

CHAMBER ACTION

1 The Business Regulation Committee recommends the following:

2
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.
23

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
32 condominiums are created as authorized by statute. In
33 circumstances that may create economic waste, areas of blight,
34 or obsolescence of the condominium property for its intended use
35 and thereby lower property tax values, the Legislature further
36 finds that it is the public policy of this state to provide by
37 statute a method to preserve the value of the property interests
38 and the rights of alienation thereof that owners have in the
39 condominium property both before and after termination. The
40 Legislature further finds that it is contrary to the public
41 policy of this state to require the continued operation of a
42 condominium when to do so would constitute economic waste or
43 when the ability to do so is made impossible by law or
44 regulation. The provisions of this section shall apply to all
45 condominiums in this state in existence on or after the
46 effective date of this act.

47 (2) TERMINATION BECAUSE OF ECONOMIC WASTE OR
48 IMPOSSIBILITY.--

49 (a) Notwithstanding any provision to the contrary in the
50 declaration, the condominium form of ownership of a property may
51 be terminated by a plan of termination approved by the lesser of

52 a majority of the total voting interests or as otherwise
53 provided in the declaration for approval of termination, in the
54 following circumstances:

55 1. When the total estimated cost of repairs necessary to
56 restore the improvements to their former condition or bring them
57 into compliance with applicable laws or regulations exceeds the
58 combined fair market value of all units in the condominium after
59 completion of the repairs; or

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

63 (b) Notwithstanding paragraph (a), a condominium in which
64 75 percent or more of the units are timeshare units may only be
65 terminated pursuant to a plan of termination approved by 80
66 percent of the total voting interests of the association and the
67 holders of 80 percent of the original principal amount of
68 outstanding recorded mortgage liens of timeshare estates in the
69 condominium, unless the declaration provides for a lower voting
70 percentage.

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

78 (4) JURISDICTION.--

79 (a) If 80 percent of the total voting interests fail to
80 approve the plan of termination but fewer than 20 percent of the
81 total voting interests vote to disapprove of the plan, the
82 circuit court shall have jurisdiction to entertain a petition by
83 the association or by one or more unit owners and approve the
84 plan of termination, and the action may be a class action.

85 (b) All unit owners and the association must be parties to
86 the action. The action may be brought against the nonconsenting
87 unit owners as a class action. Service of process on unit owners
88 may be by publication, but the plaintiff must furnish each unit
89 owner not personally served with process a copy of the petition
90 and plan of termination, and after entry of judgment, a copy of
91 the final decree of the court, by mail at the owner's last known
92 address.

93 (c) After the consideration of whether the rights and
94 interests of unit owners are equitably set forth in the plan of
95 termination as required by this section, the plan of termination
96 may be approved or rejected by the court. Consistent with the
97 provisions of this section, the court may also modify the plan
98 of termination to provide for an equitable distribution of the
99 interests of unit owners prior to approving the plan of
100 termination.

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

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

105 (6) MORTGAGE LIENHOLDERS.--Notwithstanding any provision
106 to the contrary in the declaration or this chapter, approval of

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107 a plan of termination by the holder of a recorded mortgage lien
108 affecting a condominium parcel in which fewer than 75 percent of
109 the units are timeshare units is not required unless the plan of
110 termination will result in less than the full satisfaction of
111 the mortgage lien affecting the condominium parcel. Should such
112 approval be required and not given, and should the holder of a
113 recorded mortgage lien object to the plan of termination, such
114 lienor may contest the plan as provided in subsection (16). At
115 the time of sale, the lien shall be transferred to the
116 proportionate share of the proceeds assigned to the condominium
117 parcel in the plan of termination or as subsequently modified by
118 the court.

119 (7) POWERS IN CONNECTION WITH TERMINATION.--The
120 association shall continue in existence following approval of
121 the plan of termination, with all powers it had before approval
122 of the plan. Notwithstanding any contrary provision in the
123 declaration or bylaws, after approval of the plan, the board has
124 the power and duty:

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

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

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

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

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

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

137 (g) To sell at public or private sale or to exchange,
138 convey, or otherwise dispose of assets of the association for an
139 amount deemed to be in the best interests of the association,
140 and to execute bills of sale and deeds of conveyance in the name
141 of the association.

