appraisers selected by  
226 the association or termination trustee;

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

230 3. The respective interests of the units in the common  
231 elements specified in the declaration immediately before the  
232 termination.

233 (c) The methods of apportionment in paragraph (b) do not  
234 prohibit any other method of apportioning the proceeds of sale  
235 allocated to the units agreed upon in the plan of termination.  
236 The portion of the proceeds allocated to the common elements  
237 shall be apportioned among the units based upon their respective  
238 interests in the common elements as provided in the declaration.

239 (d) Liens that encumber a unit shall be transferred to the  
240 proceeds of sale of the condominium property and the proceeds of  
241 sale or other distribution of association property, common  
242 surplus, or other association assets attributable to such unit  
243 in their same priority. The proceeds of any sale of condominium  
244 property pursuant to a plan of termination may not be deemed to  
245 be common surplus or association property.

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246       (13) TERMINATION TRUSTEE.--The association shall serve as  
247 termination trustee unless another person is appointed in the  
248 plan of termination. If the association is unable, unwilling, or  
249 fails to act as trustee, any unit owner may petition the court  
250 to appoint a trustee. Upon recording or at a later date  
251 specified in the plan, title to the condominium property vests  
252 in the trustee. Unless prohibited by the plan, the termination  
253 trustee shall be vested with the powers given to the board  
254 pursuant to the declaration, bylaws, and subsection (7). If the  
255 association is not the termination trustee, the trustee's powers  
256 shall be coextensive with those of the association to the extent  
257 not prohibited in the plan of termination or the order of  
258 appointment. If the association is not the termination trustee,  
259 the association shall transfer any association property to the  
260 trustee. If the association is dissolved, the trustee shall also  
261 have such other powers necessary to conclude the affairs of the  
262 association.

263       (14) TITLE VESTED IN TERMINATION TRUSTEE.--If termination  
264 is pursuant to a plan of termination under subsection (2) or  
265 subsection (3), the unit owners' rights and title as tenants in  
266 common in undivided interests in the condominium property vest  
267 in the termination trustee when the plan is recorded or at a  
268 later date specified in the plan. The unit owners thereafter  
269 become the beneficiaries of the proceeds realized from the plan  
270 of termination. The termination trustee may deal with the  
271 condominium property or any interest therein if the plan confers  
272 on the trustee the authority to protect, conserve, manage, sell,  
273 or dispose of the condominium property. The trustee, on behalf

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274 of the unit owners, may contract for the sale of real property,  
 275 but the contract is not binding on the unit owners until the  
 276 plan is approved pursuant to subsection (2) or subsection (3).

277 (15) NOTICE.--

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

288 (b) The trustee, within 90 days after the effective date  
 289 of the plan, shall provide to the division a certified copy of  
 290 the recorded plan, the date the plan was recorded, and the  
 291 county, book, and page number of the public records in which the  
 292 plan was recorded.

293 (16) RIGHT TO CONTEST.--A unit owner or lienor may contest  
 294 a plan of termination by initiating a summary procedure pursuant  
 295 to s. 51.011 within 90 days after the date the plan is recorded.  
 296 A unit owner or lienor who does not contest the plan within such  
 297 90-day period is barred from asserting or prosecuting a claim  
 298 against the association, the termination trustee, any unit  
 299 owner, or any successor in interest to the condominium property.  
 300 In an action contesting a plan of termination, the person  
 301 contesting the plan has the burden of pleading and proving that

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302 the apportionment of the proceeds from the sale among the unit  
303 owners was not fair and reasonable. The apportionment of sale  
304 proceeds is presumed fair and reasonable if it was determined  
305 pursuant to the methods prescribed in subsection (12). The court  
306 shall adjudge the rights and interests of the parties and order  
307 the plan of termination to be implemented if it is fair and  
308 reasonable. The court shall void a plan that is determined not  
309 to be fair and reasonable. In such action, the prevailing party  
310 may recover reasonable attorney's fees and costs.

311 (17) DISTRIBUTION.--

312 (a) Following termination of the condominium, the  
313 condominium property, association property, common surplus, and  
314 other assets of the association shall be held by the termination  
315 trustee, as trustee for unit owners and holders of liens on the  
316 units, in their order of priority.

317 (b) Not less than 30 days prior to the first distribution,  
318 the termination trustee shall deliver by certified mail, return  
319 receipt requested, a notice of the estimated distribution to all  
320 unit owners, lienors of the condominium property, and lienors of  
321 each unit at their last known addresses stating a good-faith  
322 estimate of the amount of the distributions to each class and  
323 the procedures and deadline for notifying the termination  
324 trustee of any objections to the amount. The deadline must be at  
325 least 15 days after the date the notice was mailed. The notice  
326 may be sent with or after the notice required by subsection  
327 (15). If a unit owner or lienor files a timely objection with  
328 the termination trustee, the trustee does not have to distribute  
329 the funds and property allocated to the respective unit owner or

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330 lienor until the trustee has had a reasonable time to determine  
331 the validity of the adverse claim. In the alternative, the  
332 trustee may interplead the unit owner, lienor, and any other  
333 person claiming an interest in the unit and deposit the funds  
334 allocated to the unit in the court registry, at which time the  
335 condominium property, association property, common surplus, and  
336 other assets of the association are free of all claims and liens  
337 of the parties to the suit. In an interpleader action, the  
338 trustee and prevailing party may recover reasonable attorney's  
339 fees and costs and court costs.

340 (c) The proceeds of any sale of condominium property or  
341 association property and any remaining condominium property or  
342 association property, common surplus, and other assets shall be  
343 distributed in the following priority:

344 1. To pay the costs of implementing the plan of  
345 termination, including demolition, removal, and disposal fees,  
346 termination trustee's fees and costs, accounting fees and costs,  
347 and attorney's fees and costs.

348 2. To lienholders of liens recorded prior to the recording  
349 of the declaration.

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

352 4. To creditors of the association, as their interests  
353 appear.

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

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

363 7. To unit owners, the proceeds of any sale of association  
364 property, the remaining association property, common surplus,  
365 and other assets of the association, subject to satisfaction of  
366 liens on each unit in their order of priority, in shares  
367 specified in the plan of termination, unless objected to by a  
368 unit owner or a lienor as provided in paragraph (b).

369 (d) After determining that all known debts and liabilities  
370 of an association in the process of termination have been paid  
371 or adequately provided for, the termination trustee shall  
372 distribute the remaining assets pursuant to the plan of  
373 termination. If the termination is by court proceeding or  
374 subject to court supervision, the distribution may not be made  
375 until any period for the presentation of claims ordered by the  
376 court has elapsed.

377 (e) Assets held by an association upon a valid condition  
378 requiring return, transfer, or conveyance, which condition has  
379 occurred or will occur, shall be returned, transferred, or  
380 conveyed in accordance with the condition. The remaining  
381 association assets shall be distributed pursuant to paragraph  
382 (c).

383 (f) Distribution may be made in money, property, or  
384 securities and in installments or as a lump sum, if it can be  
385 done fairly and ratably and in conformity with the plan of

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386 termination. Distribution shall be made as soon as is reasonably  
387 consistent with the beneficial liquidation of the assets.

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

395 (19) CREATION OF ANOTHER CONDOMINIUM.--The termination of  
396 a condominium does not bar the creation, by the termination  
397 trustee, of another condominium affecting any portion of the  
398 same property.

399 (20) EXCLUSION.--This section does not apply to the  
400 termination of a condominium incident to a merger of that  
401 condominium with one or more other condominiums under s.  
402 718.110(7).

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