

STORAGE NAME: h0593a.rpp

DATE: March 6, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
REAL PROPERTY AND PROBATE
ANALYSIS**

BILL #: HB 593

RELATING TO: Vacation and Timeshare Plans

SPONSOR(S): Representatives Cantens, Goodlette, and Greenstein

TIED BILL(S): none

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

- (1) REAL PROPERTY AND PROBATE
 - (2) GENERAL GOVERNMENT APPROPRIATIONS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill amends Chapter 721, F.S., the Florida Vacation Plan and Timesharing Act. Significant changes include:

Prior review of advertising is eliminated, and replaced with a filing requirement. Reduces or eliminates regulation of timeshare sales activities conducted outside of Florida.

Provides that a successor or concurrent developer is exempt from liability for actions of a predecessor developer prior to the date that the successor or concurrent developer becomes a successor or concurrent developer and provided that the transaction was not a fraudulent transaction.

Reduces the disclosures that are required to be made to potential purchasers of a timeshare interest.

Redefines "seller" so as to not include a lender that acquires more than seven timeshare interests who arranges for the timeshare interests to be sold through a developer. Such a lender would thus not be obligated to purchasers under the law as would other sellers.

Eliminates the requirement of disclosing to a purchaser the name and address of the owner of the underlying fee; eliminates the caveat for timeshare licenses; eliminates the disclosure if the accommodations or facilities are subject to a lease; and adds a requirement that the seller disclose any rights reserved by the developer to alter or modify the offering prior to closing. Increases from "fewer than 20" to "50 or fewer" the number of timeshare interests that a management entity may resell without having to register as a subsequent or concurrent developer.

Makes a number of grammatical and clarifying changes to language.

This bill does not appear to have a fiscal impact on local governments. The Department of Business and Professional Regulation states that this bill has an estimated negative fiscal impact of \$190,000 on revenues. That estimate does not include the effect of deleting several fees, but an amendment filed by the sponsor restores most of the deleted fees to current law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

In 1996, there were approximately 380 Florida timeshare projects, representing nearly 800,000 timeshare periods. In addition, there were 5 multisite timeshare plans filed with component sites located in Florida and other states.¹ In fiscal year 1998-1999, the number of timeshare periods increased to 1,191,200. For that fiscal year, the Bureau of Timeshare revenues were \$3,413,984 and expenses were \$2,606,868, leaving a surplus of \$807,116.²

See "Section-by-Section Analysis" for Present Situation specific to each section being changed by this bill.

C. EFFECT OF PROPOSED CHANGES:

See "Section-by-Section Analysis"

D. SECTION-BY-SECTION ANALYSIS:

Chapter 721, F.S., Part I -- Vacation Plans and Timesharing

Section 1 -- Amends s. 721.03, F.S., regarding the scope of Chapter 721, F.S.

Present Situation: A timeshare interest located in Florida offered for sale in Florida is subject to all of the provisions of Chapter 721, F.S.; a timeshare interest located in Florida, but offered for sale in another state,³ is subject to some, but not all, of the provisions of Chapter 721, F.S. A timeshare interest located in Florida and offered for sale in another state is not subject to s. 721.06, F.S. (contract requirements), ss. 721.08-721.12, F.S. (escrow, 10-day right to cancel, advertising restrictions, prize and gift promotions, and

¹ Regulation of Timeshare and Vacation Club Operation and Management, A Report by the Division of Florida Land Sales, Condominiums, and Mobile Homes, January 1996 at 2.

² Fiscal information provided by Department of Business and Professional Regulation on February 29, 2000.

³ Reference to "other states" means the other 49 states in the United States and also includes United States territories (District of Columbia, Puerto Rico, U.S. Virgin Islands, Guam).

record keeping by developer), and s. 721.20, F.S. (licensing of salespersons and solicitors), to the extent that the sales activity is regulated in the state where the interest is being sold, but only after the division⁴ has received and accepted satisfactory evidence that the timeshare plan has been filed and accepted by the appropriate agency in the other state.⁵ The division may require that certain disclosures be made to purchasers regarding the offer.

Effect of Proposed Changes: Provides that sales activities regarding the sale of timeshare interests in Florida will not be regulated by Florida, but only by the state where the sales activity occurs.⁶ Eliminates the review and comparison with laws of other states.

Present Situation: Section 721.03(1)(b), F.S., provides that the offer and sale of a Florida timeshare that is offered for sale outside the United States is exempt from Chapter 721, F.S.⁷ A filing fee of \$2 per 7 day timeshare interest is applicable.⁸ Any contract requires a disclaimer that the offering of the timeshare plan is exempt from regulation by Florida, and must disclose any financial interest that the developer or salesperson has in the timeshare development.

Effect of Proposed Changes: Provides that the offer or sale of a Florida timeshare outside the United States is exempt from regulation under Chapter 721, F.S., provided that the developer either files the timeshare plan with the division for approval (in which case, the developer would incur the fee calculated at \$2 per 7 day timeshare interest), or pays an exemption registration fee of \$100 for the entire development and files certain information. The required disclaimer for contracts used in such instances must still be given, but is changed from current law to remove disclosure of any financial interest that the developer or salesperson has in the timeshare.

The fiscal impact statement received from the Department of Business and Professional Regulation did not examine the fiscal impact of this change, however, the division asserts that it "rarely receives these filings".⁹

Present Situation: Section 721.03(2), F.S., provides that the division may direct the developer of a timeshare located outside of Florida that is offered for sale in Florida to conform to the provisions of s. 721.07, F.S. (requirements of a public offering statement for a timeshare development), or s. 721.55, F.S. (requirements of a public offering statement for a multistate timeshare development).

⁴ "Division" refers to the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation. The Bureau of Timeshare is part of the division.

⁵ Section 721.03(1)(a), F.S.

⁶ Because the timeshare property is located in Florida, the state will still regulate the management of the timeshare.

