

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

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Section 718.117, Florida Statutes, is amended
 24 to read:

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

27 718.117 Termination of condominium.--

28 (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

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, provided that not more than 10 percent of the total
73 voting interests of the condominium have rejected the plan of
74 termination by negative vote or by providing written objections
75 thereto. This subsection does not apply to condominiums in which
76 75 percent or more of the units are timeshare units.

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

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

85 the mortgage lien affecting the condominium parcel. If such
 86 approval is required and not given, a holder of a recorded
 87 mortgage lien who objects to the plan of termination may contest
 88 the plan as provided in subsection (16). At the time of sale,
 89 the lien shall be transferred to the proportionate share of the
 90 proceeds assigned to the condominium parcel in the plan of
 91 termination or as subsequently modified by the court.

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

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

101 (b) Conduct the affairs of the association as necessary
 102 for the liquidation or termination.

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

105 (d) Defend suits brought against the association.

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

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

111 (g) Sell at public or private sale or exchange, convey, or
 112 otherwise dispose of assets of the association for an amount

113 deemed to be in the best interests of the association, and
114 execute bills of sale and deeds of conveyance in the name of the
115 association.

116 (h) Collect and receive rents, profits, accounts
117 receivable, income, maintenance fees, special assessments, or
118 insurance proceeds for the association.

119 (i) Contract and do anything in the name of the
120 association which is proper or convenient to terminate the
121 affairs of the association.

122 (7) NATURAL DISASTERS.--

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

134 (b) The receiver shall have all powers given to the board
135 pursuant to the declaration, bylaws, and subsection (6), and any
136 other powers that are necessary to conclude the affairs of the
137 association and are set forth in the order of appointment. The
138 appointment of the receiver is subject to the bonding
139 requirements of such order. The order shall also provide for the
140 payment of a reasonable fee to the receiver from the sources

141 identified in the order, which may include rents, profits,
 142 incomes, maintenance fees, or special assessments collected from
 143 the condominium property.

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

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

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

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

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

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

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

181 (a) The name, address, and powers of the termination
 182 trustee.

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

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

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

197 (e) Any interests of the respective unit owners in
 198 insurance proceeds or condemnation proceeds that are not used
 199 for repair or reconstruction at the time of termination. Unless
 200 the declaration expressly addresses the distribution of
 201 insurance proceeds or condemnation proceeds, the plan of
 202 termination may apportion those proceeds pursuant to any method
 203 prescribed in subsection (12).

204 (11) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL
 205 TERMINATION.--

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

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

217 (12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM
 218 PROPERTY.--

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

225 independent appraisers selected by the association or
226 termination trustee.

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

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

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

239 3. The respective interests of the units in the common
240 elements specified in the declaration immediately before the
241 termination.

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

248 (d) Liens that encumber a unit shall be transferred to the
249 proceeds of sale of the condominium property and the proceeds of
250 sale or other distribution of association property, common
251 surplus, or other association assets attributable to such unit
252 in their same priority. The proceeds of any sale of condominium

253 property pursuant to a plan of termination may not be deemed to
254 be common surplus or association property.

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

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

281 on the trustee the authority to protect, conserve, manage, sell,
282 or dispose of the condominium property. The trustee, on behalf
283 of the unit owners, may contract for the sale of real property,
284 but the contract is not binding on the unit owners until the
285 plan is approved pursuant to subsection (2) or subsection (3).

286 (15) NOTICE.--

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

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

302 (16) RIGHT TO CONTEST.--A unit owner or lienor may contest
303 a plan of termination by initiating a summary procedure pursuant
304 to s. 51.011 within 90 days after the date the plan is recorded.
305 A unit owner or lienor who does not contest the plan within the
306 90-day period is barred from asserting or prosecuting a claim
307 against the association, the termination trustee, any unit
308 owner, or any successor in interest to the condominium property.

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

324 (17) DISTRIBUTION.--

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

330 (b) Not less than 30 days before the first distribution,
331 the termination trustee shall deliver by certified mail, return
332 receipt requested, a notice of the estimated distribution to all
333 unit owners, lienors of the condominium property, and lienors of
334 each unit at their last known addresses stating a good-faith
335 estimate of the amount of the distributions to each class and
336 the procedures and deadline for notifying the termination

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

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

- 357 1. To pay the reasonable termination trustee's fees and
 358 costs and accounting fees and costs.
- 359 2. To lienholders of liens recorded prior to the recording
 360 of the declaration.
- 361 3. To purchase-money lienholders on units to the extent
 362 necessary to satisfy their liens.
- 363 4. To lienholders of liens of the association which have
 364 been consented to under s. 718.121(1).

365 5. To creditors of the association, as their interests
366 appear.

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

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

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

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

391 (e) Assets held by an association upon a valid condition
392 requiring return, transfer, or conveyance, which condition has

393 occurred or will occur, shall be returned, transferred, or
394 conveyed in accordance with the condition. The remaining
395 association assets shall be distributed pursuant to paragraph
396 (c).

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

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

409 (19) CREATION OF ANOTHER CONDOMINIUM.--The termination of
410 a condominium does not bar the creation by the termination
411 trustee of another condominium affecting any portion of the same
412 property.

413 (20) EXCLUSION.--This section does not apply to the
414 termination of a condominium incident to a merger of that
415 condominium with one or more other condominiums under s.
416 718.110(7).

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