

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 756

INTRODUCER: Judiciary Committee and Senator Perry

SUBJECT: Timeshare Properties

DATE: January 30, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 756 authorizes the board of administration for a condominium or cooperative association operating a timeshare to remove accommodations or facilities without the approval of the members of the association. However, the bill maintains the requirement in current law that, if the timeshare condominium or timeshare cooperative contains any residential units that are not subject to the timeshare plan, the board of administration for the condominium or cooperative must obtain the approval of a majority of the owners of such residential units before it can make any material alterations or substantial additions to the accommodations or facilities of such timeshare condominium or timeshare cooperative.

The bill also provides that the board of administration for a condominium or cooperative may make material alterations or substantial additions to the accommodations or facilities of a timeshare condominium or timeshare cooperative without the approval of the owners' association if the board of administration of any owners' association operates a timeshare plan including a timeshare condominium. Current law references the board's operation of a timeshare condominium, not the board's operation of a timeshare plan including a timeshare condominium.

The bill provides that the managing entity of a timeshare project has all of the rights and remedies of an operator of any public lodging establishment or public food service establishment as set forth in several provisions in ch. 509, F.S., which authorizes the operator of a public lodging establishments or public food service establishments to remove a person from their establishments, including the right to have a law enforcement officer remove a person from the

establishments, if the person engages in certain activities, including the possession and use of controlled substances and engaging in disorderly conduct.

The bill requires the managing entity of a timeshare condominium or timeshare cooperative to provide the assessment certificate required under s. 721.15(7), F.S., in lieu of the estoppel certificate required by s. 718.116(8), F.S., or s. 719.108(6), F.S., relating to condominium and cooperative associations, respectively. The assessment certificate states the amount of moneys owed or due within 90 days to the managing entity on a consumer resale of a timeshare interest.

The bill also changes the appointing authority for appointment of a commissioner of deeds from the Governor to the Secretary of State. A commissioner of deeds is a person appointed to act in a foreign state or country to acknowledge that a person executing a real property instrument is the person named in the instrument. A real property instrument must be acknowledged as a condition of recording.

The bill takes effect July 1, 2024.

II. Present Situation:

A timeshare interest is a form of ownership of real and personal property.¹ In a timeshare, multiple parties hold the right to use a condominium unit or a cooperative unit. Each owner of a timeshare interest is allotted a period of time (typically one week) during which the owner has the exclusive right to use the property.

The Florida Vacation Plan and Timesharing Act, ch. 721, F.S., establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers and prospective purchasers.² Chapter 721, F.S., applies to all timeshare plans consisting of more than seven timeshare periods over a period of at least 3 years when the accommodations and facilities are located or offered within this state.³ Part I of ch. 721, F.S., relates to vacation plans and timesharing, and part II of ch. 721, F.S., relates to multisite vacation and timeshare plans that are also known as vacation clubs.

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) of the Department of Business and Professional Regulation (DBPR) administers ch. 721, F.S.

Definitions

The term “timeshare plan” means any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, or right-to-use agreement or by any other means, where a purchaser, for consideration, receives ownership rights in or a right to use accommodations and facilities, if any, for a period of time less than a full year during any given year, but not

¹ See s. 721.05(36), F.S.

² Section 721.02(2) and (3), F.S.

³ Section 721.03, F.S.

necessarily for consecutive years.⁴ The term includes both personal property timeshare and real property timeshare plans.⁵

A “timeshare unit” is an accommodation of a timeshare plan which is divided into timeshare periods or a condominium unit in which timeshare estates have been created.⁶

A “timeshare estate” is a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof.⁷ The term also includes an interest in a condominium unit, a cooperative unit, or a trust. Whether the term includes both direct and indirect interests in trusts is not specified. An example of an indirect interest in a trust is the interest of a trust beneficiary’s spouse or other dependent.

A “timeshare license” is the right to occupy a timeshare unit, which right is not a personal property timeshare interest or a timeshare estate.⁸ A “timeshare interest” is a timeshare estate, a personal property timeshare interest, or a timeshare license.⁹

Managing Entity

Section 721.13(1), F.S., requires the developer to provide a managing entity for each timeshare plan. The managing entity operates or maintains the timeshare plan.¹⁰ Section 721.13, F.S., provides the duties of a managing entity. The managing entity may be the developer, a separate manager or management firm, or an owners’ association.¹¹

⁴ Section 721.05(39), F.S.