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

145 (i) To contract and do anything in the name of the
146 association which is proper or convenient to terminate the
147 affairs of the association.

148 (8) NATURAL DISASTERS.--

149 (a) If, after a natural disaster, the identity of the
150 directors or their right to hold office is in doubt, if they are
151 deceased or unable to act, if they fail or refuse to act, or if
152 they cannot be located, any interested person may petition the
153 circuit court to determine the identity of the directors or, if
154 found to be in the best interests of the unit owners, to appoint
155 a receiver to conclude the affairs of the association after a
156 hearing following notice to such persons as the court directs.

157 (b) The receiver shall have all powers given to the board
158 pursuant to the declaration, bylaws, and subsection (7), and any
159 other powers that are necessary to conclude the affairs of the
160 association and are set forth in the order of appointment. The
161 appointment of the receiver is subject to the bonding

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162 requirements of such order. The order shall also provide for the
163 payment of a reasonable fee to the receiver from the sources
164 identified in the order, which may include rents, profits,
165 incomes, maintenance fees, or special assessments collected from
166 the condominium property.

167 (9) PLAN OF TERMINATION.--The plan of termination must be
168 a written document executed in the same manner as a deed by unit
169 owners having the requisite percentage of voting interests to
170 approve the plan and by the termination trustee. A copy of the
171 proposed plan of termination shall be given to all unit owners,
172 in the same manner as for notice of an annual meeting, at least
173 14 days prior to the meeting at which the plan of termination is
174 to be voted upon or prior to or simultaneously with the
175 distribution of the solicitation seeking execution of the plan
176 of termination or written consent to or joinder in the plan. A
177 unit owner may document assent to the plan of termination by
178 executing the plan or by consent to or joinder in the plan in
179 the manner of a deed. A plan of termination and the consents or
180 joinders of unit owners and, if required, consents or joinders
181 of mortgagees must be recorded in the public records of each
182 county in which any portion of the condominium is located. The
183 plan of termination is effective only upon recordation or at a
184 later date specified in the plan.

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

187 (a) The name, address, and powers of the termination
188 trustee.

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

191 (c) The interests of the respective unit owners in the
 192 association property, common surplus, and other assets of the
 193 association, which shall be the same as the respective interests
 194 of the unit owners in the common elements immediately before the
 195 termination, unless otherwise provided in the declaration.

196 (d) The interests of the respective unit owners in any
 197 proceeds from any sale of the condominium property. The plan of
 198 termination may apportion those proceeds pursuant to any of the
 199 methods prescribed in subsection (12). If, pursuant to the plan
 200 of termination, condominium property or real property owned by
 201 the association is to be sold following termination, the plan
 202 must provide for the sale and may establish any minimum sale
 203 terms.

204 (e) Any interests of the respective unit owners in any
 205 insurance proceeds or condemnation proceeds that are not used
 206 for repair or reconstruction at the time of termination. Unless
 207 the declaration expressly addresses the distribution of
 208 insurance proceeds or condemnation proceeds, the plan of
 209 termination may apportion those proceeds pursuant to any of the
 210 methods prescribed in subsection (12).

211 (11) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL
 212 TERMINATION.--

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

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217 (b) In the case of a conditional termination, the plan
218 must specify the conditions for termination. A conditional plan
219 will not vest title in the termination trustee until the plan
220 and a certificate executed by the association with the
221 formalities of a deed, confirming that the conditions in the
222 conditional plan have been satisfied or waived by the requisite
223 percentage of the voting interests, have been recorded.

224 (12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM
225 PROPERTY.--

226 (a) Unless the declaration expressly provides for the
227 allocation of the proceeds of sale of condominium property, the
228 plan of termination must first apportion the proceeds between
229 the aggregate value of all units and the value of the common
230 elements, based on their respective fair-market values
231 immediately before the termination, as determined by one or more
232 independent appraisers selected by the association or
233 termination trustee.

