

CHAMBER ACTION

1 The Justice Council 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 lienholders with the right to propose persons for
14 consideration by the court as receiver; requiring
15 quarterly reports; authorizing certain unit owners to
16 remove members of the board of administration; authorizing
17 certain lienors to petition the court for the appointment
18 of a termination trustee; providing requirements for a
19 plan of termination; providing for the allocation of
20 proceeds from the sale of condominium property; providing
21 powers and duties of a termination trustee; providing
22 notice requirements; providing a procedure for contesting
23 a plan of termination; providing rules for the

HB 543 CS

2006
CS

24 distribution of property and sale proceeds; providing for
 25 the association's status following termination; allowing
 26 the creation of another condominium by the trustee;
 27 specifying an exclusion; providing an effective date.
 28

29 Be It Enacted by the Legislature of the State of Florida:
 30

31 Section 1. Section 718.117, Florida Statutes, is amended
 32 to read:

33 (Substantial rewording of section. See
 34 s. 718.117, F.S., for present text.)

35 718.117 Termination of condominium.--

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

HB 543 CS

2006
CS

52 (2) TERMINATION BECAUSE OF ECONOMIC WASTE OR
53 IMPOSSIBILITY.--

54 (a) Notwithstanding any provision to the contrary in the
55 declaration, the condominium form of ownership of a property may
56 be terminated by a plan of termination approved by the lesser of
57 a majority of the total voting interests or as otherwise
58 provided in the declaration for approval of termination, in the
59 following circumstances:

60 1. When the total estimated cost of repairs necessary to
61 restore the improvements to their former condition or bring them
62 into compliance with applicable laws or regulations exceeds the
63 combined fair market value of all units in the condominium after
64 completion of the repairs; or

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

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

76 (3) OPTIONAL TERMINATION.--Except as provided in
77 subsections (2) and (4) or unless the declaration provides for a
78 lower percentage, the condominium form of ownership of the
79 property may be terminated pursuant to a plan of termination

HB 543 CS

2006
CS

80 approved by at least 80 percent of the total voting interests of
81 the condominium. This subsection does not apply to condominiums
82 in which 75 percent or more of the units are timeshare units.

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

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

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

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

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

HB 543 CS

2006
CS

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

110 (6) MORTGAGE LIENHOLDERS.--Notwithstanding any provision
111 to the contrary in the declaration or this chapter, approval of
112 a plan of termination by the holder of a recorded mortgage lien
113 affecting a condominium parcel in which fewer than 75 percent of
114 the units are timeshare units is not required unless the plan of
115 termination will result in less than the full satisfaction of
116 the mortgage lien affecting the condominium parcel. Should such
117 approval be required and not given, and should the holder of a
118 recorded mortgage lien object to the plan of termination, such
119 lienor may contest the plan as provided in subsection (17). At
120 the time of sale, the lien shall be transferred to the
121 proportionate share of the proceeds assigned to the condominium
122 parcel in the plan of termination or as subsequently modified by
123 the court.

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

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

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

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

HB 543 CS

2006
CS

- 136 (d) To defend suits brought against the association.
- 137 (e) To sue in the name of the association for all sums due
138 or owed to the association or to recover any of its property.
- 139 (f) To perform any act necessary to maintain, repair, or
140 demolish unsafe or uninhabitable improvements or other
141 condominium property in compliance with applicable codes.
- 142 (g) To sell at public or private sale or to exchange,
143 convey, or otherwise dispose of assets of the association for an
144 amount deemed to be in the best interests of the association,
145 and to execute bills of sale and deeds of conveyance in the name
146 of the association.
- 147 (h) To collect and receive rents, profits, accounts
148 receivable, income, maintenance fees, special assessments, or
149 insurance proceeds for the association.
- 150 (i) To contract and do anything in the name of the
151 association which is proper or convenient to terminate the
152 affairs of the association.
- 153 (8) NATURAL DISASTERS.--
- 154 (a) If, after a natural disaster, the identity of the
155 directors or their right to hold office is in doubt, if they are
156 deceased or unable to act, if they fail or refuse to act, or if
157 they cannot be located, any interested person may petition the
158 circuit court to determine the identity of the directors or, if
159 found to be in the best interests of the unit owners, to appoint
160 a receiver to conclude the affairs of the association after a
161 hearing following notice to such persons as the court directs.
162 Lienholders shall be given notice of the petition and shall have

163 the right to propose persons for the consideration by the court
164 as receiver.

