

1 (1) LEGISLATIVE FINDINGS.--The Legislature finds that
2 condominiums are created as authorized by statute. In
3 circumstances that may create economic waste, areas of
4 disrepair, or obsolescence of a condominium property for its
5 intended use and thereby lower property tax values, the
6 Legislature further finds that it is the public policy of this
7 state to provide by statute a method to preserve the value of
8 the property interests and the rights of alienation thereof
9 that owners have in the condominium property before and after
10 termination. The Legislature further finds that it is contrary
11 to the public policy of this state to require the continued
12 operation of a condominium when to do so constitutes economic
13 waste or when the ability to do so is made impossible by law
14 or regulation. This section applies to all condominiums in
15 this state in existence on or after July 1, 2007.

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

18 (a) Notwithstanding any provision to the contrary in
19 the declaration, the condominium form of ownership of a
20 property may be terminated by a plan of termination approved
21 by the lesser of the lowest percentage of voting interests
22 necessary to amend the declaration or as otherwise provided in
23 the declaration for approval of termination when:

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

29 2. It becomes impossible to operate or reconstruct a
30 condominium in its prior physical configuration because of
31 land-use laws or regulations.

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

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

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

18 (5) MORTGAGE LIENHOLDERS.--Notwithstanding any
19 provision to the contrary in the declaration or this chapter,
20 approval of a plan of termination by the holder of a recorded
21 mortgage lien affecting a condominium parcel in which fewer
22 than 75 percent of the units are timeshare units is not
23 required unless the plan of termination will result in less
24 than the full satisfaction of the mortgage lien affecting the
25 condominium parcel. If such approval is required and not
26 given, a holder of a recorded mortgage lien who objects to the
27 plan of termination may contest the plan as provided in
28 subsection (16). At the time of sale, the lien shall be
29 transferred to the proportionate share of the proceeds
30 assigned to the condominium parcel in the plan of termination
31 or as subsequently modified by the court.

1 (6) POWERS IN CONNECTION WITH TERMINATION.--The
2 approval of the plan of termination does not terminate the
3 association. It shall continue in existence following approval
4 of the plan of termination with all powers and duties it had
5 before approval of the plan. Notwithstanding any provision to
6 the contrary in the declaration or bylaws, after approval of
7 the plan the board shall:

8 (a) Employ directors, agents, attorneys, and other
9 professionals to liquidate or conclude its affairs.

10 (b) Conduct the affairs of the association as
11 necessary for the liquidation or termination.

12 (c) Carry out contracts and collect, pay, and settle
13 debts and claims for and against the association.

14 (d) Defend suits brought against the association.

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

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

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

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

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

1 (7) NATURAL DISASTERS.--

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

13 (b) The receiver shall have all powers given to the
14 board pursuant to the declaration, bylaws, and subsection (6),
15 and any other powers that are necessary to conclude the
16 affairs of the association and are set forth in the order of
17 appointment. The appointment of the receiver is subject to the
18 bonding requirements of such order. The order shall also
19 provide for the payment of a reasonable fee to the receiver
20 from the sources identified in the order, which may include
21 rents, profits, incomes, maintenance fees, or special
22 assessments collected from the condominium property.

23 (8) REPORTS AND REPLACEMENT OF RECEIVER.--

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

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1 to the unit owners and lienors at the mailing address provided
2 to the association by the unit owners and the lienors.

3 (b) The unit owners of an association in termination
4 may recall or remove members of the board of administration
5 with or without cause at any time as provided in s.
6 718.112(2)(j).

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

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

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

3 (a) The name, address, and powers of the termination
4 trustee.

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

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

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

21 (e) Any interests of the respective unit owners in
22 insurance proceeds or condemnation proceeds that are not used
23 for repair or reconstruction at the time of termination.
24 Unless the declaration expressly addresses the distribution of
25 insurance proceeds or condemnation proceeds, the plan of
26 termination may apportion those proceeds pursuant to any
27 method prescribed in subsection (12).

28 (11) PLAN OF TERMINATION; OPTIONAL PROVISIONS;
29 CONDITIONAL TERMINATION.--

30 (a) The plan of termination may provide that each unit
31 owner retains the exclusive right of possession to the portion

1 of the real estate that formerly constituted the unit, in
2 which case the plan must specify the conditions of possession.

