

STORAGE NAME: h1565s2z.rpp  
DATE: May 28, 1998

**\*\*FINAL ACTION\*\***  
**\*\*SEE FINAL ACTION STATUS SECTION\*\***

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
REAL PROPERTY & PROBATE  
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** CS/CS/HB 1565

**RELATING TO:** Timeshare Plans

**SPONSOR(S):** Committee on Real Property & Probate and Representative Edwards

**STATUTE(S) AFFECTED:** Amending sections 721.03, 721.05, 721.06, 721.07, 721.075, 721.09, 721.11, 721.13, 721.15, 721.18, 721.26, 721.265, and creating Part III and Part IV of chapter 721, Florida Statutes

**COMPANION BILL(S):** SB 626

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) REAL PROPERTY & PROBATE YEAS 6 NAYS 0
- (2) REAL PROPERTY & PROBATE YEAS 6 NAYS 0
- (3)
- (4)
- (5)

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I. FINAL ACTION STATUS:

CS/CS/SB 626 was substituted for CS/CS/HB 1565. The House took up and passed CS/CS/SB 626. The bill became law without the Governor's signature on April 30, 1998. See. Final Bill Research & Economic Impact Statement for CS/CS/SB 626 and 98-36 Laws of Florida.

II. SUMMARY:

CS/CS/HB 1565 revises various provisions of law relating to timeshare plans. The bill authorizes the promulgation of described rules relating to exemptions from chapter 721, F.S. The bill adds a definition of "regulated short-term product", and prescribes notice and right to cancellation requirements for regulated short-term products. The bill provides that if a proposed amendment to an approved multisite timeshare plan adds a new component site the initial period to approve or to notify the plan of deficiencies will be 45 days.

The bill removes a provision relating to incidental benefits which requires the developer to file an irrevocable letter of credit, surety bond, or other assurance to guarantee the delivery of the incidental benefits to the purchaser. The bill revises language regarding reservation agreements, and revises provisions relating to the duties of the managing entity. The bill permits timeshare plans to vary assessments for common expenses.

CS/CS/HB 1565 creates the "Timeshare Lien Foreclosure Act." This part of the bill creates a streamlined process for foreclosure of timeshare estates that are delinquent in the payment of association levied tax and common expense assessments and private mortgages. The bill also creates a "Commissioner of Deeds" to take acknowledgments, proofs of execution, and oaths outside the United States in connection with timeshare properties.

This bill may have some fiscal impact.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Chapter 721, Florida Statutes, is the Florida Vacation Plan and Timesharing Act. This chapter gives statutory recognition to real property timesharing and personal property timesharing in the state. The chapter establishes procedures for the creation, sale, exchange, promotion, and operation of timeshare plans.

Section 721.03, Florida Statutes, provides that this chapter applies to all timeshare plans consisting of more than 7 timeshare periods over a period of at least 3 years in which the accommodations or facilities are located within this state, unless otherwise exempted. Section 721.03(1)(b), Florida Statutes, provides that with respect to timeshare plans containing accommodations or facilities located in this state which are offered for sale outside the jurisdictional limits of the United States, the offers are exempt from this chapter so long as the seller complies with the specified disclosure requirements, and only if the plans have first been filed with and approved by the Division of Condominiums, Land Sales & Mobile Homes (division), of the Department of Business & Professional Regulation (department) pursuant to s. 721.07 or s. 721.55, F.S. This provides the division with a record of the existence of the timeshare plan so that it can monitor the management and operation of the timeshare plan. The developer's offering activities in the other country are exempt once the Florida filing has been approved.

Section 721.05, Florida Statutes, provides definitions. There is no definition of "regulated short-term product" in current law.

Section 721.06, Florida Statutes, requires that a conspicuous type disclosure be placed in the timeshare purchase contract stating that the purchaser has a ten-day period in which to cancel the purchase contract without penalty or obligation.

Section 721.07(3), Florida Statutes, provides for the filing of public offering statements with the division for approval. Until the division approves the filing, any contract regarding the sale of the timeshare plan which is the subject of the public offering statement is voidable by the purchaser. Section 721.07(3)(a)1., Florida Statutes, provides that the division has 20 days after receipt of a proposed amendment to an offering statement to approve or cite deficiencies in the proposed amendment. If the division fails to act within 20 days, the amendment is deemed approved. If a developer fails to respond to a deficiency notice within 30 days, the division may reject the amendment.