⁷ Only sales activity is exempt. Because the timeshare development is physically located within the state, the management of the timeshare is subject to regulation.

⁸ Section 721.07(4), F.S.

⁹ Correspondence from Laura Glenn, Esquire, Bureau Chief of the Bureau of Timeshare, March 5, 2000.

Effect of Proposed Changes: The division may not direct the developer of a timeshare located outside of Florida that is offered for sale in Florida to conform to the provisions of s. 721.07, F.S., or s. 721.55, F.S., but may require the developer to disclose to a potential purchaser those provisions of the timeshare instrument that do not conform to s. 721.07, F.S., or s. 721.55, F.S. The division may not determine whether the developer of a non-Florida timeshare has complied with other state's law, but may require the developer to show compliance with the other state's law. The division may enter into agreements with other states to facilitate processing of non-Florida timeshare developments. Offering an additional timeshare interest in a non-Florida timeshare to an existing purchaser is only subject to s. 721.11(4), F.S. (certain provisions relating to misrepresentation in advertising).

Present Situation: Section 721.03(4), F.S., provides that a timeshare plan fully in compliance with Chapter 721, F.S., which plan is also governed by Chapter 718, F.S. (condominiums), or Chapter 719, F.S. (cooperatives), is exempt from certain provisions of those chapters.

Effect of Proposed Changes: Adds an exemption providing that such a timeshare plan is not subject to part VI of those chapters, relating to conversions, provided that the developer complies with the portions of part VI of those chapters regarding the rights of existing tenants, and, if the improvements are over 18 months old, the developer must bring the improvements to new condition, fund reserves as described, provide each purchaser with a warranty of fitness and merchantability,¹⁰ or post a surety bond equal to the amount necessary to fully fund reserves.

Present Situation: Section 721.03(7), F.S., provides that a timeshare plan in which a prospective purchaser's total financial obligation is \$1,500 or less is exempt from regulation under Chapter 721, F.S.

Effect of Proposed Changes: Increases the minimum from \$1,500 to \$3,000.

Present Situation: Current law is unclear as to whether usury laws apply to the sale of a timeshare license. Usury law at s. 687.03, F.S., prohibits certain interest charges.

Effect of Proposed Changes: New s. 721.03(9) provides that the maximum rate of interest that may be charged by a developer or seller of a timeshare license is governed by the usury laws at s. 687.03, F.S.

Section 2 -- Amends s. 721.05, F.S., regarding definitions.

Present Situation: Section 721.05(4), F.S., defines "closing" to mean the conveyance of legal title to a timeshare period as evidenced by delivery of a deed, for recording.

¹⁰ The specific warranty of fitness and merchantability is defined at s. 718.618(6), F.S., or s. 719.618(6), F.S., as: "an implied warranty of fitness and merchantability for the purposes or uses intended, as to the roof and structural components of the improvements; as to fireproofing and fire protection systems; and as to mechanical, electrical, and plumbing elements serving the improvements, except mechanical elements serving only one unit. The warranty shall be for a period beginning with the notice of intended conversion and continuing for 3 years thereafter, or the recording of the declaration to condominium and continuing for 3 years thereafter, or 1 year after owners other than the developer obtain control of the association, whichever occurs last, but in no event more than 5 years."

Effect of Proposed Changes: Add to the definition of “closing” the conveyance of beneficial title to a timeshare interest, and provides for the recording of “other instrument[s]”.

This language is intended to add conveyance of a beneficial interest by recordation of an instrument other than a deed. An amendment has been filed to clarify the language.

Present Situation: Section 721.05(5), F.S., defines “common expenses”. Section 192.037, F.S., provides how ad valorem taxes are assessed against a timeshare development.

Effect of Proposed Changes: Adds to the definition of “common expenses”: “Any past due and uncollected ad valorem taxes assessed against the timeshare development pursuant to s. 192.037.”

This would allow the unpaid taxes of a timeshare owner to be passed on as a common expense to the other timeshare owners.

Present Situation: Section 721.05(6), F.S., defines “completion of construction.” The definition requires, in part, that all accommodations and facilities of the timeshare plan are complete and available for use in conformance with the original advertising and public offering statements. Allows limited exceptions to the requirement that all accommodations and facilities be complete, including that a single site timeshare may portray possible accommodations and facilities if the portrayal does not violate s. 721.11(4), F.S. (false and misleading advertising), a single site timeshare may portray possible accommodations or facilities by general geographic location if the portrayal does not violate s. 721.11(4), F.S., and a multisite timeshare may portray possible component sites if permitted by s. 721.553, F.S. (restrictions on portrayal of possible component sites).

Effect of Proposed Changes: Moves to s. 721.11, F.S., the limited exceptions to the requirement that all accommodations and facilities be complete at the time of disclosure.

Present Situation: Section 721.05(7), F.S., defines “conspicuous type” as two point sizes larger than the largest nonconspicuous type, exclusive of headings, on the page on which it appears, but in no case smaller than 10 point. The division may approve an alternative type if the use of 10 point type is impractical or impossible with respect to a particular piece of written advertising, so long as the print remains conspicuous under the circumstances.

Effect of Proposed Changes: Eliminates the requirement that the division approve a different style or type when the use of 10 point type is impractical or impossible, but still requires the print to remain conspicuous under the circumstances.