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

11 (12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM
12 PROPERTY.--

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

21 (b) The portion of proceeds allocated to the units
22 shall be further apportioned among the individual units. The
23 apportionment is deemed fair and reasonable if it is so
24 determined by the unit owners, who may approve the plan of
25 termination by any of the following methods:

26 1. The respective values of the units based on the
27 fair-market values of the units immediately before the
28 termination, as determined by one or more independent
29 appraisers selected by the association or termination trustee;
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1 2. The respective values of the units based on the
2 most recent market value of the units before the termination,
3 as provided in the county property appraiser's records; or

4 3. The respective interests of the units in the common
5 elements specified in the declaration immediately before the
6 termination.

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

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

22 (13) TERMINATION TRUSTEE.--The association shall serve
23 as termination trustee unless another person is appointed in
24 the plan of termination. If the association is unable,
25 unwilling, or fails to act as trustee, any unit owner may
26 petition the court to appoint a trustee. Upon the date of the
27 recording or at a later date specified in the plan, title to
28 the condominium property vests in the trustee. Unless
29 prohibited by the plan, the termination trustee shall be
30 vested with the powers given to the board pursuant to the
31 declaration, bylaws, and subsection (6). If the association is

1 not the termination trustee, the trustee's powers shall be
2 coextensive with those of the association to the extent not
3 prohibited in the plan of termination or the order of
4 appointment. If the association is not the termination
5 trustee, the association shall transfer any association
6 property to the trustee. If the association is dissolved, the
7 trustee shall also have such other powers necessary to
8 conclude the affairs of the association.

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

24 (15) NOTICE.--

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

1 was recorded, notice that a copy of the plan shall be
2 furnished upon written request, and notice that the unit owner
3 or lienor has the right to contest the fairness of the plan.

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

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

1 (17) DISTRIBUTION.--

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

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

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1 (c) The proceeds from any sale of condominium property
2 or association property and any remaining condominium property
3 or association property, common surplus, and other assets
4 shall be distributed in the following priority:

5 1. To pay the reasonable termination trustee's fees
6 and costs and accounting fees and costs.

7 2. To lienholders of liens recorded prior to the
8 recording of the declaration.

9 3. To purchase-money lienholders on units to the
10 extent necessary to satisfy their liens.

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

13 5. To creditors of the association, as their interests
14 appear.

15 6. To unit owners, the proceeds of any sale of
16 condominium property subject to satisfaction of liens on each
17 unit in their order of priority, in shares specified in the
18 plan of termination, unless objected to by a unit owner or
19 lienor.

20 7. To unit owners, the remaining condominium property,
21 subject to satisfaction of liens on each unit in their order
22 of priority, in shares specified in the plan of termination,
23 unless objected to by a unit owner or a lienor as provided in
24 paragraph (b).

25 8. To unit owners, the proceeds of any sale of
26 association property, the remaining association property,
27 common surplus, and other assets of the association, subject
28 to satisfaction of liens on each unit in their order of
29 priority, in shares specified in the plan of termination,
30 unless objected to by a unit owner or a lienor as provided in
31 paragraph (b).

1 (d) After determining that all known debts and
2 liabilities of an association in the process of termination
3 have been paid or adequately provided for, the termination
4 trustee shall distribute the remaining assets pursuant to the
5 plan of termination. If the termination is by court proceeding
6 or subject to court supervision, the distribution may not be
7 made until any period for the presentation of claims ordered
8 by the court has elapsed.

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

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

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

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

3 (20) EXCLUSION.--This section does not apply to the
4 termination of a condominium incident to a merger of that
5 condominium with one or more other condominiums under s.
6 718.110(7).

7 Section 2. This act shall take effect July 1, 2007.

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10 SENATE SUMMARY

11 Substantially revises statutory provisions that govern
12 the termination of the condominium form of government of
13 a property. Requires a plan of termination and provides
14 methods of approving the plan. Requires reports. Provides
15 powers and duties of the association board or other
16 termination trustee. Requires certain notices. Provides
17 property valuation requirements. Provides for the
18 allocation of proceeds from the sale of the property.
19 Provides for the creation of another condominium by the
20 trustee. (See bill for details.)
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