Section 721.075, Florida Statutes, relates to incidental benefits. An incidental benefit is defined in s. 721.05(17), F.S., to mean an accommodation, product, service, discount, or other benefit which is offered to a purchaser, or a prospective purchaser of a timeshare plan, prior to the expiration of the initial 10-day voidability period pursuant to section 721.10; which is not an exchange program as defined in subsection (15); and which complies with the provisions of section 721.075, F.S. The term does not include an offer of the use of the accommodations and facilities of the timeshare plan on a free or discounted one-time basis. Section 721.075, F.S., requires that a developer file a specified financial assurance of the availability of any incidental benefits if the aggregate

represented value of the incidental benefits to a purchaser exceeds 5 percent of the purchase price of the timeshare interest.

Section 721.09, Florida Statutes, relates to reservation agreements and escrows. This section currently requires that prior to filing the public offering statement with the division, a seller cannot offer a timeshare plan for sale, but may accept reservation deposits. This requires approval by the division of a fully executed escrow agreement and properly-filed reservation. It is unclear whether this section prohibits a seller or developer from advertising the timeshare plan in any way prior to filing a public offering statement, or whether it permits the developer to advertise the existence of the reservation agreement without promoting the timeshare plan and without having filed the public offering statement.

Section 721.11, Florida Statutes, requires that any advertising material relating to a timeshare plan, including prize and gift promotional offers, shall be filed with the division by the developer 10 days prior to use. The director of the division has the discretion to accept other assurances from the developer to assure the developer will comply with the provisions of ch. 721, F.S., such as surety bond or an irrevocable letter of credit. This section defines the term "advertising material," and provides a list of advertising or oral statements by any seller which are prohibited. This section provides disclosures for written advertising material, including any lodging certificate, gift award, premium, discount, or display booth.

Section 721.13, Florida Statutes, requires the timeshare plan managing entity to arrange for an annual independent audit of the books and records of the timeshare plan and to file a copy of the audit with the division. A copy must be sent by the entity to the officers of the owners association. If there is no owners' association, the purchasers must be notified that the audit is available upon request. The department, by rule, requires the audit to be filed with the division within 5 months after the end of the timeshare plan's fiscal year. Rule 61B-40.007(4), F.A.C.

Section 732.13(3)(i), Florida Statutes, requires the timeshare plan managing entity to file a statement of receipts and disbursements regarding the ad valorem tax escrow account as required by s. 192.037(6)(e), F.S.

Section 732.13(4), Florida Statutes, provides a mechanism for purchasers of a condominium timeshare plan to request the managing entity to initiate a mailing to the owners of the timeshare plan if the purpose of the mailing is to advance legitimate association business, such as a proxy solicitation for any purpose. The purchaser who requests the mailing must reimburse the association in advance for the association's actual costs in performing the mailing. This section prohibits the managing entity from disseminating a list of owners. The ability to request a mailing only applies to condominium or cooperative timeshare purchasers, not to a purchaser of a timeshare license plan.

Section 721.15(1), Florida Statutes, requires a developer to allocate common expenses of a condominium timeshare plan among purchasers on the basis of either square footage or unit type.

Section 721.18, Florida Statutes, relates to exchange programs. Subsection (2) provides that each exchange company offering an exchange program to purchasers in

the state shall file the information required in subsection (1) at least 20 days prior to July 1 of each year. Initial filings must be made at least 20 days prior to offering an exchange program to any purchaser in the state. Within 20 days of receipt of the filing, the division must determine whether the filing is adequate to meet the requirements of this section and must notify the exchange company in writing that the division has either approved the filing or found specified deficiencies in the filing.

Section 721.26, Florida Statutes, provides that the division has the power to enforce and ensure compliance with the provisions of this chapter using the powers provided in this chapter, as well as the powers prescribed in chapters 498, 718, and 719, Florida Statutes. This section specifies the divisions powers and duties. Currently, "any person", including officers, directors, employees, agents, and others connected with a party regulated by the division has personal liability if the person has materially participated in any "offer of disposition" of a timeshare interest in violation of the chapter or rules involving fraud or other acts of dishonesty.

Section 721.265, Florida Statutes, provides for service of process. In addition to the methods of service provided for in the Florida Rules of Civil Procedure and the Florida Statutes, service of process may be made by delivering a copy of the process to the director of the division, which shall be binding upon the defendant or respondent, if:

- (a) The plaintiff, which may be the division, immediately sends a copy of the process and the pleading by certified mail to the defendant or respondent at her or his last known address.
- (b) The plaintiff files an affidavit of compliance with this section on or before the return date of the process or within the time set by the court.