Present Situation: Section 721.05(9), F.S., defines “developer” and provides exemptions from the definition. In Bell v. R.D.I. Resort Services Corp.,¹¹ a timeshare owner sued a successor developer to enforce promises made by the original developer to the owner. The successor developer was a management entity that had been employed to manage the property by a lender that had taken title by foreclosure after the original developer defaulted on its mortgage. In defense, the successor developer argued that it should not

¹¹ Bell v. R.D.I. Resort Services Corp., 637 So.2d 960 (Fla. 2nd DCA 1994).

be responsible for promises made by a previous developer. The Second District Court of Appeal disagreed, reversing the lower court's entry of summary judgment and remanding for further proceeding. The Second District Court of Appeal stated that the legislative intent of Chapter 721, F.S., is to "establish procedures to regulate the entire operation of time-share plans and to protect purchasers against any person or participant in the operation of time-share plans."¹²

Effect of Proposed Changes: Amends the definition of "developer" to exempt the following entities: (i) a managing entity not otherwise a developer that engages a third party to offer, on behalf of the managing entity, timeshare interests in a timeshare plan; and (ii) a person who acquires or has the right to acquire more than 7 timeshare interests in connection with security under a loan or a securitization transaction, who subsequently arranges for all or a portion of the timeshare interests to be offered for sale by a developer, for example, in a loan default situation.

Provides that a successor or concurrent developer is exempt from liability for actions of a predecessor developer prior to the date that the successor or concurrent developer becomes a successor or concurrent developer and provided that the transaction was not a fraudulent transaction. Further provides that a fraudulent transfer is any transfer made with actual intent to hinder, delay, or defraud any purchaser or the division, or a transaction to an insider as defined at s. 726.102(7), F.S.¹³ A successor or concurrent developer will continue to be liable to purchasers for any obligation in any applicable timeshare interest.

This proposed change appears to, in effect, overrule the court's decision in Bell v. R.D.I. Resort Services Corp.

Present Situation: Section 721.05(24), F.S., defines the "owner of the underlying fee" as any person having an interest in the real property underlying the accommodations or facilities of the timeshare plan, and any person who purchases 15 or more timeshare periods for resale in the ordinary course of business. An owner of the underlying fee is also considered an "interestholder" as defined at s. 721.05(19), F.S. Any owner of the underlying fee must be disclosed to any purchaser of a timeshare period in the contract for purchase and sale,¹⁴ a public offering statement must disclose any judgment or pending suit against an owner of the underlying fee that is material to the timeshare plan,¹⁵ an owner of the underlying fee must be treated by a management company equally with all

¹² *Id.* at 961.

¹³ Section 726.102(7), F.S., provides that "insider" includes, if the debtor is an individual: 1. A relative of the debtor or of a general partner of the debtor; 2. A partnership in which the debtor is a general partner; 3. A general partner in a partnership; or 4. A corporation of which the debtor is a director, officer, or person in control. If the debtor is a corporation: 1. A director of the debtor; 2. An officer of the debtor; 3. A person in control of the debtor; 4. A partnership in which the debtor is a general partner; 5. A general partner in a partnership; or 6. A relative of a general partner, director, officer, or person in control of the debtor. If the debtor is a partnership: 1. A general partner in the debtor; 2. A relative of a general partner in, a general partner of, or a person in control of the debtor; 3. Another partnership in which the debtor is a general partner; 4. A general partner in a partnership; or 5. A person in control of the debtor. "Insider" may also be an affiliate, or an insider of an affiliate as if the affiliate were the debtor, or a managing agent of the debtor.

¹⁴ Section 721.06(1)(b), F.S.

¹⁵ Section 721.07(5)(l), F.S.

other timeshare owners and the developer,¹⁶ and an owner of the underlying fee cannot sell the underlying fee except by recorded instrument that must include certain disclosures and assurances.¹⁷

Effect of Proposed Changes: Removes any person who purchases 15 or more timeshare periods for resale in the ordinary course of business from the definition of "owner of the underlying fee."

Present Situation: The terms "public offering statement", "purchaser public offering statement", and "registered public offering statement" are not defined.

Effect of Proposed Changes: Defines "public offering statement" as the written materials describing a single-site timeshare plan or a multisite timeshare plan, including a text and any exhibits attached thereto as required by ss. 721.07, 721.55, and 721.551, F.S. The term "public offering statement" refers to both a registered public offering statement and a purchaser public offering statement.

Defines "purchaser public offering statement" as that portion of the registered public offering statement which must be delivered to purchasers pursuant to s. 721.07(6), F.S., or s. 721.551, F.S.

Defines "registered public offering statement" as a public offering statement which has been filed with the division pursuant to s. 721.07(5), F.S., or s. 721.55, F.S.

Present Situation: Section 721.05(27), F.S., defines "regulated short-term product" to mean a contractual right, offered by the seller, to use "accommodations"¹⁸ of a timeshare plan under certain conditions.

¹⁶ Section 721.13(6)(g), F.S.

¹⁷ Section 721.17, F.S., which reads: 721.17 Transfer of interest.-- Except in the case of a timeshare plan subject to the provisions of chapter 718 or chapter 719, no developer or owner of the underlying fee shall sell, lease, assign, mortgage, or otherwise transfer his or her interest in the accommodations or facilities of the timeshare plan except by an instrument evidencing the transfer recorded in the public records of the county in which the accommodations or facilities are located. The instrument shall be executed by both the transferor and transferee and shall state:

(1) That its provisions are intended to protect the rights of all purchasers of the plan.
(2) That its terms may be enforced by any prior or subsequent timeshare purchaser so long as that purchaser is not in default of his or her obligations.

(3) That the transferee will fully honor the rights of the purchasers to occupy and use the accommodations and facilities as provided in their original contracts and the timeshare instruments.

(4) That the transferee will fully honor all rights of timeshare purchasers to cancel their contracts and receive appropriate refunds.

(5) That the obligations of the transferee under such instrument will continue to exist despite any cancellation or rejection of the contracts between the developer and purchaser arising out of bankruptcy proceedings.

Should any transfer of the interest of the developer or owner of the underlying fee occur in a manner which is not in compliance with this section, the terms set forth in this section shall be presumed to be a part of the transfer and shall be deemed to be included in the instrument of transfer. Notice shall be mailed to each purchaser of record within 30 days of the transfer. Persons who hold mortgages on the property constituting a timeshare plan before the public offering statement of such plan is approved by the division shall not be considered transferees for the purposes of this section.