⁵ Section 721.05(39)(a), F.S., defines a “personal property timeshare plan,” as a timeshare plan in which the accommodations are comprised of personal property that is not permanently affixed to real property. Section 721.05(39)(b), F.S., defines a “real property timeshare plan,” as a timeshare plan in which the accommodations of the timeshare plan are comprised of or permanently affixed to real property.

⁶ See ss. 721.05(41) and 718.103(26), F.S.

⁷ Section 721.05(34), F.S.

⁸ Section 721.05(37), F.S.

⁹ Section 721.05(36), F.S.

¹⁰ See s. 721.05(22), F.S., defining the term “managing entity.”

¹¹ Section 721.13(1)(a), F.S.

Material Alterations or Substantial Additions to Accommodations or Facilities

Section 721.13(8), F.S., provides that, notwithstanding anything to the contrary in s. 718.110, F.S.,¹² s. 718.113, F.S.,¹³ s. 718.114, F.S.,¹⁴ or s. 719.1055, F.S.,¹⁵ the board of administration of any owners' association that operates a timeshare condominium pursuant to s. 718.111, F.S., or a timeshare cooperative pursuant to s. 719.104, F.S., has the power to make material alterations or substantial additions to the accommodations or facilities of such timeshare condominium or timeshare cooperative without the approval of the owners' association. Current law does not reference the deletion of accommodations or facilities.

Section 721.13(8), F.S., also provides that, if the timeshare condominium or timeshare cooperative contains any residential units that are not subject to the timeshare plan, the board of administration for the condominium or cooperative must obtain the approval of a majority of the owners of such residential units before it can make any material alterations or substantial additions to the accommodations or facilities of such timeshare condominium or timeshare cooperative. However, unless otherwise provided in the timeshare instrument as originally recorded, an amendment may not change the configuration or size of any accommodation in any material fashion, or change the proportion or percentage by which a member of the owners' association shares the common expenses, unless the record owners of the affected units or timeshare interests and all record owners of liens on the affected units or timeshare interests join in the execution of the amendment.

Assessment Certificates

Condominiums and Cooperatives

An assessment is a unit or parcel owner's share of the funds required for the payment of the association's common expenses.¹⁶ A special assessment is any assessment levied against a unit or parcel owner other than the assessment adopted in the annual budget.¹⁷

¹² Section 718.110, F.S., provides for the amending of a declaration of condominium and, in part, prohibits any amendment that materially alters or substantially adds to the condominium property, unless all recorded unit owners and all record owners of liens join in and approve the execution of the amendment.

¹³ Section 718.113, F.S., sets forth the responsibility of a condominium association to maintain the common elements of the condominium and, in relevant part, prohibits any material alteration or substantial additions to the common elements or to real property which is association property, except in a manner provided in the declaration as originally recorded or as amended under the procedures provided in the declaration. However, if the declaration as originally recorded or as amended does not specify the procedure for approval of material alterations or substantial additions, 75 percent of the total voting interests of the association must approve the alterations or additions before the material alterations or substantial additions are commenced.

¹⁴ Section 718.114, F.S., authorizes condominium associations, with specified conditions, to "enter into agreements to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities, regardless of whether the lands or facilities are contiguous to the lands of the condominium, if such lands and facilities are intended to provide enjoyment, recreation, or other use or benefit to the unit owners."

¹⁵ Section 719.1055, F.S., provides for the amendment of cooperative documents and, in part, prohibits any amendment that materially alters or substantially adds to the cooperative property, unless all recorded unit owners and all record owners of liens join in and approve the execution of the amendment.

¹⁶ Sections 718.103(1) and 719.103(1), F.S., relating to condominium and cooperative associations, respectively.

¹⁷ Sections 718.103(24) and 719.103(23), F.S., relating to condominium and cooperative associations, respectively.

Assessments that are unpaid may become a lien on the unit or parcel.¹⁸ An owner is jointly and severally liable with the previous owner for all unpaid assessments that come due up to the time of transfer of title.¹⁹ This liability is without prejudice to an owner's right to recover from the previous owner the amounts paid that were assessed during the time that the previous owner owned the property.²⁰

To protect against undisclosed financial obligations and to obtain title to the property free of any lien or encumbrance in favor of the association, purchasers may request that the seller provide an estoppel certificate, also known as an assessment certificate, from the condominium or cooperative association. An estoppel certificate certifies the amount of any total debt owed to the association for unpaid monetary obligations by a unit or parcel owner as of a specified date.²¹