Section 721.265(2), Florida Statutes, provides that if any person, including any nonresident of this state, allegedly engages in conduct prohibited by this chapter, or by any rule or order of the division, and has not filed a consent to service of process, and personal jurisdiction over her or him cannot otherwise be obtained in this state, the director is authorized to receive service of process in any noncriminal proceeding against that person or her or his successor which grows out of the conduct. The process has the same force and validity as if personally served. Notice must be given pursuant to subsection (1).

On July 19, 1996, the Secretary of the Department of Business and Professional Regulation appointed a task force to gather information and make recommendations to address the number of timeshare resorts in Florida suffering from serious financial distress and failure to comply with chapters 718 and 721, Florida Statutes. The task force included timeshare industry representatives, public accountants, and department personnel. According to the Department, the task force determined that the number and nature of financial problems facing the timeshare plans demand immediate attention in order to protect timeshare purchasers and the industry. Although this bill is not a product of that taskforce, it does address some of the issues raised in the task force meetings.

**B. EFFECT OF PROPOSED CHANGES:**

CS/CS/HB 1565 revises various provisions of law relating to timeshare plans. The bill authorizes the promulgation of described rules relating to exemptions from ch. 721, F.S. The bill adds a definition of "regulated short-term product", and prescribes notice and right to cancellation requirements for regulated short-term products. The bill provides that if a proposed amendment to an approved multisite timeshare plan adds a new component site, the initial period to approve or to notify the plan of deficiencies will be 45 days.

The bill removes a provision relating to incidental benefits which requires the developer to file an irrevocable letter of credit, surety bond, or other assurance to guarantee the delivery of the incidental benefits to the purchaser. The bill revises language regarding reservation agreements, and revises provisions relating to the duties of the managing entity. The bill permits timeshare plans to vary assessments for common expenses.

HB 1565 creates the "Timeshare Lien Foreclosure Act." This part of the bill creates a streamlined process for foreclosure of timeshare estates that are delinquent in the payment of association levied tax and common expense assessments and private mortgages. The bill also creates a "Commissioner of Deeds" to take acknowledgments, proofs of execution, and oaths outside the United States in connection with timeshare properties.

This bill will take effect upon becoming a law; however, with respect to any timeshare plan filing approved by the division prior to the date this act becomes a law, the amendment to s. 721.06(1)(f), F.S., shall not apply to such filing until January 1, 1999, unless and only to the extent the developer otherwise voluntarily agrees to comply with all or a portion of such provisions.

**C. APPLICATION OF PRINCIPLES:**

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The bill increases rulemaking authority, and provides for expedited judicial foreclosure.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The bill provides a more complex method of assessing common expenses. This may result in more complaints and lengthier investigations by the division. In addition, the bill authorizes the division to penalize regulated entities for violations of division rules.

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No. However, the bill does authorize the division to impose penalties for violation of its rules.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

**D. SECTION-BY-SECTION RESEARCH:**

**Section 1.**

Section 721.03(1)(b), Florida Statutes, is amended to clarify that the offering exemption in this paragraph is effective so long as the filing is approved within 6 months of filing unless the division stipulates to a longer time frame. The bill further clarifies existing law that requires that filing fees be paid as to the filing made under this section in the same manner as every other filing reviewed by the division. The bill adds a disclosure requirement to the purchase contract disclosure required to be contained in the contracts used in another country to inform the other-country purchasers about the status of title in the Florida accommodations or facilities.

Section 721.03(1)(c), Florida Statutes, is amended to add rulemaking authority to clarify what documentation need not be addressed in a filing, based upon the consideration that the documentation may not be applicable in the instance of an out-of-country offering.

**Section 2.**

Section 721.05, Florida Statutes, is amended to add a definition of the term "regulated short-term product." This term is defined to mean a contractual right, offered by the seller, to use accommodations of a timeshare plan, provided that:



(a) The agreement to purchase the short-term right to use is executed in this state on the same day that the prospective purchaser receives an offer to acquire an interest in a timeshare plan and does not execute a purchase contract, after attending a sales presentation; and

(b) The acquisition of the right to use includes an agreement that all or a portion of the consideration paid by the prospective purchaser for the right to use will be applied to or credited against the price of a future purchase of a timeshare interest, or that the cost of a future purchase of a timeshare interest will be fixed or locked in at a specified price.