¹⁸ Section 721.05(1), F.S., defines "accommodation" to mean "any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, campground, or other private or commercial structure which is situated on real or personal property and designed for occupancy or use by one or more individuals. The term does not include an incidental benefit as defined in this section."

Effect of Proposed Changes: Broadens the definition of “regulated short-term product” to include accommodations other than accommodations of a timeshare plan.¹⁹

Present Situation: Section 721.05(28), F.S., defines “seller” to mean any developer or any other person, or any agent or employee thereof, who offers timeshare periods in the ordinary course of business. The activities of a seller are regulated throughout Chapter 721, F.S. “Seller” does not include a person who purchases a timeshare for personal use and later re-sells it, except that a person who has acquired more than seven timeshare periods is presumed to not have acquired them for personal use. “Seller” also does not include a managing entity selling timeshare periods in a timeshare development that it manages, nor does it include a person owing more than seven timeshare periods that sells all of such periods to a single purchaser.

In Smith v. Department of Business Regulation, Division of Land Sales, Condominiums and Mobile Homes,²⁰ a “financier” purchased the outstanding mortgages on 28 timeshare periods, and was assigned six unsold units as collateral for the remaining balance on the loan. When the developer went out of business, the owners of the timeshare periods were unable to use their accommodations. The court found that the “financier” was a “seller” and ordered the financier to honor the rights of purchasers to cancel their contract and receive appropriate refunds and further ordered the “financier” to assume the developer’s obligations to timeshare purchasers.

Effect of Proposed Changes: Amends the definition of “seller” to exempt the following activities: (i) a managing entity that engages a third party to offer, on behalf of the managing entity, timeshare interests in a timeshare plan; and (ii) a lender that acquires more than seven timeshare interests who arranges for the timeshare interests to be sold through a developer.

This amended definition appears to effectively overruling the holding of Smith v. Department of Business Regulation, Division of Land Sales, Condominiums and Mobile Homes.

Present Situation: Section 721.05(29), F.S., defines “timeshare estate” to mean a right to occupy a time share unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property, or a specified portion thereof. The term also means an interest in a condominium unit.

Effect of Proposed Changes: Amends the definition of “timeshare estate” to include an interest in a cooperative, or in a trust that complies with s. 721.08(2)(c)3., F.S. See Section 7 of the bill and of this analysis for a description of trusts that comply with s. 721.08(2)(c)3., F.S.

Present Situation: “Timeshare interest” is not defined.

¹⁹ A regulated short-term product is usually a product sold to a prospective purchaser as part of the sales and marketing efforts of the developer.

²⁰ Smith v. Department of Business Regulation, Division of Land Sales, Condominiums and Mobile Homes, 504 So.2d 1285 (Fla. 1st DCA 1987), review denied, 513 So.2d 1063 (Fla. 1987).

Effect of Proposed Changes: Defines “timeshare interest” as a timeshare estate or timeshare license.

Present Situation: Section 721.05(34), F.S., defines “timeshare property” to mean “one or more timeshare units subject to the same timeshare instrument, together with any other property or rights to property appurtenant to those units.” It is unclear whether personal property, contractual rights, affiliation agreements of component sites of vacation clubs, exchange companies, or reservation systems, or any other agreements or personal property may be common elements or limited common elements of a timeshare condominium or cooperative.

Effect of Proposed Changes: Amends the definition of “timeshare property” to provide that personal property, contractual rights, affiliation agreements of component sites of vacation clubs, exchange companies, or reservation systems, or any other agreements or personal property may be common elements or limited common elements of a timeshare condominium or cooperative, provided the timeshare instrument for the timeshare condominium or cooperative so provides.

Present Situation: Section 721.05(35), F.S., defines “timeshare unit” to mean an accommodation of a timeshare plan which is divided into timeshare periods.

Effect of Proposed Changes: Adds to the definition of “timeshare unit” that “[any] timeshare unit in which a door or doors connecting two or more private dwellings shall only constitute one timeshare unit for purposes of this chapter, unless the timeshare instrument provides that timeshare interests may be separately conveyed in such locked-off portions.”

Section 3 -- Amends s. 721.06, F.S., regarding contracts for the purchase of timeshares.

Present Situation: Section 721.06(1), F.S., provides that a seller²¹ must disclose a number of facts to a buyer in a contract for purchase and sale of a timeshare, including the name and address of any owner of the underlying fee, the total financial obligation of the purchaser, a caveat if the sale is of a timeshare license, the actual interest of the developer in the accommodations or facilities, and a disclosure if the accommodations or facilities are subject to a lease.

Effect of Proposed Changes: Eliminates the requirement of disclosing the name and address of the owner of the underlying fee; modifies disclosure of the financial obligation to provide that the seller must disclose the total amount of initial payment, any annually recurring use charge, and next year’s estimated assessment for common expenses and for ad valorem taxes; eliminates the caveat for timeshare licenses; permits a cross-reference to the portion of the public offering statement that discloses the interest of the developer in the accommodations or facilities in lieu of disclosure in the contract; eliminates the disclosure requirement if the accommodations or facilities are subject to a lease; and adds a requirement that the seller disclose any rights reserved by the developer to alter or modify the offering prior to closing.

²¹ “Seller” is defined by statute, and does not include all sellers of timeshare interests. See s. 721.05(28), F.S. for current definition, and s. 721.05(31) of this bill for the proposed amended definition of “seller”.

Present Situation: Section 721.06(4), F.S., prohibits a developer from “overbooking” a timeshare development.

Effect of Proposed Changes: This prohibition is moved to new s. 721.03(10) (in Section 1 of this bill).

Section 4 -- Amends s. 721.065, F.S., regarding resale purchase agreements other than those used by regulated developers or sellers.

