

THE FLORIDA SENATE
2013 SUMMARY OF LEGISLATION PASSED
Committee on Regulated Industries

CS/HB 7025 — Timeshares

by Regulatory Affairs Committee; Business and Professional Regulation Subcommittee; and Rep. Eagle (CS/SB 696 by Regulated Industries Committee and Senator Stargel)

The bill relates to the Florida Vacation Plan and Timesharing Act. The bill revises provisions related to the nonjudicial, trustee foreclosure process for the foreclosure of liens on timeshare interests, including liens based on unpaid assessments and unpaid mortgage obligations. In current law, the lienholders appoint a trustee to serve the required notices and forms on the timeshare interest holder.

The bill provides for the regulation of timeshare interest transfer companies. These businesses solicit timeshare owners to transfer ownership of their timeshare to another entity or person for a fee paid by the timeshare owner to relieve the timeshare owner from paying maintenance fees and other obligations of ownership. The bill requires that timeshare transfer companies or their agent must provide an estoppel letter to the managing entity of the timeshare plan. An estoppel letter indicates whether all assessments and other money owed to the managing entity by the timeshare interest owner have been paid. The bill requires timeshare transfer companies to deliver a signed written resale transfer agreement to the consumer timeshare reseller, and specifies the information that must be included in the agreement. The agreement must contain a statement that no fees or costs will be paid before delivery to the consumer timeshare reseller and managing entity of written evidence that the transfer services have been performed. The agreement must also identify the escrow agent.

The person providing transfer services must establish an escrow account. The funds or property must be held with the escrow agent until the transfer company has fully complied with the obligations under the agreement. The escrow records must be kept for 5 years. It provides that it is a third degree felony to intentionally fail to comply with the escrow and recordkeeping requirements. The bill provides managing entities with a private right of action to recover actual damages; plus attorney fees and court costs, to bring an action for a declaratory judgment; and to bring an action to obtain an injunction. The bill also provides exemptions for real estate brokers, licensed attorneys, title insurers, or agents, who receive total consideration from a consumer reseller of less than \$600, and for transfers from a timeshare reseller to the developer or managing entity of that timeshare plan.

The bill also:

- Exempts timeshare condominiums from the requirements related to the conduct of condominium board member elections;
- Permits timeshare plan reserves to be calculated using the pooling accounting method as an alternative to the straight line accounting method, as is also currently permitted for condominium associations;
- Revises the definition of the term “timeshare estate” in s. 721.05(34), F.S., to include direct and indirect interest in a trust;

- Revises the definition of the term “notice address” to include any address that is known to be the current address of a timeshare mortgagor, owner, or junior interestholder;
- Amends the definition of the term “permitted delivery service” in s. 721.82(11), F.S., to allow the trustee to use a foreign jurisdiction’s recognized equivalent of certified or registered mail;
- Requires that the required title search must be conducted and delivered to the trustee prior to the sale of the timeshare interest with an effective date of within sixty days of the date it is delivered to the trustee;
- Provides that the initiation of a foreclosure proceeding against a timeshare interest does not automatically act as a lis pendens, which is a notice, recorded in the chain of title to real property that gives notice that the property is the subject matter of litigation, and that any interests acquired during the pendency of the suit are subject to its outcome;
- Provides the information that must be included in a notice of lis pendens;
- Provides a good faith standard for determining whether the obligor is the person who signed the receipt of the notice of default and intent to foreclose;
- Provides that it will not be a third degree felony, as provided in current law, if the trustee makes an incorrect determination as to the identity of the signature on the notice receipt and he or she made a good faith effort to properly ascertain if the obligor signed the return receipt in accordance with the good faith standards provided in this bill;
- Delineates the information that must be included in the publication notice that is required if the obligor cannot be served with a notice of default and intent to foreclose;
- Provides that circumstances in which the attestation that a diligent search and inquiry to ascertain the obligor has been done is not required;
- Permits the notice of default and intent to foreclose to be perfected as to all obligors at the same address, so long as notice is perfected as to at least one obligor at that address;
- Permits the trustee to use a third party to conduct the sale on behalf of the trustee; and
- Corrects scrivener’s error by deleting duplicative terms.

If approved by the Governor, these provisions take effect July 1, 2013.

Vote: Senate 38-1; House 116-0