

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Regulatory Affairs
2 Committee
3 Representative Eagle offered the following:

Amendment (with title amendment)

Remove lines 414-415 and insert:

Section 4. Subsection (7) of section 721.15, Florida Statutes, is amended to read:

721.15 Assessments for common expenses.-

(7) (a) A purchaser, regardless of how her or his timeshare estate or timeshare license has been acquired, including a purchaser at a judicial sale, is personally liable for all assessments for common expenses which come due while the purchaser is the owner of such interest. A successor in interest is jointly and severally liable with her or his predecessor in interest for all unpaid assessments against such predecessor up to the time of transfer of the timeshare interest to such successor without prejudice to any right a successor in interest may have to recover from her or his predecessor in interest any

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20 amounts assessed against such predecessor and paid by such
21 successor. The predecessor in interest, or a person providing
22 resale transfer services for the predecessor in interest
23 pursuant to s. 721.17(3), shall provide the managing entity with
24 a copy of the recorded deed of conveyance if the interest is a
25 timeshare estate or a copy of the instrument of transfer if the
26 interest is a timeshare license, containing the name and mailing
27 address of the successor in interest within 15 days after the
28 date of transfer. The managing entity shall not be liable to any
29 person for any inaccuracy in the books and records of the
30 timeshare plan arising from the failure of the predecessor in
31 interest to timely and correctly notify the managing entity of
32 the name and mailing address of the successor in interest.

33 (b) Within 30 days after receiving a written request from
34 a timeshare interest owner, or from a person providing resale
35 transfer services for a consumer timeshare reseller pursuant to
36 s. 721.17(3), provided that all assessments and other monies
37 owed by such timeshare interest owner to the managing entity
38 have been previously paid in full, a managing entity shall
39 provide a certificate or estoppel letter to or at the direction
40 of such timeshare interest owner or to such person providing
41 resale transfer services stating that all assessments and other
42 monies owed to the managing entity by the timeshare interest
43 owner have been paid in full with respect to the timeshare
44 interest. The managing entity may charge a reasonable fee for
45 the preparation and delivery of the certificate or estoppel
46 letter. The amount of the fee must be included on the
47 certificate or estoppel letter.

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48 Section 5. Section 721.17, Florida Statutes, is amended to
49 read:

50 721.17 Transfer of interest; resale transfer agreements.-

51 (1) Except in the case of a timeshare plan subject to the
52 provisions of chapter 718 or chapter 719, no developer, owner of
53 the underlying fee, or owner of the underlying personal property
54 shall sell, lease, assign, mortgage, or otherwise transfer his
55 or her interest in the accommodations and facilities of the
56 timeshare plan except by an instrument evidencing the transfer
57 recorded in the public records of the county in which such
58 accommodations and facilities are located or, with respect to
59 personal property timeshare plans, in full compliance with s.
60 721.08. The instrument shall be executed by both the transferor
61 and transferee and shall state:

62 (a)~~(1)~~ That its provisions are intended to protect the
63 rights of all purchasers of the plan.

64 (b)~~(2)~~ That its terms may be enforced by any prior or
65 subsequent timeshare purchaser so long as that purchaser is not
66 in default of his or her obligations.

67 (c)~~(3)~~ That so long as a purchaser remains in good
68 standing with respect to her or his obligations under the
69 timeshare instrument, including making all payments to the
70 managing entity required by the timeshare instrument with
71 respect to the annual common expenses of the timeshare plan, the
72 transferee shall honor all rights of such purchaser relating to
73 the subject accommodation or facility as reflected in the
74 timeshare instrument.

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75 (d)~~(4)~~ That the transferee will fully honor all rights of
76 timeshare purchasers to cancel their resale transfer agreements
77 and receive appropriate refunds.

78 (e)~~(5)~~ That the obligations of the transferee under such
79 instrument will continue to exist despite any cancellation or
80 rejection of the resale transfer agreements between the
81 developer and purchaser arising out of bankruptcy proceedings.

82 (2) Should any transfer of the interest of the developer,
83 the owner of the underlying fee, or the owner of the underlying
84 property occur in a manner which is not in compliance with
85 subsection (1) ~~this section~~, the terms set forth in this section
86 shall be presumed to be a part of the transfer and shall be
87 deemed to be included in the instrument of transfer. Notice
88 shall be mailed to each purchaser of record within 30 days after
89 the transfer unless such transfer does not affect the
90 purchaser's rights in or use of the timeshare plan. Persons who
91 hold mortgages or liens on the property constituting a timeshare
92 plan before the filed public offering statement of such plan is
93 approved by the division shall not be considered transferees for
94 the purposes of this subsection ~~section~~.