Present Situation: Section 721.065(1), F.S., provides that a person who has purchased a timeshare period for his or her own use, who later sells the timeshare period, must provide certain disclosures but does not have to register as a developer. A management entity that sells fewer than 20 of its own timeshare periods for sale need not register as a subsequent or concurrent developer, and may therefore sell units under the same disclosure requirements of a person selling his or her own unit. Section 721.05(9)(d)2., F.S., provides that a management entity that is not otherwise a developer of a timeshare plan and that offers timeshare periods for its own account in a timeshare plan which it manages for sale to existing purchasers of that timeshare plan is not a “developer”, and thus as it relates to s. 721.065(1), F.S., that managing entity in those circumstances may sell units under the same disclosure requirements as a person selling his or her own unit.

Effect of Proposed Changes: Increases from “fewer than 20” to “50 or fewer” the number of timeshare interests that a management entity may resell without having to register as a subsequent or concurrent developer. Clarifies current law by specifying that a sale by a management entity of another timeshare interest to an existing timeshare owner of that development is subject to the requirements of this section rather than the more extensive disclosure requirements of a sale by a developer. Adds requirement that the person or management entity selling the timeshare interest must disclose the first year in which occupancy will be permitted.

Section 5 -- Amends s. 721.07, F.S., regarding public offering statements

Present Situation: Section 721.07(1), F.S., requires that, prior to offering any timeshare plan, a developer must file a proposed public offering statement with the division. Until the public offering statement is approved, any sale to a purchaser is voidable by the purchaser.

Effect of Proposed Changes: Public offering statements are separated into two types: “purchaser public offering statement” defined at s. 721.03(28), F.S., as amended, and “registered public offering statement” defined at s. 721.03(29), F.S., as amended. If a developer sells timeshare units prior to receiving approval of the public offering statements, the sale is only voidable under certain circumstances. Section 721.07(2)(d), F.S., as amended, provides disclosures for sales made prior to division approval, together with form notices for distribution to buyers, and requires that a developer provide a prospective purchaser with a copy of the proposed public offering statement that has been filed with, but not yet approved by, the division. This section further provides that a sales contract is not voidable unless the developer makes changes in the public offering statement that materially alter or modify the offering in a manner adverse to the purchaser. The developer is the party primarily responsible for determining if a change materially alters or modifies a public offering statement in a manner adverse to the purchaser.

Present Situation: Section 721.07(4), F.S., requires from the developer a filing fee of \$2 per 7 days of annual use availability, and allows the division to, by rule, increase the fee to \$3. Currently, the division has not used this section to raise the fee above \$2.

Effect of Proposed Changes: Deletes the provision allowing the division to increase the filing fee, thereby fixing the fee at \$2 per 7 days of annual use availability.

Present Situation: Section 721.07(5), F.S., requires in a number of instances that a developer include in the offering statement a cross-reference to the exhibit where relevant documents are attached.

Effect of Proposed Changes: Deletes the cross-reference requirement. The developer is still required to attach a copy of the relevant documents as exhibits pursuant to s. 721.07(5)(ff), F.S., as amended.

Present Situation: Section 721.07(5)(g), F.S., requires a developer to disclose in the offering statement the recreational and other commonly used facilities that will be available for use by timeshare owners.

Effect of Proposed Changes: Deletes the specific requirements, allowing more generalized descriptions of facilities that will be available for use by timeshare owners.

Present Situation: Section 721.07(5)(p), F.S., requires in the public offering statement a disclosure as to whether the developer will include a plan of leasing units in addition to selling of timeshare units.

Effect of Proposed Changes: Deletes the requirement to disclose leasing plans.

Present Situation: Section 721.07(5)(x), F.S., requires an estimated operating budget to be included in the offering statement, and provides requirements for preparation and presentation of the budget.

Effect of Proposed Changes: Provides that the capital improvement reserve account requirements apply only to timeshare plans located in the state. Provides that out of state timeshare reserves are to be calculated according to the requirements of the state where the timeshare is located. Adds a provision requiring that the budget be based on either the actual number of timeshare interests at the beginning of the year or the estimated number of timeshare interests for the year; and in all cases the budget must identify the number of timeshare interests covered by the budget and the number of timeshare interests estimated to be declared for the year.

Present Situation: Section 721.07(5)(aa), F.S., requires that the offering statement include a statement of any service, maintenance, or recreation contracts or leases that may be canceled by purchasers.

Effect of Proposed Changes: Deletes requirement that the offering statement include a statement of any service, maintenance, or recreation contracts or leases that may be canceled by purchasers.

Present Situation: Section 721.07(5), F.S., lists the information and documents that must be included in an offering statement.

Effect of Proposed Changes: Adds a requirement that a public offering statement include disclosure of rules and regulations regarding reservations, and provides disclosure language regarding reservations. Adds authority for the division to approve a new timeshare filing that includes an existing timeshare instrument that was in compliance with the law in effect at the time the timeshare was created but does not conform with current law if the developer is unable to amend the timeshare instrument; and requires certain disclosure language including the nature of any conflict between current law and the timeshare instrument.

Present Situation: Section 721.07(7), F.S., requires that descriptions in an offering statement must include "locations, areas, capacities, numbers, volumes, or sizes and may be stated as approximations or minimums." For example, a description of a swimming pool must disclose the size of the pool and number of gallons.

Effect of Proposed Changes: Deletes requirement that descriptions in an offering statement list specific locations, areas, capacities, numbers, volumes, or sizes.

Section 6 -- Amends s. 721.075, F.S., regarding incidental benefits.

Present Situation: An incidental benefit is a product that is offered in connection with a timeshare interest but is not included as part of the timeshare plan. An incidental benefit must be available to a purchaser for at least 6 months from the date offered, but no more than 3 years. The developer is not required to make the incidental benefit available for longer than 18 months.

Effect of Proposed Changes: Removes the 6 month minimum amount of time that an incidental benefit must be available. Removes the requirement that a developer make an incidental benefit available for 18 months. Makes a number of grammatical changes to the section.

Section 7 -- Amends s. 721.08, F.S., regarding escrow agreements, nondisturbance agreements, and alternate security arrangements.