165 (b) The receiver shall have all powers given to the board
166 pursuant to the declaration, bylaws, and subsection (7), and any
167 other powers that are necessary to conclude the affairs of the
168 association and are set forth in the order of appointment. The
169 appointment of the receiver is subject to the bonding
170 requirements of such order. The order shall also provide for the
171 payment of a reasonable fee to the receiver from the sources
172 identified in the order, which may include rents, profits,
173 incomes, maintenance fees, or special assessments collected from
174 the condominium property.

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

176 (a) The association, receiver, or termination trustee
177 shall prepare reports each quarter following the approval of the
178 plan of termination setting forth the status and progress of the
179 termination, the costs and fees incurred, the date the
180 termination is expected to be completed, and the current
181 financial condition of the association, receivership, or
182 trusteeship, and provide copies of the report by regular mail to
183 the unit owners and lienors at the mailing addresses provided to
184 the association by the unit owners and lienors.

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

188 (c) The lienors of an association in termination
189 representing at least 50 percent of the outstanding amount of
190 liens may petition the court for the appointment of a

HB 543 CS

2006
CS

191 termination trustee which shall be granted upon good cause
192 shown.

193 (10) PLAN OF TERMINATION.--The plan of termination must be
194 a written document executed in the same manner as a deed by unit
195 owners having the requisite percentage of voting interests to
196 approve the plan and by the termination trustee. A copy of the
197 proposed plan of termination shall be given to all unit owners,
198 in the same manner as for notice of an annual meeting, at least
199 14 days prior to the meeting at which the plan of termination is
200 to be voted upon or prior to or simultaneously with the
201 distribution of the solicitation seeking execution of the plan
202 of termination or written consent to or joinder in the plan. A
203 unit owner may document assent to the plan of termination by
204 executing the plan or by consent to or joinder in the plan in
205 the manner of a deed. A plan of termination and the consents or
206 joinders of unit owners and, if required, consents or joinders
207 of mortgagees must be recorded in the public records of each
208 county in which any portion of the condominium is located. The
209 plan of termination is effective only upon recordation or at a
210 later date specified in the plan.

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

213 (a) The name, address, and powers of the termination
214 trustee.

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

217 (c) The interests of the respective unit owners in the
218 association property, common surplus, and other assets of the

HB 543 CS

2006
CS

219 association, which shall be the same as the respective interests
220 of the unit owners in the common elements immediately before the
221 termination, unless otherwise provided in the declaration.

222 (d) The interests of the respective unit owners in any
223 proceeds from any sale of the condominium property. The plan of
224 termination may apportion those proceeds pursuant to any of the
225 methods prescribed in subsection (13). If, pursuant to the plan
226 of termination, condominium property or real property owned by
227 the association is to be sold following termination, the plan
228 must provide for the sale and may establish any minimum sale
229 terms.

230 (e) Any interests of the respective unit owners in any
231 insurance proceeds or condemnation proceeds that are not used
232 for repair or reconstruction at the time of termination. Unless
233 the declaration expressly addresses the distribution of
234 insurance proceeds or condemnation proceeds, the plan of
235 termination may apportion those proceeds pursuant to any of the
236 methods prescribed in subsection (13).

237 (12) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL
238 TERMINATION.--

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

243 (b) In the case of a conditional termination, the plan
244 must specify the conditions for termination. A conditional plan
245 will not vest title in the termination trustee until the plan
246 and a certificate executed by the association with the

HB 543 CS

2006
CS

247 formalities of a deed, confirming that the conditions in the
248 conditional plan have been satisfied or waived by the requisite
249 percentage of the voting interests, have been recorded.

250 (13) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM
251 PROPERTY.--

252 (a) Unless the declaration expressly provides for the
253 allocation of the proceeds of sale of condominium property, the
254 plan of termination must first apportion the proceeds between
255 the aggregate value of all units and the value of the common
256 elements, based on their respective fair-market values
257 immediately before the termination, as determined by one or more
258 independent appraisers selected by the association or
259 termination trustee.

260 (b) The portion of proceeds allocated to the units shall
261 be further apportioned among the individual units. The
262 apportionment is deemed fair and reasonable if it is determined
263 by the unit owners approving the plan of termination by any of
264 the following methods:

265 1. The respective values of the units based on the fair-
266 market values of the units immediately before the termination,
267 as determined by one or more independent appraisers selected by
268 the association or termination trustee;

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

272 3. The respective interests of the units in the common
273 elements specified in the declaration immediately before the
274 termination.

