

A bill to be entitled

An act relating to condominiums; amending s. 718.117, F.S.; substantially revising provisions relating to the termination of the condominium form of ownership of a property; providing legislative findings; providing grounds for termination; providing powers and duties of the board of administration of the association; waiving certain notice requirements following natural disasters; providing requirements for a plan of termination; providing for the allocation of proceeds from the sale of condominium property; providing powers and duties of a termination trustee; providing notice requirements; providing a procedure for contesting a plan of termination; providing for award or recovery of attorney's fees and costs; providing rules for the distribution of property and sale proceeds; providing for the association's status following termination; allowing the creation of another condominium by the trustee; specifying an exclusion; providing an effective date.

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

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

(Substantial rewording of section. See

s. 718.117, F.S., for present text.)

718.117 Termination of condominium.--

(1) LEGISLATIVE FINDINGS.--The Legislature finds that

29 condominiums are created as authorized by statute. In
 30 circumstances that may create economic waste, areas of
 31 disrepair, or obsolescence of a condominium property for its
 32 intended use and thereby lower property tax values, the
 33 Legislature further finds that it is the public policy of this
 34 state to provide by statute a method to preserve the value of
 35 the property interests and the rights of alienation thereof that
 36 owners have in the condominium property before and after
 37 termination. The Legislature further finds that it is contrary
 38 to the public policy of this state to require the continued
 39 operation of a condominium when to do so constitutes economic
 40 waste or when the ability to do so is made impossible by law or
 41 regulation. This section applies to all condominiums in this
 42 state in existence on or after July 1, 2007.

43 (2) TERMINATION BECAUSE OF ECONOMIC WASTE OR
 44 IMPOSSIBILITY.--

45 (a) Notwithstanding any provision to the contrary in the
 46 declaration, the condominium form of ownership of a property may
 47 be terminated by a plan of termination approved by the lesser of
 48 the lowest percentage of voting interests necessary to amend the
 49 declaration or as otherwise provided in the declaration for
 50 approval of termination when:

51 1. The total estimated cost of repairs necessary to
 52 restore the improvements to their former condition or bring them
 53 into compliance with applicable laws or regulations exceeds the
 54 combined fair market value of all units in the condominium after
 55 completion of the repairs; or

56 2. It becomes impossible to operate or reconstruct a

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57 condominium in its prior physical configuration because of land-
58 use laws or regulations.

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

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

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

76 (5) MORTGAGE LIENHOLDERS.--Notwithstanding any provision
77 to the contrary in the declaration or this chapter, approval of
78 a plan of termination by the holder of a recorded mortgage lien
79 affecting a condominium parcel in which fewer than 75 percent of
80 the units are timeshare units is not required unless the plan of
81 termination will result in less than the full satisfaction of
82 the mortgage lien affecting the condominium parcel. If such
83 approval is required and not given, a holder of a recorded
84 mortgage lien who objects to the plan of termination may contest

85 the plan as provided in subsection (16). At the time of sale,
86 the lien shall be transferred to the proportionate share of the
87 proceeds assigned to the condominium parcel in the plan of
88 termination or as subsequently modified by the court.

89 (6) POWERS IN CONNECTION WITH TERMINATION.--The approval
90 of the plan of termination does not terminate the association.
91 It shall continue in existence following approval of the plan of
92 termination with all powers and duties it had before approval of
93 the plan. Notwithstanding any provision to the contrary in the
94 declaration or bylaws, after approval of the plan the board
95 shall:

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

98 (b) Conduct the affairs of the association as necessary
99 for the liquidation or termination.

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

102 (d) Defend suits brought against the association.

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

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

108 (g) Sell at public or private sale or exchange, convey, or
109 otherwise dispose of assets of the association for an amount
110 deemed to be in the best interests of the association, and
111 execute bills of sale and deeds of conveyance in the name of the
112 association.

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113 (h) Collect and receive rents, profits, accounts
114 receivable, income, maintenance fees, special assessments, or
115 insurance proceeds for the association.

116 (i) Contract and do anything in the name of the
117 association which is proper or convenient to terminate the
118 affairs of the association.

119 (7) NATURAL DISASTERS.--

120 (a) If, after a natural disaster, the identity of the
121 directors or their right to hold office is in doubt, if they are
122 deceased or unable to act, if they fail or refuse to act, or if
123 they cannot be located, any interested person may petition the
124 circuit court to determine the identity of the directors or, if
125 found to be in the best interests of the unit owners, to appoint
126 a receiver to conclude the affairs of the association after a
127 hearing following notice to such persons as the court directs.
128 Lienholders shall be given notice of the petition and have the
129 right to propose persons for the consideration by the court as
130 receiver.

131 (b) The receiver shall have all powers given to the board
132 pursuant to the declaration, bylaws, and subsection (6), and any
133 other powers that are necessary to conclude the affairs of the
134 association and are set forth in the order of appointment. The
135 appointment of the receiver is subject to the bonding
136 requirements of such order. The order shall also provide for the
137 payment of a reasonable fee to the receiver from the sources
138 identified in the order, which may include rents, profits,
139 incomes, maintenance fees, or special assessments collected from
140 the condominium property.