Present Situation: Section 721.08(2)(c), F.S., provides conditions under which an escrow agent is allowed to distribute funds from escrow.

Effect of Proposed Changes: Adds additional conditions under which an escrow agent may distribute funds from escrow. An escrow agent, of a timeshare plan in which timeshare licenses are to be sold, may release the escrowed funds or property upon presentation of a notice delivered for recording notifying all persons of the identity of an independent escrow agent that shall maintain records of accommodations subject to the plan and purchasers of the licenses. In addition, an escrow agent of a timeshare plan in which timeshare estates are to be sold in a trust that complies with specific conditions may release escrowed funds under specified conditions.

Present Situation: Section 721.08, F.S., requires a developer to establish an escrow account with an escrow agent to protect purchaser funds. There is currently no provision allowing an escrow agent to dispense unclaimed funds in an escrow account. According to bill proponents, escrow agents are currently holding a number of escrow deposits owed to

purchasers, the typical deposit is between \$800 and \$1200 which has been held by an escrow agent for approximately 10 years.²²

Effect of Proposed Changes: Adds new s. 721.08(8), which provides procedures for an escrow agent regarding unclaimed escrow funds that are over 5 years old. The escrow agent is to make one attempt to return the funds by mailing them to the last known address of the purchaser, no search is required. If unsuccessful, the escrow agent must publish a legal notice in the county in which the funds are being held. If the purchaser does not claim the funds within 30 days of publication, the escrow agent may deliver such unclaimed funds to the division for deposit in the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund, at which point the purchaser shall have no further claim on the funds.

There are concerns regarding this proposed change, see "Other Comments" herein.

Present Situation: There is no specific requirement that a purchaser be given an instrument of conveyance, although common practice would be that a purchaser would expect to receive an instrument of conveyance at closing.

Effect of Proposed Changes: Requires a developer to deliver an instrument evidencing conveyance of legal title to a timeshare estate to either the purchaser or to the clerk of the court for recording.

This change appears to require a catchline amendment.

It is unclear why s. 721.08, F.S. is being amended. It appears that this change belongs in s. 721.06, F.S., and s. 721.065, F.S.

Section 8 -- Amends s. 721.09, F.S., regarding reservation agreements.

Present Situation: Section 721.09(1)(b), F.S., provides that, prior to filing a public offering statement with the division, a developer may take reservations for the purchase of a timeshare unit under certain conditions. The developer must own the property on which the timeshare is to be created, and funds received must be placed in escrow pending approval of the development by the division.

Effect of Proposed Changes: Allows a developer to establish a reservation program regarding property upon which the developer holds an option to purchase or lease, in addition to property that the developer owns.

Section 9 -- Amends s. 721.10, F.S., regarding purchaser cancellation of a contract to purchase a timeshare.

Present Situation: Section 721.10(1), F.S., provides that a purchaser may cancel a timeshare purchase agreement within 10 days of signing the contract or receipt of all documents required to be given to the purchaser, whichever is later.

²² Meeting with bill proponents Brian Bibeau, Esquire, and William C. Guthrie, Esquire, together with representatives of the Bureau of Timeshare and the Department of Business and Professional Regulation, and House and Senate staff, February 9, 2000.

Effect of Proposed Changes: Requires, where applicable, that the developer send the purchaser a notice that the public offering statement has been approved by the division, with certain material changes from the unapproved statement that was previously supplied to the purchaser. The purchaser's cancellation right expires 10 days after signing the purchase contract or receipt of the revisions, whichever is later.

Present Situation: Section 721.10(3), F.S., provides that, should a purchaser timely cancel a contract for purchase of a timeshare, the developer must "refund to the purchaser all payments made by the purchaser which exceed the proportionate amount of benefits made available under the plan, using the number of years of the plan as portrayed in the timeshare instrument as the base for plans of specific and limited duration, or using the fair market rental value of such benefits for plans without specific or limited duration." This section is worded differently from s. 721.06(1)(i), F.S., which section has the apparent same intent.

Effect of Proposed Changes: Changes the refund formula to match the formula provided in current law at s. 721.06(1)(i), F.S., which requires the developer to refund "all payments made by the purchaser under the contract, reduced by the proportion of any contract benefits the purchaser has actually received under the contract prior to the effective date of the cancellation".

Section 10 -- Amends s. 721.11, F.S., regarding advertising and oral statements.

Present Situation: Section 721.11(1), F.S., requires all advertising to be filed with and approved by the division before dissemination. However, s. 721.03(1)(a), F.S., provides that the division need not review an advertisement utilized outside of Florida that is filed with and approved by another state. The division may require a developer to correct any deficiency in the advertising. The division may accept alternative assurance (such as a bond) that a developer will comply with the advertising restrictions, in which case prior review is not required. All advertising is subject to review, whether disseminated in or out of Florida.

Effect of Proposed Changes: Eliminates the formal review by the division of developer advertising unless specifically requested by the developer. Eliminates the alternative assurance provisions. Advertising must still be filed with the division prior to use. If a developer requests review and the advertising material is approved, the developer will not be liable for any violation of s. 721.11, F.S. (general advertising regulations) or s. 721.111, F.S. (regulation of prize and gift offers), with respect to those advertising materials. If the developer does not request prior review, and there is a problem with the advertising, the division may file administrative charges or seek an injunction, in addition to requiring the developer to correct the deficiency. Advertising materials do not include advertising disseminated to a non-resident of Florida, except that such advertising is still subject to the regulations prohibiting false or misleading advertising. Clarifies that materials delivered to a purchaser after a purchase contract are not advertising unless those materials are for soliciting a sale of a different timeshare development. Materials "shown, displayed, or presented in a sales center or during a sales presentation" are not advertising regulated by s. 721.11, F.S., except that any such material that shows a facility not currently complete must be conspicuously labeled.

There is a concern that the exception for materials shown in a sales center may perhaps be overly broad and therefore create unintentional consequences. The

sponsor has filed an amendment addressing this concern. See "Other Comments" herein.