HB 543 CS

2006
CS

275 (c) The methods of apportionment in paragraph (b) do not
276 prohibit any other method of apportioning the proceeds of sale
277 allocated to the units agreed upon in the plan of termination.
278 The portion of the proceeds allocated to the common elements
279 shall be apportioned among the units based upon their respective
280 interests in the common elements as provided in the declaration.

281 (d) Liens that encumber a unit shall be transferred to the
282 proceeds of sale of the condominium property and the proceeds of
283 sale or other distribution of association property, common
284 surplus, or other association assets attributable to such unit
285 in their same priority. The proceeds of any sale of condominium
286 property pursuant to a plan of termination may not be deemed to
287 be common surplus or association property.

288 (14) TERMINATION TRUSTEE.--The association shall serve as
289 termination trustee unless another person is appointed in the
290 plan of termination. If the association is unable, unwilling, or
291 fails to act as trustee, any unit owner may petition the court
292 to appoint a trustee. Upon recording or at a later date
293 specified in the plan, title to the condominium property vests
294 in the trustee. Unless prohibited by the plan, the termination
295 trustee shall be vested with the powers given to the board
296 pursuant to the declaration, bylaws, and subsection (7). If the
297 association is not the termination trustee, the trustee's powers
298 shall be coextensive with those of the association to the extent
299 not prohibited in the plan of termination or the order of
300 appointment. If the association is not the termination trustee,
301 the association shall transfer any association property to the
302 trustee. If the association is dissolved, the trustee shall also

HB 543 CS

2006
CS

303 have such other powers necessary to conclude the affairs of the
304 association.

305 (15) TITLE VESTED IN TERMINATION TRUSTEE.--If termination
306 is pursuant to a plan of termination under subsection (2),
307 subsection (3), or subsection (4), the unit owners' rights and
308 title as tenants in common in undivided interests in the
309 condominium property vest in the termination trustee when the
310 plan is recorded or at a later date specified in the plan. The
311 unit owners thereafter become the beneficiaries of the proceeds
312 realized from the plan of termination. The termination trustee
313 may deal with the condominium property or any interest therein
314 if the plan confers on the trustee the authority to protect,
315 conserve, manage, sell, or dispose of the condominium property.
316 The trustee, on behalf of the unit owners, may contract for the
317 sale of real property, but the contract is not binding on the
318 unit owners until the plan is approved pursuant to subsection
319 (2), subsection (3), or subsection (4).

320 (16) NOTICE.--

321 (a) Within 30 days after a plan of termination has been
322 recorded, the termination trustee shall deliver by certified
323 mail, return receipt requested, notice to all unit owners,
324 lienors of the condominium property, and lienors of all units at
325 their last known addresses that a plan of termination has been
326 recorded. The notice shall include the book and page number of
327 the public records in which the plan was recorded, notice that a
328 copy of the plan shall be furnished upon written request, and
329 notice that the unit owner or lienor has the right to contest
330 the fairness of the plan.

HB 543 CS

2006
CS

331 (b) The trustee, within 90 days after the effective date
332 of the plan, shall provide to the division a certified copy of
333 the recorded plan, the date the plan was recorded, and the
334 county, book, and page number of the public records in which the
335 plan was recorded.

336 (17) RIGHT TO CONTEST.--A unit owner or lienor may contest
337 a plan of termination by initiating a summary procedure pursuant
338 to s. 51.011 within 90 days after the date the plan is recorded.
339 A unit owner or lienor who does not contest the plan within such
340 90-day period is barred from asserting or prosecuting a claim
341 against the association, the termination trustee, any unit
342 owner, or any successor in interest to the condominium property.
343 In an action contesting a plan of termination, the person
344 contesting the plan has the burden of pleading and proving that
345 the apportionment of the proceeds from the sale among the unit
346 owners was not fair and reasonable. The apportionment of sale
347 proceeds is presumed fair and reasonable if it was determined
348 pursuant to the methods prescribed in subsection (13). The court
349 shall adjudge the rights and interests of the parties and order
350 the plan of termination to be implemented if it is fair and
351 reasonable. If the court determines that the plan of termination
352 is not fair and reasonable, the court may void the plan or may
353 modify the plan to apportion the proceeds in a fair and
354 reasonable manner as required by this section based upon the
355 proceedings and order the modified plan of termination to be
356 implemented. In such action, the prevailing party may recover
357 reasonable attorney's fees and costs.