### **Section 3.**

Section 721.06(1)(f), Florida Statutes, is amended to clarify that the 10-day period during which a contract for purchase of timeshare periods may be canceled without penalty or obligation is 10 "calendar" days after the date you sign the contract and within 10 "calendar" days after the date you receive the approved public offering statement, whichever is later. Existing law provides for 10 days and does not specify whether this is calendar or business days.

### **Section 4.**

Section 721.07(3)(a)1., Florida Statutes, is amended to provide that in the event that a proposed amendment adds a new component site to an approved multisite timeshare plan, the division's initial period in which to approve or cite deficiencies will be 45 days. Current law permits 20 days, which, according to the division, is not a workable period.

### **Section 5.**

Section 721.075(1)(e), Florida Statutes, is amended to specify that this section does not prevent the renewal "or extension of the availability" of an incidental benefit. Language is removed which provided for renewal so long as any ability to renew was not represented or otherwise portrayed to a prospective purchaser or to a purchaser prior to the expiration of his or her initial 10-day voidability period. Subsection (2)(d) is amended to add in the disclosure provision for incidental benefits that the availability of the incidental benefit may or may not be renewed or extended. This subsection is further amended to caution that the purchaser of a timeshare should not rely on the continued availability "or renewal or extension" of the incidental benefit.

The bill deletes the requirement in s. 721.075(4), F.S., for posting of financial assurances for incidental benefits exceeding 5 percent of the purchase price. According to the division, the required amount of assurances is constantly changing and requires a significant amount of time to monitor. The division points out that there are private purchaser remedies and attorneys' fees provided in the statute for a purchaser whose incidental benefit was not available in the manner portrayed.

### **Section 6.**

Section 721.09(1), Florida Statutes, is amended to provide that a seller may advertise the reservation deposit program prior to filing the public offering statement with the division, upon approval by the division of a fully executed escrow agreement and

reservation agreement. The advertisement would include restricted details about the proposed timeshare plan, and can run for a period of 90 days. At the end of the 90 day period, if the developer has not filed a public offering statement for the proposed timeshare plan, the developer must cease collection of reservation deposits and advertisement of the reservation agreement, and cancel and return all reservation deposits.

### **Section 7.**

Section 721.11(6), Florida Statutes, is added to provide that the failure to provide cancellation rights or disclosures as required by this subsection in connection with sale of a regulated short-term product constitutes misrepresentation. Any agreement relating to the sale of a regulated short-term product must be regulated as advertising material and is subject to the following:

- (a) A standard form of any agreement relating to the sale of a regulated short-term product must be filed 10 days prior to use as advertising material. Each seller must furnish each purchaser of a regulated short-term product with a fully completed and executed copy of the agreement at the time of execution.
- (b) A purchaser of a regulated short-term product has the right to cancel the agreement until midnight of the 10th calendar day following the execution date of the agreement. This right cannot be waived. Notice of cancellation must be given in the same manner prescribed for giving notice of cancellation under s. 721.10(2), F.S. The prospective purchaser who gives a valid notice of cancellation is entitled to a refund of all funds or property.
- (c) An agreement for purchase of a regulated short-term product must contain a specified list of statements given at the time the agreement is made. These statements relate to the voidability period and the refund.
- (d) An agreement for purchase of a regulated short-term product must contain a specified list of statements in conspicuous type immediately above the space reserved in the agreement for the signature of the prospective purchaser. This notice alerts the prospective purchaser of the cancellation period, the notice requirement for cancellation, and the invalidity of a waiver of the cancellation right. The notice further provides that if the purchaser executes a purchase contract for a timeshare period, s. 721.08, F.S., will apply and the purchaser will not be entitled to a cancellation refund of the short-term product.
- (e) If the seller provides the purchaser with the right to cancel the purchase of a regulated short-term product at any time up to 7 days prior to the purchaser's reserved use of the accommodations, but not less than 10 days, the seller does not have to provide the notices prescribed in paragraphs (b), (c), and (d). However, the seller must provide a statement setting out the cancellation rights and a statement about the inability to waive the cancellation right.