Within 10 days after receiving a written request for an estoppel certificate, the association must provide an estoppel certificate signed by an officer or agent of the association stating all assessments and other moneys owed to the association by the owner with respect to the unit or parcel. In addition to specifying the amount of any debt owed to the association, an estoppel certificate must also include specific information about the association and the property to be purchased, including the amount of any regular periodic assessments or other fees.²²

Timeshares

A purchaser timeshare estate or timeshare license is personally liable for all assessments for common expenses which come due while the purchaser is the owner of such interest.²³ A successor in interest of timeshare estate or timeshare license is also 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 amounts assessed against such predecessor and paid by such successor.²⁴

The managing entity of a timeshare plan must provide an assessment certificate within 30 days after receiving a written request from a timeshare interest owner, an agent designated in writing by the timeshare interest owner, or a person providing resale transfer services for a consumer timeshare reseller. The assessment certificate must be signed by an officer or agent of the managing entity, to the person requesting the certificate, state the amount of any assessment, transfer fee, or other moneys currently owed to the managing entity, and of any assessment, transfer fee, or other moneys approved by the managing entity that will be due within the next 90 days, with respect to the designated consumer resale timeshare interest, as well as any information contained in the books and records of the timeshare plan regarding the legal description and use plan related to the designated consumer resale timeshare interest.²⁵

¹⁸ Sections 718.116(5) and 719.108(4), F.S., relating to condominium and cooperative associations, respectively.

¹⁹ Sections 718.116(1)(a) and 719.108(1), F.S., relating to condominium and cooperative associations, respectively.

²⁰ *Id.* The term "without prejudice" means "without loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party." BLACK'S LAW DICTIONARY 770 (10th ed. 2014).

²¹ Sections 718.116(8) and 719.108(6), F.S., relating to condominium and cooperative associations, respectively.

²² *Id.*

²³ Section 721.15(7), F.S.

²⁴ *Id.*

²⁵ *Id.*

The managing entity may charge a fee not to exceed \$150 for the preparation and delivery of the certificate, and the amount of the fee must be included on the certificate.²⁶

Public Lodging Establishments and Public Food Service Establishments

The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (DBPR) is charged with enforcing the provisions of ch. 509, F.S., relating to the regulation of public lodging establishments and public food service establishments to protect public health, safety, and welfare.

Section 509.242(1), F.S., classifies public lodging establishments as a hotel, motel, nontransient apartment, transient apartment, bed and breakfast inn, timeshare project, or vacation rental.²⁷ Section 509.242(1)(g), F.S., defines the term “timeshare project” to mean “a timeshare property, as defined in [ch. 721, F.S.,] that is located in this state and that is also a transient public lodging establishment.”

The term “public lodging establishments” includes transient and non-transient public lodging establishments.²⁸ The principal differences between transient and non-transient public lodging establishments are the number of times that the establishments are rented in a calendar year and the duration of the rentals.

A “transient public lodging establishment” is defined in s. 509.013(4)(a)1., F.S., as:

any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings *which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month*, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests. (emphasis added)

A “non-transient public lodging establishment” is defined in s. 509.013(4)(a)2., F.S., as:

any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings *which is rented to guests for periods of at least 30 days or 1 calendar month*, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month. (emphasis added)

The following provisions in ch. 509, F.S., authorizes the operator of any public lodging establishment or public food service establishment to remove persons from their establishments, including the right to have a law enforcement officer remove a person from the establishments:

²⁶ *Id.*

²⁷ See s. 509.013(4)(b), F.S., which exempts the several types of establishments from the definition of “public lodging establishment.”

²⁸ Section 509.013(4)(a), F.S.