Present Situation: Section 721.11(4), F.S., provides in general that no advertising or oral statement made by any seller of a timeshare may be false or misleading, and describes 16 types of false or misleading statements that are prohibited. One of those 16 requires that a seller describing an improvement that is not required to be built or that is uncompleted must conspicuously label such improvement, which label must include the "date of promised completion".

Effect of Proposed Changes: If the facility is categorized as "need not be built" or "proposed", the "date of promised completion" is changed to the "estimated date that such facility will be made part of the timeshare plan." If the facility is "under construction", the "date of promised completion" is changed to the "estimated date of completion". These changes are referenced in the new s. 721.11(7).

Present Situation: Section 721.11(5), F.S., requires that all written advertising contain a legend stating that the advertising material is being used for the purpose of soliciting sales of a times or a vacation membership, and allows alternative disclosures that comply with the requirements of another jurisdiction.

Effect of Proposed Changes: Provides flexibility in use of the disclosure, allows the division to approve an alternative disclosure, allows the disclosure to be on only one piece of a set of advertising materials distributed to a prospective purchaser, and removes provisions relating to advertising materials approved by another jurisdiction.

Present Situation: The use and form of advertising is regulated.

Effect of Proposed Changes: New s. 721.11(7) allows a seller to portray possible accommodations or facilities in advertising so long as the portrayal complies with s. 721.11(4), F.S., as amended, which section relates to false and misleading advertising, and specifically with disclosures that must be made regarding possible accommodations or facilities (see above for changes to that section relating to proposed facilities). The portrayal may be made notwithstanding s. 721.05(6)(b), F.S., which is a definition of the term "completion of construction." These provisions are substantially similar to provisions contained in current law under the definition of "completion of construction" at s. 721.05(6)(b), F.S.

New s. 721.11(8) allows a developer to make oral or written statements to a prospective purchaser regarding possible accommodations or facilities, with no obligation to actually construct such accommodations or facilities, so long as the statements fall within the exception to the definition of advertising at s. 721.11(3)(e), F.S. (which section is amended by this bill).

New s. 721.11(9)(a) allows a seller of a multisite timeshare plan to portray a possible component site to a prospective purchaser with no obligation to actually add such component site, provided the statements fall within the exception to the definition of advertising at s. 721.11(3)(e), F.S. (which section is amended by this bill). New s. 721.11(9)(b) allows a seller of a multisite timeshare plan to portray possible accommodations or facilities of a possible component site in a public offering statement, provided the portrayal complies with s. 721.11(4), F.S., as amended, which section relates to false and misleading advertising, and specifically with disclosures that must be made regarding possible accommodations or facilities (see above for

changes to that section relating to proposed facilities); and provided that the seller provide a conspicuous disclosure described in new s. 721.11(9)(c). New s. 721.11(9)(d) allows a developer or managing entity to communicate with existing purchasers regarding possible component sites without restriction, provided the communication complies with s. 721.11(4), F.S., as amended, which section relates to false and misleading advertising, and specifically with disclosures that must be made regarding possible accommodations or facilities (see above for changes to that section relating to proposed facilities). Any violation of these sections may be prosecuted by the division, and is deemed to grant any purchaser who has not closed with a new 10-day voidability period.

Section 11 -- Amends s. 721.111, F.S., regarding prize and gift promotional offers.

Present Situation: Section 721.111(1), F.S., defines a prize or gift promotional offer as any advertising material wherein a prospective purchaser may receive goods or services other than the timeshare plan itself, either free or at a discount, including, but not limited to, the use of any prize, gift, award, premium, or lodging or vacation certificate. Section 721.111(4), F.S., requires all prize or gift promotional offers to be filed with the division, s. 721.111(6), F.S., provides a \$100 filing fee, which is increased to \$500 if the offer includes a game of chance. Section 721.111(5)(d), F.S., requires the developer filing with the division to provide, among other things, the information on which the developer relies on in determining the retail value of the prize or gift promotion and the number of anticipated recipients of each item of advertising related to the offer. Section 721.111(7), F.S., requires the developer to disclose certain facts regarding a prize or promotional offer in advertising regarding the prize or promotional offer, including a description of the prize, gift, or other item that the person will receive, which description must include the suggested retail price, or, if there is none, the verifiable retail value. Section 721.111(8), F.S., requires a developer to annually file with the division a statement of the total number of each prize, gift, or other item actually awarded and the name and address of each person who actually received a prize, gift, or other item worth over \$200, other than recipients of lodging or vacation certificates.

Effect of Proposed Changes: Provides that, in the developer disclosure to the division, the information used to determine the value of the prize or gift need only be provided if the prize or item is worth in excess of \$50. The listing of the number of anticipated recipients is deleted. The division may require an affidavit, certification, or other reasonable assurance that a lodging certificate program can be met. If the value of the gift, prize, or other item, is less than \$50, the developer need not disclose the actual value, but must state that the value is \$50 or less. The requirement that a developer file an annual statement of the total number of prizes or gifts awarded, and the name and address of certain recipients, is deleted. The \$100 filing fee is moved to s. 721.111(4), F.S., as amended, and only applies if the developer wishes prior review of the prize or gift offer as advertising material pursuant to s. 721.11, F.S., as amended. The additional \$400 fee for games of chance is eliminated.

The fiscal impact statement received the Department of Business and Professional Regulation did not examine the fiscal impact of changing the \$100 filing fee for prize and gift offers from a mandatory fee to an optional fee based upon whether the developer is seeking prior review of the offer. An amendment will be filed restoring the mandatory \$100 fee. See "Fiscal Comments" herein.

The fiscal impact statement received the Department of Business and Professional Regulation did not examine the fiscal impact of deleting the extra \$400 filing fee applicable to games of chance. The division asserts that these filing are rare, and thus this change would have a minimal fiscal impact. See "Fiscal Comments" herein.