**Section 8.**

Section 721.13(3)(c)1., Florida Statutes, is amended to specify that the managing entity must include with its final budget, a statement of the number of periods of 7-day annual use availability that exist within the timeshare plan, including those periods filed for sale by the developer but not yet committed to the timeshare plan, for which annual fees are required to be paid to the division pursuant to s. 721.27, F.S.

Section 721.13(3)(e), Florida Statutes, is amended to conform the statutes to the current administrative rule, requiring the annual audit of the timeshare plan financial records to be filed with the division within 5 months after the end of the timeshare plan fiscal year. The bill also provides that the certified public accountants performing the audits must be licensed in Florida, provides that the timeshare plan financial statements must be prepared on an accrual basis of accounting, and presented in accordance with generally accepted accounting principles. This section is further amended to provide that notwithstanding any requirement of s. 718.111(13) or (14), F.S., the audited financial statements required by this section will be the only annual financial reporting requirements for timeshare condominiums.

Section 721.13(3)(i), Florida Statutes, is amended to require the timeshare plan managing entity to accompany its filing of the receipts and disbursements statement with a statement disclosing whether ad valorem property taxes have been paid for the timeshare development or the amounts of any delinquent taxes, interest, and penalties for each assessment year. According to the division, this will enable them to monitor this aspect of the management of each timeshare plan and to incorporate this information into on going settlement negotiations or enforcement cases pending against financially troubled timeshare plans.

Section 721.13(4), Florida Statutes, is amended to enable purchasers of licensed timeshare plans to have the same ability to request a mailing as purchasers of condominium or cooperative timeshare plans.

**Section 9.**

Section 721.15(1), Florida Statutes, is amended to permit the developer of a condominium timeshare plan to allocate common expenses of the timeshare plan in a manner different from the requirements currently applicable to all condominiums. The developer will be able to differentiate in the allocation between whole-unit condominium units and timeshare condominium units on any reasonable basis including, but not limited to: unit size, unit type, unit location, specific identification, or a combination of these factors, so long as the percentage interest in the common elements attributable to each timeshare condominium parcel or timeshare cooperative parcel equals the share of the total common expenses allocable to that parcel.

**Section 10.**

Section 721.18(2), Florida Statutes, is amended to require that both the offering and audit information required in subsection (1) be filed on or before June 1 of each year. According to the division, the existing language has led to some confusion.

**Section 11.**

Section 721.26, Florida Statutes, is amended to give the division authority, except for Part III and Part IV, to seek personal liability against regulated parties and related parties who violate the chapter or rules involving acts of dishonesty during the management and operation phase of the timeshare plan. This is an expansion of the current authority to seek personal liability during the offer and disposition phase of the timeshare plan. In addition, the bill gives the division authority to seek penalties for violation of its rules. Parts III and IV, which are new parts relating to expedited judicial foreclosure and Commissioner of Deeds are specifically excluded from the division's regulatory jurisdiction.

**Section 12.**

Section 721.265(3), Florida Statutes, is added to provide that in addition to any means recognized by law, substituted service of process on timeshare purchasers in receivership proceedings may be made in accordance with s. 721.85(1), F.S.

**Section 13.**

This section creates Part III of chapter 721, Florida Statutes, the "Timeshare Lien Foreclosure Act." According to the bill, the purposes of this part are to:

- (1) give statutory recognition to timeshare estates as parcels of real property used for vacation experience rather than for homestead purposes.
- (2) recognize that the economic health and efficient operation of the vacation ownership industry are in part dependent upon the availability of an efficient and economical process for foreclosure.
- (3) recognize the need to establish streamlined procedures for the foreclosure of any and all assessment liens and mortgage liens against timeshare estates.
- (4) reduce court congestion and the cost to taxpayers by establishing streamlined procedures for the foreclosure of assessment liens and mortgage liens against timeshare estates.

Section 721.82, Florida Statutes, is created to provide for definitions as follows:

- (1) "Assessment lien" means: (a) a lien for delinquent assessments as provided in ss. 721.16 and 718.116 as to timeshare condominiums; or (b) a lien for unpaid taxes and special assessments as provided in s. 192.037(8), F.S.
- (2) "Junior interestholder" means any person who has a lien or interest of record against a timeshare estate in the county in which the timeshare estate is located, which is inferior to the mortgage lien or assessment lien being foreclosed under this part.
- (3) "Lienholder" means a holder of an assessment lien or a holder of a mortgage lien, as applicable. A receiver appointed pursuant to s. 721.26, F.S., shall be considered a lienholder for purposes of this part.