- Section 509.141, F.S., providing the right to remove or cause to be removed a person for specified causes, including any guest of the establishment who, while on the premises of the establishment, illegally possesses or deals in controlled substances as defined in ch. 893, F.S., or is intoxicated, profane, lewd, or brawling; who indulges in any language or conduct which disturbs the peace and comfort of other guests or which injures the reputation, dignity, or standing of the establishment; fails to check out by the time agreed upon in writing by the guest and public lodging establishment at check-in unless an extension of time is agreed to by the public lodging establishment and guest prior to checkout; fails to make payment for food, beverages, or services; or, in the opinion of the operator, is a person the continued entertainment of whom would be detrimental to the establishment.
- Section 509.142, F.S., providing the right to refuse accommodations or service to any person whose conduct on the premises of the establishment displays intoxication, profanity, lewdness, or brawling; who indulges in language or conduct such as to disturb the peace or comfort of other guests; who engages in illegal or disorderly conduct; who illegally possesses or deals in controlled substances as defined in ch. 893, F.S.; or whose conduct constitutes a nuisance.
- Section 509.143, F.S., permitting an operator to take a person into custody and detain that person in a reasonable manner and for a reasonable time if the operator has probable cause to believe that the person was engaging in disorderly conduct in violation of s. 877.03, F.S.,²⁹ on the premises of the licensed establishment and that such conduct was creating a threat to the life or safety of the person or others.
- Section 509.162, F.S., permitting any law enforcement officer or operator to take a person into custody on the premises and detain such person in a reasonable manner and for a reasonable period of time if the officer has probable cause to believe that theft of personal property belonging to such establishment has been committed by a person and that the officer or operator can recover such property or the reasonable value thereof by taking the person into custody for the purpose of attempting to effect such recovery or for prosecution.

Commissioner of Deeds

Instruments affecting title to real property must be recorded to be effective.³⁰ One primary requirement of recording is that a signature of the person transferring the real property interest must be acknowledged and proved.³¹ Within the state, this is typically done by notarization of the signature. Outside of the state, the statutes allow for several alternative means for acknowledgment. One is acknowledgment by a commissioner of deeds, a person appointed by the Governor to take acknowledgments in a particular foreign state or country.³² Similarly, commissioners of deeds for timeshare transactions may be appointed by the Governor.³³

²⁹ Section 877, F.S., provides that a person is guilty of a misdemeanor of the second degree if they commit “such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct.”

³⁰ Section 695.01(1), F.S.

³¹ Section 695.03, F.S.

³² Sections 695.03(2) and (3), F.S.

³³ Section 721.97, F.S.

III. Effect of Proposed Changes:

Material Alterations, Additions, and Deletions to Accommodations or Facilities

The bill amends s. 721.13(8), F.S., to authorize the board of administration for a condominium or cooperative association operating a timeshare to delete accommodations or facilities without the approval of the members of the association. However, the bill maintains the requirement in current law that, if the timeshare condominium or timeshare cooperative contains any residential units that are not subject to the timeshare plan, the board of administration for the condominium or cooperative must obtain the approval of a majority of the owners of such residential units before it can make any material alterations or substantial additions to the accommodations or facilities of such timeshare condominium or timeshare cooperative.

The bill also amends s. 721.13(8), F.S., to clarify that the board of administration for a condominium or cooperative may make material alterations or substantial additions to the accommodations or facilities of such timeshare condominium or timeshare cooperative without the approval of the owners' association if the board of administration of any owners' association operates a timeshare plan including a timeshare condominium. Current law references the board's operation of a timeshare condominium, not the board's operation of a timeshare plan including a timeshare condominium.

Public Lodging Establishments and Public Food Service Establishments

The bill creates s. 721.13(14), F.S., to provide that the managing entity of a timeshare project as defined in s. 509.242(1)(g), F.S., has all of the rights and remedies of an operator of any public lodging establishment or public food service establishment as set forth in ss. 509.141, 509.142, 509.143, and 509.162, F.S., and is entitled to have a law enforcement officer take any action, including arrest or removal from the timeshare property, against any purchaser, including a deeded owner, or guest or invitee of such purchaser or owner who engages in conduct described in those sections or conduct in violation of the timeshare instrument.³⁴

Assessment Certificates

The bill amends s. 721.15(7)(b), F.S., to provide that the managing entity of a timeshare condominium or timeshare cooperative must provide the assessment certificate required under this section in lieu of the estoppel certificate required by s. 718.116(8), F.S., or s. 719.108(6), F.S., relating to condominium and cooperative associations, respectively. The certificate states the amount of moneys owed or due within 90 days to the managing entity on a consumer resale of a timeshare interest.

Appointment of a Commissioner of Deeds

The bill amends ss. 695.03 and 721.97, F.S., to change the appointing authority for a commissioner of deeds from the Governor to the Secretary of State.

³⁴ Section 721.05(35), F.S., defines the term "timeshare instrument" to mean one or more of the documents, by whatever name denominated, creating or governing the operation of a timeshare plan.

Effective Date

The bill takes effect July 1, 2024.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 721.13 and 721.15.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on January 29, 2024:

The committee substitute added two sections to the bill that changed the appointing authority for a commissioner of deeds from the Governor to the Secretary of State.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