234 (b) The portion of proceeds allocated to the units shall
235 be further apportioned among the individual units. The
236 apportionment is deemed fair and reasonable if it is determined
237 by the unit owners approving the plan of termination by any of
238 the following methods:

239 1. The respective values of the units based on the fair-
240 market values of the units immediately before the termination,
241 as determined by one or more independent appraisers selected by
242 the association or termination trustee;

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

246 3. The respective interests of the units in the common
247 elements specified in the declaration immediately before the
248 termination.

249 (c) The methods of apportionment in paragraph (b) do not
250 prohibit any other method of apportioning the proceeds of sale
251 allocated to the units agreed upon in the plan of termination.
252 The portion of the proceeds allocated to the common elements
253 shall be apportioned among the units based upon their respective
254 interests in the common elements as provided in the declaration.

255 (d) Liens that encumber a unit shall be transferred to the
256 proceeds of sale of the condominium property and the proceeds of
257 sale or other distribution of association property, common
258 surplus, or other association assets attributable to such unit
259 in their same priority. The proceeds of any sale of condominium
260 property pursuant to a plan of termination may not be deemed to
261 be common surplus or association property.

262 (13) TERMINATION TRUSTEE.--The association shall serve as
263 termination trustee unless another person is appointed in the
264 plan of termination. If the association is unable, unwilling, or
265 fails to act as trustee, any unit owner may petition the court
266 to appoint a trustee. Upon recording or at a later date
267 specified in the plan, title to the condominium property vests
268 in the trustee. Unless prohibited by the plan, the termination
269 trustee shall be vested with the powers given to the board
270 pursuant to the declaration, bylaws, and subsection (7). If the

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271 association is not the termination trustee, the trustee's powers
272 shall be coextensive with those of the association to the extent
273 not prohibited in the plan of termination or the order of
274 appointment. If the association is not the termination trustee,
275 the association shall transfer any association property to the
276 trustee. If the association is dissolved, the trustee shall also
277 have such other powers necessary to conclude the affairs of the
278 association.

279 (14) TITLE VESTED IN TERMINATION TRUSTEE.--If termination
280 is pursuant to a plan of termination under subsection (2) or
281 subsection (3), the unit owners' rights and title as tenants in
282 common in undivided interests in the condominium property vest
283 in the termination trustee when the plan is recorded or at a
284 later date specified in the plan. The unit owners thereafter
285 become the beneficiaries of the proceeds realized from the plan
286 of termination. The termination trustee may deal with the
287 condominium property or any interest therein if the plan confers
288 on the trustee the authority to protect, conserve, manage, sell,
289 or dispose of the condominium property. The trustee, on behalf
290 of the unit owners, may contract for the sale of real property,
291 but the contract is not binding on the unit owners until the
292 plan is approved pursuant to subsection (2) or subsection (3).

293 (15) NOTICE.--

294 (a) Within 30 days after a plan of termination has been
295 recorded, the termination trustee shall deliver by certified
296 mail, return receipt requested, notice to all unit owners,
297 lienors of the condominium property, and lienors of all units at
298 their last known addresses that a plan of termination has been

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299 recorded. The notice shall include the book and page number of
300 the public records in which the plan was recorded, notice that a
301 copy of the plan shall be furnished upon written request, and
302 notice that the unit owner or lienor has the right to contest
303 the fairness of the plan.

304 (b) The trustee, within 90 days after the effective date
305 of the plan, shall provide to the division a certified copy of
306 the recorded plan, the date the plan was recorded, and the
307 county, book, and page number of the public records in which the
308 plan was recorded.

309 (16) RIGHT TO CONTEST.--A unit owner or lienor may contest
310 a plan of termination by initiating a summary procedure pursuant
311 to s. 51.011 within 90 days after the date the plan is recorded.
312 A unit owner or lienor who does not contest the plan within such
313 90-day period is barred from asserting or prosecuting a claim
314 against the association, the termination trustee, any unit
315 owner, or any successor in interest to the condominium property.
316 In an action contesting a plan of termination, the person
317 contesting the plan has the burden of pleading and proving that
318 the apportionment of the proceeds from the sale among the unit
319 owners was not fair and reasonable. The apportionment of sale
320 proceeds is presumed fair and reasonable if it was determined
321 pursuant to the methods prescribed in subsection (12). The court
322 shall adjudge the rights and interests of the parties and order
323 the plan of termination to be implemented if it is fair and
324 reasonable. The court may modify the plan to apportion the
325 proceeds in a fair and reasonable manner as required by this
326 section based upon the proceedings and order the modified plan

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327 of termination to be implemented. The court shall void a plan
328 that is determined not to be fair and reasonable. In such
329 action, the prevailing party may recover reasonable attorney's
330 fees and costs.