358 (18) DISTRIBUTION.--

HB 543 CS

2006
CS

359 (a) Following termination of the condominium, the
360 condominium property, association property, common surplus, and
361 other assets of the association shall be held by the termination
362 trustee, as trustee for unit owners and holders of liens on the
363 units, in their order of priority.

364 (b) Not less than 30 days prior to the first distribution,
365 the termination trustee shall deliver by certified mail, return
366 receipt requested, a notice of the estimated distribution to all
367 unit owners, lienors of the condominium property, and lienors of
368 each unit at their last known addresses stating a good-faith
369 estimate of the amount of the distributions to each class and
370 the procedures and deadline for notifying the termination
371 trustee of any objections to the amount. The deadline must be at
372 least 15 days after the date the notice was mailed. The notice
373 may be sent with or after the notice required by subsection
374 (16). If a unit owner or lienor files a timely objection with
375 the termination trustee, the trustee does not have to distribute
376 the funds and property allocated to the respective unit owner or
377 lienor until the trustee has had a reasonable time to determine
378 the validity of the adverse claim. In the alternative, the
379 trustee may interplead the unit owner, lienor, and any other
380 person claiming an interest in the unit and deposit the funds
381 allocated to the unit in the court registry, at which time the
382 condominium property, association property, common surplus, and
383 other assets of the association are free of all claims and liens
384 of the parties to the suit. In an interpleader action, the
385 trustee and prevailing party may recover reasonable attorney's
386 fees and costs and court costs.

HB 543 CS

2006
CS

387 (c) The proceeds of any sale of condominium property or
388 association property and any remaining condominium property or
389 association property, common surplus, and other assets shall be
390 distributed in the following priority:

391 1. To pay the reasonable termination trustee's fees and
392 costs and accounting fees and costs.

393 2. To lienholders of liens recorded prior to the recording
394 of the declaration.

395 3. To purchase money lienholders on units to the extent
396 necessary to satisfy their liens.

397 4. To lienholders of liens of the association which have
398 been consented to under s. 718.121(1).

399 5. To creditors of the association, as their interests
400 appear.

401 6. To unit owners, the proceeds of any sale of condominium
402 property subject to satisfaction of liens on each unit in their
403 order of priority, in shares specified in the plan of
404 termination, unless objected to by a unit owner or lienor.

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

410 8. To unit owners, the proceeds of any sale of association
411 property, the remaining association property, common surplus,
412 and other assets of the association, subject to satisfaction of
413 liens on each unit in their order of priority, in shares

HB 543 CS

2006
CS

414 specified in the plan of termination, unless objected to by a
415 unit owner or a lienor as provided in paragraph (b).

416 (d) After determining that all known debts and liabilities
417 of an association in the process of termination have been paid
418 or adequately provided for, the termination trustee shall
419 distribute the remaining assets pursuant to the plan of
420 termination. If the termination is by court proceeding or
421 subject to court supervision, the distribution may not be made
422 until any period for the presentation of claims ordered by the
423 court has elapsed.

424 (e) Assets held by an association upon a valid condition
425 requiring return, transfer, or conveyance, which condition has
426 occurred or will occur, shall be returned, transferred, or
427 conveyed in accordance with the condition. The remaining
428 association assets shall be distributed pursuant to paragraph
429 (c).

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

435 (19) ASSOCIATION STATUS.--The termination of a condominium
436 does not change the corporate status of the association that
437 operated the condominium property. The association continues to
438 exist to conclude its affairs, prosecute and defend actions by
439 or against it, collect and discharge obligations, dispose of and
440 convey its property, and collect and divide its assets, but not
441 to act except as necessary to conclude its affairs.

HB 543 CS

2006
CS

442 (20) CREATION OF ANOTHER CONDOMINIUM.--The termination of
 443 a condominium does not bar the creation, by the termination
 444 trustee, of another condominium affecting any portion of the
 445 same property.

446 (21) EXCLUSION.--This section does not apply to the
 447 termination of a condominium incident to a merger of that
 448 condominium with one or more other condominiums under s.
 449 718.110(7).

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