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

142 (a) The association, receiver, or termination trustee
 143 shall prepare reports each quarter following the approval of the
 144 plan of termination setting forth the status and progress of the
 145 termination, costs and fees incurred, the date the termination
 146 is expected to be completed, and the current financial condition
 147 of the association, receivership, or trusteeship and provide
 148 copies of the report by regular mail to the unit owners and
 149 lienors at the mailing address provided to the association by
 150 the unit owners and the lienors.

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

154 (c) The lienors of an association in termination
 155 representing at least 50 percent of the outstanding amount of
 156 liens may petition the court for the appointment of a
 157 termination trustee, which shall be granted upon good cause
 158 shown.

159 (9) PLAN OF TERMINATION.--The plan of termination must be
 160 a written document executed in the same manner as a deed by unit
 161 owners having the requisite percentage of voting interests to
 162 approve the plan and by the termination trustee. A copy of the
 163 proposed plan of termination shall be given to all unit owners,
 164 in the same manner as for notice of an annual meeting, at least
 165 14 days prior to the meeting at which the plan of termination is
 166 to be voted upon or prior to or simultaneously with the
 167 distribution of the solicitation seeking execution of the plan
 168 of termination or written consent to or joinder in the plan. A

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169 unit owner may document assent to the plan by executing the plan
170 or by consent to or joinder in the plan in the manner of a deed.
171 A plan of termination and the consents or joinders of unit
172 owners and, if required, consents or joinders of mortgagees must
173 be recorded in the public records of each county in which any
174 portion of the condominium is located. The plan is effective
175 only upon recordation or at a later date specified in the plan.

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

178 (a) The name, address, and powers of the termination
179 trustee.

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

182 (c) The interests of the respective unit owners in the
183 association property, common surplus, and other assets of the
184 association, which shall be the same as the respective interests
185 of the unit owners in the common elements immediately before the
186 termination, unless otherwise provided in the declaration.

187 (d) The interests of the respective unit owners in any
188 proceeds from the sale of the condominium property. The plan of
189 termination may apportion those proceeds pursuant to any method
190 prescribed in subsection (12). If, pursuant to the plan of
191 termination, condominium property or real property owned by the
192 association is to be sold following termination, the plan must
193 provide for the sale and may establish any minimum sale terms.

194 (e) Any interests of the respective unit owners in
195 insurance proceeds or condemnation proceeds that are not used
196 for repair or reconstruction at the time of termination. Unless

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197 the declaration expressly addresses the distribution of
198 insurance proceeds or condemnation proceeds, the plan of
199 termination may apportion those proceeds pursuant to any method
200 prescribed in subsection (12).

201 (11) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL
202 TERMINATION.--

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

207 (b) In a conditional termination, the plan must specify
208 the conditions for termination. A conditional plan does not vest
209 title in the termination trustee until the plan and a
210 certificate executed by the association with the formalities of
211 a deed, confirming that the conditions in the conditional plan
212 have been satisfied or waived by the requisite percentage of the
213 voting interests, have been recorded.

214 (12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM
215 PROPERTY.--

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

224 (b) The portion of proceeds allocated to the units shall

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225 be further apportioned among the individual units. The
226 apportionment is deemed fair and reasonable if it is so
227 determined by the unit owners, who may approve the plan of
228 termination by any of the following methods:

229 1. The respective values of the units based on the fair-
230 market values of the units immediately before the termination,
231 as determined by one or more independent appraisers selected by
232 the association or termination trustee;

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

236 3. The respective interests of the units in the common
237 elements specified in the declaration immediately before the
238 termination.

239 (c) The methods of apportionment in paragraph (b) do not
240 prohibit any other method of apportioning the proceeds of sale
241 allocated to the units agreed upon in the plan of termination.
242 The portion of the proceeds allocated to the common elements
243 shall be apportioned among the units based upon their respective
244 interests in the common elements as provided in the declaration.

245 (d) Liens that encumber a unit shall be transferred to the
246 proceeds of sale of the condominium property and the proceeds of
247 sale or other distribution of association property, common
248 surplus, or other association assets attributable to such unit
249 in their same priority. The proceeds of any sale of condominium
250 property pursuant to a plan of termination may not be deemed to
251 be common surplus or association property.

252 (13) TERMINATION TRUSTEE.--The association shall serve as

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

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

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281 but the contract is not binding on the unit owners until the
282 plan is approved pursuant to subsection (2) or subsection (3).

283 (15) NOTICE.--

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

294 (b) The trustee, within 90 days after the effective date
295 of the plan, shall provide to the division a certified copy of
296 the recorded plan, the date the plan was recorded, and the
297 county, book, and page number of the public records in which the
298 plan is recorded.