- (4) "Mortgage" has the same meaning as set forth in s. 697.01 , F.S.
- (5) "Mortgage lien" means a security interest in a timeshare estate created by a mortgage encumbering the timeshare estate.
- (6) "Mortgagee" means a person holding a mortgage lien.
- (7) "Mortgagor" means a person granting a mortgage lien or a person who has assumed the obligation secured by a mortgage lien.
- (8) "Notice address" is defined for an assessment lien and a mortgage lien, and for a junior interestholder.
- (9) "Obligor" means either the mortgagor, the person subject to an assessment lien, or the record owner of the timeshare estate.
- (10) "Registered agent" means an agent duly appointed by the obligor under s. 721.84 for the purpose of accepting all notices and service of process under this pat. A registered agent may be an individual resident in this state whose business office qualifies as a registered office, or a domestic or foreign corporation or a not-for-profit corporation. A registered agent for any obligor may not be the lienholder or the attorney for the lienholder.
- (11) "Registered office" means the street address of the business office of the registered agent.

Section 721.83, Florida Statutes, is created to provide that a complaint in a foreclosure proceeding involving timeshare estates may join in the same action multiple defendant obligors and junior interestholders of separate timeshare estates, provided:

- (a) The foreclosure proceeding involves a single timeshare property;
- (b) The foreclosure proceeding is filed by a single plaintiff;
- (c) The default and remedy provisions in the written instruments on which the foreclosure proceeding is based are substantially the same for each defendant; and
- (d) The nature of the defaults alleged are the same for each defendant.

In any foreclosure proceeding involving multiple defendants, the court must sever for separate trial any count of the complaint in which a defense or counterclaim is timely raised by a defendant.

Section 721.84, Florida Statutes is created to provide for the appointment of a registered agent, and the registered agents duties.

- (1) Any obligor may appoint a registered agent on whom notices and process may be served under s. 721.85. The statement of appointment must be in writing signed by the obligor and must:
  - (a) Provide the name of the registered agent and the street address for the registered office;
  - (b) Identify the obligor for whom the registered agent serves;
  - (c) Indicate the purpose of the appointment;

- (d) Specify the instruments out of which the liens arise;
- (e) Designate the address the obligor wishes to use to receive mail from the registered agent; and
- (f) Contain the obligor's undertaking to inform the registered agent of any change in such designated address.

The statement of appointment must also provide for the registered agent's acceptance of the appointment, which must confirm that the registered agent is familiar with and accepts the obligations of that position as set forth in this section.

(2) An obligor may change but not revoke its appointment of registered agent and registered office by executing a written statement of change that identifies the former registered agent and registered address and also satisfies all of the requirements of subsection (1). A copy of the statement of change must be provided to the former registered agent and the affected lienholder and becomes effective upon receipt by the affected lienholder.

(3) A registered agent appointed under subsection (1) or a successor registered agent appointed under subsection (2) shall provide the lienholder with a copy of the obligor's appointment and the executed acceptance of the appointment by the registered agent following the registered agent's receipt of the statement of appointment or statement of change executed by the obligor. The statement of appointment or statement of change becomes effective upon receipt by the lienholder of the fully executed form. A successor registered agent must provide a copy of a statement of change to the former registered agent.

(4) A registered agent may change its business name or address by:

- (a) Notifying all obligors of the specific change in writing at the address the obligor designated; and
- (b) Delivering to each lienholder a statement that updates the information on the original appointment or change of appointment, identifies the names of all affected obligors, and states that each affected obligor has been notified of the change.

(5) A registered agent may resign his agency appointment provided that:

- (a) He or she executes a written statement of resignation;
- (b) A successor registered agent is appointed and such successor agent executes an acceptance of appointment as successor registered agent and satisfies all of the requirements of subsection (1). The resigning registered agent may designate a successor. Otherwise, the successor registered agent may be designated by the mortgagee as to the mortgagee lien and by the association of the timeshare plan as to the assessment lien; and
- (c) Copies of the statement of resignation and acceptance of appointment as successor registered agent are mailed to the affected obligors and to the affected lienholders. Termination occurs as of the 10th day after the date on which the statement of resignation and acceptance of appointment as successor registered agent are received by the lienholder.

(6) Unless otherwise provided in this section, a registered agent in receipt of any notice or other document addressed from the lienholder to the obligor in care of the registered agent at the registered office must mail the notice or documents to the obligor at the obligor's last designated address within 5 days of receipt.