331 (17) DISTRIBUTION.--

332 (a) Following termination of the condominium, the
333 condominium property, association property, common surplus, and
334 other assets of the association shall be held by the termination
335 trustee, as trustee for unit owners and holders of liens on the
336 units, in their order of priority.

337 (b) Not less than 30 days prior to the first distribution,
338 the termination trustee shall deliver by certified mail, return
339 receipt requested, a notice of the estimated distribution to all
340 unit owners, lienors of the condominium property, and lienors of
341 each unit at their last known addresses stating a good-faith
342 estimate of the amount of the distributions to each class and
343 the procedures and deadline for notifying the termination
344 trustee of any objections to the amount. The deadline must be at
345 least 15 days after the date the notice was mailed. The notice
346 may be sent with or after the notice required by subsection
347 (15). If a unit owner or lienor files a timely objection with
348 the termination trustee, the trustee does not have to distribute
349 the funds and property allocated to the respective unit owner or
350 lienor until the trustee has had a reasonable time to determine
351 the validity of the adverse claim. In the alternative, the
352 trustee may interplead the unit owner, lienor, and any other
353 person claiming an interest in the unit and deposit the funds
354 allocated to the unit in the court registry, at which time the

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355 condominium property, association property, common surplus, and
356 other assets of the association are free of all claims and liens
357 of the parties to the suit. In an interpleader action, the
358 trustee and prevailing party may recover reasonable attorney's
359 fees and costs and court costs.

360 (c) The proceeds of any sale of condominium property or
361 association property and any remaining condominium property or
362 association property, common surplus, and other assets shall be
363 distributed in the following priority:

364 1. To pay the costs of implementing the plan of
365 termination, including demolition, removal, and disposal fees,
366 termination trustee's fees and costs, accounting fees and costs,
367 and attorney's fees and costs.

368 2. To lienholders of liens recorded prior to the recording
369 of the declaration.

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

372 4. To creditors of the association, as their interests
373 appear.

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

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

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383 7. To unit owners, the proceeds of any sale of association
384 property, the remaining association property, common surplus,
385 and other assets of the association, subject to satisfaction of
386 liens on each unit in their order of priority, in shares
387 specified in the plan of termination, unless objected to by a
388 unit owner or a lienor as provided in paragraph (b).

389 (d) After determining that all known debts and liabilities
390 of an association in the process of termination have been paid
391 or adequately provided for, the termination trustee shall
392 distribute the remaining assets pursuant to the plan of
393 termination. If the termination is by court proceeding or
394 subject to court supervision, the distribution may not be made
395 until any period for the presentation of claims ordered by the
396 court has elapsed.

397 (e) Assets held by an association upon a valid condition
398 requiring return, transfer, or conveyance, which condition has
399 occurred or will occur, shall be returned, transferred, or
400 conveyed in accordance with the condition. The remaining
401 association assets shall be distributed pursuant to paragraph
402 (c).

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

408 (18) ASSOCIATION STATUS.--The termination of a condominium
409 does not change the corporate status of the association that
410 operated the condominium property. The association continues to

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411 exist to conclude its affairs, prosecute and defend actions by
412 or against it, collect and discharge obligations, dispose of and
413 convey its property, and collect and divide its assets, but not
414 to act except as necessary to conclude its affairs.

415 (19) CREATION OF ANOTHER CONDOMINIUM.--The termination of
416 a condominium does not bar the creation, by the termination
417 trustee, of another condominium affecting any portion of the
418 same property.

419 (20) EXCLUSION.--This section does not apply to the
420 termination of a condominium incident to a merger of that
421 condominium with one or more other condominiums under s.
422 718.110(7).

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