95 (3) (a) In the course of offering timeshare interest
96 transfer services, no person shall:

97 1. Engage in any timeshare interest transfer services for
98 consideration, or the expectation of receiving consideration,
99 without first obtaining a written resale transfer agreement
100 signed by the person offering timeshare interest transfer
101 services and by the consumer timeshare reseller that complies
102 with the provisions of this subsection.

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103 2. Fail to provide both the consumer timeshare reseller
104 and the escrow agent required by paragraph (c) with a fully-
105 executed copy of the resale transfer agreement.

106 3. Fail to comply with the requirements of paragraphs (b)
107 and (c).

108 (b) Each resale transfer agreement shall contain:

109 1. A statement that no fee, cost or other compensation may
110 be paid to the person providing the timeshare resale transfer
111 services prior to the delivery to the consumer timeshare
112 reseller of written evidence that all promised timeshare
113 interest transfer services have been performed, including, but
114 not limited to, delivery to both the consumer timeshare reseller
115 and the timeshare plan managing entity of a copy of the recorded
116 instrument or other legal document evidencing the transfer of
117 ownership of or legal title to the consumer resale timeshare
118 interest to the transferee, accompanied by the full name,
119 address and other known contact information for the transferee.

120 2. The name, address, current phone number and current
121 electronic mail address of the escrow agent required by
122 paragraph (c).

123 3. A statement that the person providing the timeshare
124 resale transfer services will provide the consumer timeshare
125 reseller with written notice of the full performance of the
126 timeshare resale transfer services, together with a copy of the
127 recorded instrument or other legal document evidencing the
128 transfer of ownership of or legal title to the consumer resale
129 timeshare interest from the consumer timeshare reseller to a
130 transferee, and that the consumer timeshare reseller will have

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131 five (5) business days after receipt of such written notice of
132 full performance to notify the escrow agent in the manner
133 described in the resale transfer agreement if the consumer
134 timeshare reseller believes that all promised timeshare interest
135 transfer services have not in fact been fully performed.

136 4. A statement in substantially the following form in
137 conspicuous type immediately preceding the space in the resale
138 transfer agreement provided for the consumer timeshare
139 reseller's signature:

141 <Name> has agreed to provide you with timeshare resale
142 transfer services pursuant to this resale transfer
143 agreement. Once those services have been fully
144 performed, <Name> is obligated to provide you with
145 written notice of such full performance and a copy of
146 the recorded instrument or other legal document
147 evidencing the transfer of ownership of or legal title
148 to the consumer resale timeshare interest to the
149 transferee. Any fee or other compensation paid by you
150 under this agreement prior to such full performance by
151 <Name> must be held in escrow by the escrow agent
152 specified in this agreement, and <Name> is prohibited
153 from receiving any such fee or other compensation
154 until all promised timeshare interest transfer
155 services have been performed. You have five (5)
156 business days after your receipt of written notice of
157 full performance from <Name> to notify the escrow
158 agent in the manner described in this agreement if you

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159 believe that all promised timeshare interest transfer
160 services have not in fact been fully performed.

161
162 (c)1. Prior to entering into any resale transfer
163 agreement, a person providing timeshare resale transfer services
164 shall establish an escrow account with an escrow agent for the
165 purpose of protecting the funds or other property of consumer
166 timeshare resellers required to be escrowed by this subsection.
167 A licensed Florida attorney in good standing, a licensed Florida
168 real estate broker in good standing, or a licensed Florida title
169 insurance agent in good standing, any of whom also provides
170 timeshare interest transfer services as described in this
171 subsection, may serve as escrow agent under this subsection. The
172 escrow agent shall maintain the escrow account only in such a
173 manner as to be under the direct supervision and control of the
174 escrow agent. The escrow agent shall have a fiduciary duty to
175 each consumer timeshare reseller to maintain the escrow account
176 in accordance with good accounting practices and to release the
177 consumer timeshare reseller's funds or other property from
178 escrow only in accordance with this subsection.

179 2. All funds or other property which is received from or
180 on behalf of a consumer timeshare reseller pursuant to a resale
181 transfer agreement to provide timeshare interest transfer
182 services shall be deposited into an escrow account pursuant to
183 this paragraph. Any fee, cost or other compensation that is due
184 or that will be paid to the person providing the timeshare
185 resale transfer services under the resale transfer agreement
186 must be held in such escrow account until the person providing

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187 the timeshare resale transfer services has fully complied with
188 all of its obligations under the resale transfer agreement and
189 under this subsection.