(7) In the absence of a written agreement to the contrary, a registered agent is not liable for the failure to give notice to the obligor for the receipt of any document under this part if, the registered agent has complied in a timely manner with the procedures and duties in this section.

Section 721.85, Florida Statutes, is created to provide for service to the notice address or to the registered agent.

(1) Service of process for a foreclosure proceeding involving a timeshare estate may be made by any means recognized by law. In addition, substituted service on a party who has appointed a registered agent under s. 721.84 may be made on the registered agent. Also, when using s. 48.194 where in rem or quasi in rem relief only is sought, such service of process provisions are modified in connection with a foreclosure proceeding against a timeshare estate to provide that:

(a) Such service of process may be made on any person whether the person is located inside or outside this state, by certified or registered mail, addressed to the person to be served, or on the party's registered agent.

(b) Service shall be considered obtained upon the signing of the return receipt by any person at the notice address, or by the registered agent.

(2) The current owner and the mortgagor of a timeshare estate must promptly notify the association of the timeshare plan and the mortgagee of any change of address.

Section 721.86, Florida Statutes, provides miscellaneous provisions as follows:

(1) The procedures in this part must be given effect in the context of any foreclosure proceedings against timeshare estates governed by this chapter, chapter 702, or chapter 718.

(2) If any provisions of this part is held invalid, the invalidity does not affect other provision or applications, and are therefore, severable.

(3) The division has no authority to regulate, enforce, or ensure compliance with any provision of this part.

(4) In addition to assessment liens and mortgage liens arising after the effective date of this part, the provisions of this part apply to all assessment liens and mortgage liens existing prior to the effective date of this act regarding which a foreclosure proceeding has not yet commenced.

#### **Section 14.**

Part IV of chapter 721, Florida Statutes, is created relating to Commissioner of Deeds.

Section 721.96, Florida Statutes, is created to provide that the purpose of this part is to provide for the appointment of commissioners of deeds to take acknowledgments, proofs of execution, and oaths outside the United States in connection with the execution of any deed, mortgage, deed of trust, contract, power of attorney, or any other agreement, instrument or writing concerning, relating to, or to be used or recorded in connection with a timeshare estate, timeshare license, any property subject to a timeshare plan, or the operation of a timeshare plan located within this state.

Section 721.97, Florida Statutes, is created to provide:

(1) the Governor may appoint commissioners of deeds to take acknowledgments, proofs of execution, or oaths in any foreign country. The term of office is 4 years. The Commissioner of Deeds' certification has the same effect as if made or taken by a notary public licensed in this state.

(2) any person seeking to be appointed a commissioner of deeds must take and subscribe an oath, before a notary public in Florida or any other state, or a person authorized to take oaths in another country, to well and faithfully execute and perform the duties of the commissioner of deeds. The oath must be filed with the Department of State prior to the person being commissioned.

(3) Official acts performed by any previously appointed commissioners of deeds, between May 30, 1997, and the effective date of this part, are declared valid as though such official acts were performed in accordance with this provision.

Section 721.98, Florida Statutes, is created to provide that the division has no duty or authority to regulate, enforce, or ensure compliance with any provision of this part.

### **Section 15.**

This act shall take effect upon becoming a law. With respect to any timeshare plan filing approved by the division prior to the date this act becomes a law, the amendments to s. 721.06(1)(f), F.S., will not apply to such filing until January 1, 1999, unless and only to the extent that the developer otherwise voluntarily agrees to comply with all or a portion of the provisions.

## **IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:**

### **A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:**

#### **1. Non-recurring Effects:**

Unknown.



2. Recurring Effects:

Unknown. According to the division, penalties imposed for rule violations will be deposited into the division's trust account. Currently, there are very few rule violations that would result in the imposition of penalties.

According to the division, the changes in the method of assessing common expenses is more flexible yet more complex than current law. This may generate more complaints and lengthier investigations. The division is unable to determine whether the increased complexity will result in more or fewer enforcement cases or an increase in litigation.

The bill provides that the oath of each commissioner of deeds must be filed with the Department of State prior to the person being commissioned. According to the Department of State, they do not anticipate that this would have a fiscal impact on the Department.

3. Long Run Effects Other Than Normal Growth:

Unknown.

4. Total Revenues and Expenditures:

Unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Unknown.

