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2 An act relating to condominiums; amending s.
3 718.117, F.S.; substantially revising
4 provisions relating to the termination of the
5 condominium form of ownership of a property;
6 providing legislative findings; providing
7 grounds for termination; providing powers and
8 duties of the board of administration of the
9 association; waiving certain notice
10 requirements following natural disasters;
11 providing requirements for a plan of
12 termination; providing for the allocation of
13 proceeds from the sale of condominium property;
14 providing powers and duties of a termination
15 trustee; providing notice requirements;
16 providing a procedure for contesting a plan of
17 termination; providing for award or recovery of
18 attorney's fees and costs; providing rules for
19 the distribution of property and sale proceeds;
20 providing for the association's status
21 following termination; allowing the creation of
22 another condominium by the trustee; specifying
23 an exclusion; providing an effective date.

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

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

29 (Substantial rewording of section. See
30 s. 718.117, F.S., for present text.)
31 718.117 Termination of condominium.--

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 if not more than 10 percent of the total voting
15 interests of the condominium have rejected the plan of
16 termination by negative vote or by providing written
17 objections thereto. This subsection does not apply to
18 condominiums in which 75 percent or more of the units are
19 timeshare units.

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

22 (5) MORTGAGE LIENHOLDERS.--Notwithstanding any
23 provision to the contrary in the declaration or this chapter,
24 approval of a plan of termination by the holder of a recorded
25 mortgage lien affecting a condominium parcel in which fewer
26 than 75 percent of the units are timeshare units is not
27 required unless the plan of termination will result in less
28 than the full satisfaction of the mortgage lien affecting the
29 condominium parcel. If such approval is required and not
30 given, a holder of a recorded mortgage lien who objects to the
31 plan of termination may contest the plan as provided in

1 subsection (16). At the time of sale, the lien shall be
2 transferred to the proportionate share of the proceeds
3 assigned to the condominium parcel in the plan of termination
4 or as subsequently modified by the court.

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

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

14 (b) Conduct the affairs of the association as
15 necessary for the liquidation or termination.

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

18 (d) Defend suits brought against the association.

19 (e) Sue in the name of the association for all sums
20 due or owed to the association or to recover any of its
21 property.

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

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

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1 (h) Collect and receive rents, profits, accounts
2 receivable, income, maintenance fees, special assessments, or
3 insurance proceeds for the association.

4 (i) Contract and do anything in the name of the
5 association which is proper or convenient to terminate the
6 affairs of the association.

7 (7) NATURAL DISASTERS.--

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

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

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

30 (a) The association, receiver, or termination trustee
31 shall prepare reports each quarter following the approval of

1 the plan of termination setting forth the status and progress
2 of the termination, costs and fees incurred, the date the
3 termination is expected to be completed, and the current
4 financial condition of the association, receivership, or
5 trusteeship and provide copies of the report by regular mail
6 to the unit owners and lienors at the mailing address provided
7 to the association by the unit owners and the lienors.

8 (b) The unit owners of an association in termination
9 may recall or remove members of the board of administration
10 with or without cause at any time as provided in s.

11 718.112(2)(j).

12 (c) The lienors of an association in termination
13 representing at least 50 percent of the outstanding amount of
14 liens may petition the court for the appointment of a
15 termination trustee, which shall be granted upon good cause
16 shown.

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

1 recorded in the public records of each county in which any
2 portion of the condominium is located. The plan is effective
3 only upon recordation or at a later date specified in the
4 plan.

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

7 (a) The name, address, and powers of the termination
8 trustee.

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

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

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

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

1 (11) PLAN OF TERMINATION; OPTIONAL PROVISIONS;
2 CONDITIONAL TERMINATION.--

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

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

15 (12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM
16 PROPERTY.--

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

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

30 1. The respective values of the units based on the
31 fair-market values of the units immediately before the

1 termination, as determined by one or more independent
2 appraisers selected by the association or termination trustee;

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

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

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

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

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

1 vested with the powers given to the board pursuant to the
2 declaration, bylaws, and subsection (6). If the association is
3 not the termination trustee, the trustee's powers shall be
4 coextensive with those of the association to the extent not
5 prohibited in the plan of termination or the order of
6 appointment. If the association is not the termination
7 trustee, the association shall transfer any association
8 property to the trustee. If the association is dissolved, the
9 trustee shall also have such other powers necessary to
10 conclude the affairs of the association.

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

26 (15) NOTICE.--

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

1 termination has been recorded. The notice must include the
2 book and page number of the public records in which the plan
3 was recorded, notice that a copy of the plan shall be
4 furnished upon written request, and notice that the unit owner
5 or lienor has the right to contest the fairness of the plan.

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

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

1 be implemented. In such action, the prevailing party shall
2 recover reasonable attorney's fees and costs.

3 (17) DISTRIBUTION.--

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

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

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

7 1. To pay the reasonable termination trustee's fees
8 and costs and accounting fees and costs.

9 2. To lienholders of liens recorded prior to the
10 recording of the declaration.

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

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

15 5. To creditors of the association, as their interests
16 appear.

17 6. To unit owners, the proceeds of any sale of
18 condominium property subject to satisfaction of liens on each
19 unit in their order of priority, in shares specified in the
20 plan of termination, unless objected to by a unit owner or
21 lienor as provided in paragraph (b).

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

27 8. To unit owners, the proceeds of any sale of
28 association property, the remaining association property,
29 common surplus, and other assets of the association, subject
30 to satisfaction of liens on each unit in their order of
31 priority, in shares specified in the plan of termination,

1 unless objected to by a unit owner or a lienor as provided in
2 paragraph (b).

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

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

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

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

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

5 (20) EXCLUSION.--This section does not apply to the
6 termination of a condominium incident to a merger of that
7 condominium with one or more other condominiums under s.
8 718.110(7).

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

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