190 3. The funds or other property required to be escrowed
191 hereunder may only be released from escrow as follows:

192 a. The escrow agent may release the escrowed funds or
193 other property to or on the order of the person providing the
194 timeshare resale transfer services upon presentation of an
195 affidavit by such person that all promised timeshare interest
196 transfer services have been performed, including delivery to
197 both the consumer timeshare reseller and the timeshare plan
198 managing entity of a copy of the recorded instrument or other
199 legal document evidencing the transfer of ownership of or legal
200 title to the consumer resale timeshare interest to the
201 transferee, provided that at least five (5) days have passed
202 since the consumer timeshare reseller has received the notice
203 required under paragraph (b)3. and the escrow agent has not
204 received notice from the consumer timeshare reseller pursuant to
205 paragraph (b)3. disputing that all promised timeshare interest
206 transfer services have in fact fully performed by the person
207 providing the timeshare resale transfer services.

208 b. Should the escrow agent receive conflicting demands for
209 funds or other property held in escrow, the escrow agent shall
210 immediately notify the division of the dispute and either
211 promptly submit the matter to arbitration or, by interpleader or
212 otherwise, seek an adjudication of the matter by court.

213 c. The escrow agent shall retain all resale transfer
214 agreements, escrow account records, affidavits and notices of

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215 dispute received pursuant to this subsection for a period of 5
216 years.

217 (d) Any person providing timeshare resale transfer
218 services, agent or third party service provider therefor, or
219 escrow agent who intentionally fails to comply with the
220 provisions of this subsection concerning the establishment of an
221 escrow account, deposits of funds into escrow, withdrawal
222 therefrom, and maintenance of records is guilty of a felony of
223 the third degree, punishable as provided in s. 775.082, s.
224 775.083, or s. 775.084, or the successor thereof. The failure
225 to establish an escrow account, place funds therein as required
226 in this subsection, withdraw funds therefrom only as permitted
227 in this subsection, or maintain records is prima facie evidence
228 of an intentional and purposeful violation of this subsection.

229 (e)1. No person shall participate, for consideration or
230 with the expectation of consideration, in any plan or scheme, a
231 purpose of which is to transfer a consumer resale timeshare
232 interest to a transferee that the person knows or reasonably
233 should know does not have the ability, means or intent to pay
234 all assessments and taxes for the consumer resale timeshare
235 interest that are due or that come due during the transferee's
236 ownership.

237 2. It shall be deemed a violation of this paragraph if
238 there is any transfer, series of transfers, or other action made
239 or taken by any person for the purpose of circumventing
240 subparagraph 1.

241 3. It shall not be a violation of this paragraph when a
242 managing entity performs such administrative acts as are

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243 necessary to satisfy its fiduciary duties or to otherwise comply
244 with the requirements of this chapter with respect to any
245 transfer of a consumer resale timeshare interest, including the
246 requirement to maintain and update the books and records of the
247 timeshare plan pursuant to ss. 721.13(4) and 721.15(7).

248 (f) Providing timeshare interest transfer services with
249 respect to a consumer resale timeshare interest in a timeshare
250 property located or offered within this state, or in a multisite
251 timeshare plan registered or required to be registered to be
252 offered in this state, including acting as an agent or third-
253 party service provider for a resale service provider,
254 constitutes operating, conducting, engaging in, or carrying on a
255 business or business venture in this state for the purposes of
256 s. 48.193(1).

257 (g)1. Notwithstanding any other penalties provided for in
258 this subsection, any violation of this subsection is subject to
259 a civil penalty of not more than \$10,000 per violation pursuant
260 to s. 721.26(5) (e).

261 2. A managing entity may bring an action to enforce the
262 provisions of paragraph (e). In any such action, the managing
263 entity may recover its actual damages, plus attorney's fees and
264 court costs. Without regard to any other remedy or relief to
265 which the managing entity is entitled, the managing entity may
266 also bring an action to obtain a declaratory judgment that an
267 act or practice violates paragraph (e) and to enjoin a person
268 who has violated, is violating, or is otherwise likely to
269 violate paragraph (e).

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270 (h) The provisions of this subsection shall not apply to
 271 any resale advertiser who offers resale advertising services to
 272 a consumer timeshare reseller, unless such person also
 273 specifically offers timeshare interest transfer services to such
 274 consumer timeshare reseller. The provisions of paragraphs (a)-
 275 (d) shall not apply to any resale broker who offers timeshare
 276 interest transfer services to a consumer timeshare reseller, so
 277 long as the resale broker complies in all respects with chapter
 278 475 and with s. 721.20. The provisions of this subsection shall
 279 not apply to the transfer of ownership of a consumer resale
 280 timeshare interest from a consumer timeshare reseller to the
 281 developer or managing entity of that timeshare plan.

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284 **T I T L E A M E N D M E N T**

285 Remove line 9 and insert:
 286 property timeshare plans; amending s. 721.15, F.S.;

287 requiring an estoppel letter in certain timeshare

288 resale transfer transactions; amending s. 721.17,

289 F.S.; providing requirements for resale transfer

290 agreements; amending s. 721.82, F.S.;

291