299 (16) RIGHT TO CONTEST.--A unit owner or lienor may contest
300 a plan of termination by initiating a summary procedure pursuant
301 to s. 51.011 within 90 days after the date the plan is recorded.
302 A unit owner or lienor who does not contest the plan within the
303 90-day period is barred from asserting or prosecuting a claim
304 against the association, the termination trustee, any unit
305 owner, or any successor in interest to the condominium property.
306 In an action contesting a plan of termination, the person
307 contesting the plan has the burden of pleading and proving that
308 the apportionment of the proceeds from the sale among the unit

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309 owners was not fair and reasonable. The apportionment of sale
310 proceeds is presumed fair and reasonable if it was determined
311 pursuant to the methods prescribed in subsection (12). The court
312 shall determine the rights and interests of the parties and
313 order the plan of termination to be implemented if it is fair
314 and reasonable. If the court determines that the plan of
315 termination is not fair and reasonable, the court may void the
316 plan or may modify the plan to apportion the proceeds in a fair
317 and reasonable manner pursuant to this section based upon the
318 proceedings and order the modified plan of termination to be
319 implemented. In such action, the prevailing party shall recover
320 reasonable attorney's fees and costs.

321 (17) DISTRIBUTION.--

322 (a) Following termination of the condominium, the
323 condominium property, association property, common surplus, and
324 other assets of the association shall be held by the termination
325 trustee, as trustee for unit owners and holders of liens on the
326 units, in their order of priority.

327 (b) Not less than 30 days before the first distribution,
328 the termination trustee shall deliver by certified mail, return
329 receipt requested, a notice of the estimated distribution to all
330 unit owners, lienors of the condominium property, and lienors of
331 each unit at their last known addresses stating a good-faith
332 estimate of the amount of the distributions to each class and
333 the procedures and deadline for notifying the termination
334 trustee of any objections to the amount. The deadline must be at
335 least 15 days after the date the notice was mailed. The notice
336 may be sent with or after the notice required by subsection

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337 (15). If a unit owner or lienor files a timely objection with
338 the termination trustee, the trustee need not distribute the
339 funds and property allocated to the respective unit owner or
340 lienor until the trustee has had a reasonable time to determine
341 the validity of the adverse claim. In the alternative, the
342 trustee may interplead the unit owner, lienor, and any other
343 person claiming an interest in the unit and deposit the funds
344 allocated to the unit in the court registry, at which time the
345 condominium property, association property, common surplus, and
346 other assets of the association are free of all claims and liens
347 of the parties to the suit. In an interpleader action, the
348 trustee and prevailing party may recover reasonable attorney's
349 fees and costs and court costs.

350 (c) The proceeds from any sale of condominium property or
351 association property and any remaining condominium property or
352 association property, common surplus, and other assets shall be
353 distributed in the following priority:

354 1. To pay the reasonable termination trustee's fees and
355 costs and accounting fees and costs.

356 2. To lienholders of liens recorded prior to the recording
357 of the declaration.

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

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

362 5. To creditors of the association, as their interests
363 appear.

364 6. To unit owners, the proceeds of any sale of condominium

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365 property subject to satisfaction of liens on each unit in their
366 order of priority, in shares specified in the plan of
367 termination, unless objected to by a unit owner or lienor.

368 7. To unit owners, the remaining condominium property,
369 subject to satisfaction of liens on each unit in their order of
370 priority, in shares specified in the plan of termination, unless
371 objected to by a unit owner or a lienor as provided in paragraph
372 (b).

373 8. To unit owners, the proceeds of any sale of association
374 property, the remaining association property, common surplus,
375 and other assets of the association, subject to satisfaction of
376 liens on each unit in their order of priority, in shares
377 specified in the plan of termination, unless objected to by a
378 unit owner or a lienor as provided in paragraph (b).

379 (d) After determining that all known debts and liabilities
380 of an association in the process of termination have been paid
381 or adequately provided for, the termination trustee shall
382 distribute the remaining assets pursuant to the plan of
383 termination. If the termination is by court proceeding or
384 subject to court supervision, the distribution may not be made
385 until any period for the presentation of claims ordered by the
386 court has elapsed.

387 (e) Assets held by an association upon a valid condition
388 requiring return, transfer, or conveyance, which condition has
389 occurred or will occur, shall be returned, transferred, or
390 conveyed in accordance with the condition. The remaining
391 association assets shall be distributed pursuant to paragraph
392 (c).

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

398 (18) ASSOCIATION STATUS.--The termination of a condominium
399 does not change the corporate status of the association that
400 operated the condominium property. The association continues to
401 exist to conclude its affairs, prosecute and defend actions by
402 or against it, collect and discharge obligations, dispose of and
403 convey its property, and collect and divide its assets, but not
404 to act except as necessary to conclude its affairs.

405 (19) CREATION OF ANOTHER CONDOMINIUM.--The termination of
406 a condominium does not bar the creation by the termination
407 trustee of another condominium affecting any portion of the same
408 property.

409 (20) EXCLUSION.--This section does not apply to the
410 termination of a condominium incident to a merger of that
411 condominium with one or more other condominiums under s.
412 718.110(7).

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