2. Recurring Effects:

Local governments may see an increase in the number of timeshare plans that fully pay the annual ad valorem tax assessments as a result of the more expedient judicial foreclosure process for unit owners who are not paying their assessments.

3. Long Run Effects Other Than Normal Growth:

Unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The bill provides a more expedient method of foreclosing on timeshare properties.

2. Direct Private Sector Benefits:

According to the division, the timeshare industry has been faced with a number of financially troubled resorts that are unable to pay the full tax assessment on the timeshare property because of the operation of s. 192.037, F.S., which requires a lump sum payment by the association to the county tax collector. Because property taxes are individually assessed against owners but collectively paid by the association, and because taxes that are not paid by delinquent owners may not be assessed against paying owners as a common expense, a number of timeshare associations have been unable to pay the property tax when due. This results in a tax lien on the timeshare property, which leads to statutory foreclosure of the entire timeshare plan.

The bill gives timeshare plans a method of quickly foreclosing on non-paying owners so that the collective tax bill can be paid. Timeshare plans gain flexibility to meet the tax debts for full payment, and at the same time, protect the interests of the remaining timeshare owners who have paid their share of the tax.

This bill will also provide a more expedient remedy for timeshare plans whose owners have not paid their common expenses. These assessments may currently be passed on to paying owners; however, this creates an additional financial burden for responsible owners.

3. Effects on Competition, Private Enterprise and Employment Markets:

Unknown.

D. FISCAL COMMENTS:

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

VI. COMMENTS:

Section 721.26, Florida Statutes, is amended to give the division authority to seek personal liability against regulated parties and related parties who violate the chapter or rules involving acts of dishonesty during the management and operation phase of the timeshare plan. This is an expansion of the current authority to seek personal liability during the offer and disposition phase of the timeshare plan. In addition, the bill gives the division authority to seek penalties for violation of its rules. Existing law provides that a penalty may be imposed on the basis of each day of continuing violation, but in no event may the penalty for any offense exceed \$10,000.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

During the 1997 Legislative Session, the Committee on Real Property & Probate adopted a strike everything amendment along with 3 amendments to the strike everything. The strike everything amendment was a clean-up amendment. The differences include correcting drafting and grammatical errors, clarifying certain provisions, specifying that the division does not have any regulatory power over nonjudicial foreclosures, and changing the qualifications of a trustee.

In addition, the committee deleted a sentence in 721.91(4), which provided "The certificate of compliance and the issuance of the certificate of sale may be relied upon by all third parties without actual knowledge of a defect or irregularity in the sale. This provision was removed to address concerns regarding title insurance. Similarly, a provision in 721.93(2), was removed which stated that "no action to set aside the sale and void the trustee's deed may be filed or otherwise pursued against any person acquiring an interest in the timeshare estate for value, including any subsequent mortgagee or buyer."

Finally, section 721.86 relating to the manner of delivery of notice of default and intent to sell was amended to require diligent search and inquiry to obtain a valid address for the obligor, and to require that if notice is perfected by publication under this subsection, the trustee must attach an affidavit of publication to the certificate of compliance and shall state that the notice was perfected by publication after diligent search and inquiry was made for the obligor's address.

CS/HB 1565 was removed passed by the House of Representatives on April 25, 1997 and sent to the Senate. The Senate referred the bill to the Committees on Regulated Industries and Judiciary. Upon adjournment, the bill was pending in Senate Regulated Industries.

CS/HB 1565 was carried over for the 1998 Regular Session and was pending Consent Calendar on March 3, 1998. The bill was removed from Consent Calendar by the Justice Council and referred back to the Committee on Real Property & Probate for a second hearing.

The Committee on Real Property & Probate adopted a strike-everything amendment which is incorporated into this committee substitute. The CS/CS/HB 1565 replaced non-judicial foreclosure with a streamlined judicial foreclosure, and added provisions relating to regulated short-term product, and created a part relating to commissioner of deeds.

**STORAGE NAME:** h1565s2z.rpp

**DATE:** May 28, 1998

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VIII. SIGNATURES:

**COMMITTEE ON REAL PROPERTY & PROBATE:**

Prepared by:

Legislative Research Director:

P.K. Jameson

P.K. Jameson

**FINAL RESEARCH PREPARED BY COMMITTEE ON REAL PROPERTY & PROBATE:**

Prepared by:

Legislative Research Director:

P.K. Jameson

P.K. Jameson