There is a concern that, without an annual statement, there may be no mechanism to determine if the prizes or gifts were given as advertised.

Section 12 -- Amends s. 721.12, F.S., regarding recordkeeping by a seller, making grammatical changes only.

Section 13 -- Amends s. 721.13, F.S., regarding management of a timeshare.

Present Situation: Section 721.13(1)(a), F.S., requires a developer to create or provide for a managing entity prior to the first sale of a timeshare period.

Effect of Proposed Changes: Requires a developer to provide for a managing entity prior to recording the documents creating the timeshare development.

Present Situation: Section 721.13(3)(c)1., F.S., requires a managing entity to file a copy of the annual budget with the division within 30 days of its adoption.

Effect of Proposed Changes: Requires a managing entity to file a copy of the annual budget within 30 days of the beginning of each fiscal year.

Present Situation: It is unclear whether a managing entity may transfer funds from the operating account to reserve accounts in excess of the transfer required by the adopted budget.

Effect of Proposed Changes: Section 721.13(3)(c)2., as amended, provides that the board of directors of a timeshare development is entitled to transfer excess funds in any operating account to any deferred maintenance or reserve account without approval of the owners.

Present Situation: Section 721.13(3), F.S., lists the duties of the board of directors. Section 721.13(3)(i), F.S., provides that one of those duties is to submit to the division the statement required by s. 192.037(6)(e), F.S. Section 192.037, F.S., requires a timeshare managing entity to establish an escrow account from which the ad valorem taxes for the timeshare property are to be paid. Section 192.037(6)(e), F.S., requires every timeshare managing entity to provide an annual statement to the division of receipts and disbursements from the ad valorem tax account.

Effect of Proposed Changes: Authorizes a managing entity to enter into an ad valorem tax escrow agreement, prior to the receipt of any ad valorem tax escrow payments, with an independent escrow agent.

Present Situation: Section 721.13(4), F.S., requires a management company to keep a list of current owners of timeshare interests, and provides that the managing entity may not publish the list nor provide it to any purchaser or third party. The managing entity must initiate a mailing to the persons on the list of owners upon request if the purpose of the mailing is to advance legitimate association business, such as proxy solicitation, recall of

board members, or discharge of the management firm. The board of administration must determine if a proposed mailing complies with these restrictions. The purchaser requesting the mailing must pay the actual cost of the mailing.

Effect of Proposed Changes: Changes the authorized purposes of a proposed mailing to persons on the list of owners. In addition to proxy solicitation, recall, or discharge of management, this bill adds “communications relating to the performance of the board of administration or the manager or management firm, and other communication with purchasers of timeshare interest in the timeshare plan relating to the timeshare plan”. As in current law, the list of authorized purposes is not exclusive, and is still restricted to communications that “advance legitimate association business”. This bill further adds the restriction that any communication distributed to the persons on the owners’ list must “not be intended for the commercial benefit of any purchaser or any entity other than the association or managing entity.”

See “Other Comments” for information regarding the debate over this issue.

Present Situation: Section 721.13(6), F.S., allows a managing entity, in a floating reservation timeshare plan, to deny use of the accommodations and facilities to any purchaser who is delinquent in the payment of assessments, and requires the managing entity to give notice to the purchaser of denial of use at least 30 days prior to the first day of the purchaser’s use period.

Effect of Proposed Changes: Additionally, allows the managing entity to deny the right to make a reservation for any purchaser who is delinquent in the payment of assessments, allows the managing entity to cancel a confirmed reservation for any purchaser who is delinquent in the payment of assessments,²³ changes the notice time to 30 days after the date the assessment is due, and adds the requirement that the notice of delinquency must state that the purchaser will not be able to make a reservation and that any confirmed reservation may be canceled.

Present Situation: Some timeshare properties are also governed by Chapter 718, F.S., (condominiums) or Chapter 719, F.S. (cooperatives). Those chapters restrict the power of a managing association in making material alterations or substantial additions to common areas. A timeshare that is also governed by these chapters cannot make a material alteration or substantial addition to the accommodations or facilities of the timeshare plan without a supermajority vote of the members (in some case, unanimous vote).

Effect of Proposed Changes: Adds new s. 721.13(8), which allows a board of administration of an owners’ association to make material alterations or substantial additions to the accommodations or facilities of a timeshare plan without a vote of the members of the association. However, no such amendment may change the configuration or size of any accommodation in any material fashion, or change the proportion of percentage by which a timeshare owner share the common expenses, unless all affected owners, together with the record owners of all liens on the affected timeshare interests, consent to the amendment.

²³ In a traditional timeshare plan, a purchaser owns the right to use a specific fixed time, usually a numbered week during the year. Reservations are made in a “floating” timeshare plan, that is, a timeshare plan where the annual use period of purchasers is not fixed to a specific week.

Section 14 -- Amends s. 721.14, F.S., regarding discharge of a managing entity, making grammatical changes only.

Section 15 -- Amends s. 721.15, F.S., regarding assessments for common expenses.

Present Situation: No owner of a timeshare may be excused from payment of the owner's share of common expenses, however, a developer may be excused from paying the developer's share during any time period in which the developer has assured purchasers that assessments would not exceed a stated amount and the developer pays all common expenses of the association in excess of the total revenues of the association (known as the "guarantee period").

Effect of Proposed Changes: Provides that any common expense incurred as a result of a natural disaster or an act of God, which is not covered by insurance, and which occurs during the guarantee period, is to be allocated among all owners notwithstanding the developer assurance that assessments would not exceed a stated amount, provided the association maintained required insurance coverage.²⁴

Present Situation: Section 721.15(7), F.S., provides that a purchaser of a timeshare unit assumes all outstanding liabilities for outstanding assessments and common expenses owed by the former owner for the timeshare purchased; except that as to a timeshare also governed by Chapter 718, F.S. (condominiums), if the purchaser is first mortgagee, or a successor or assignee of a first mortgagee, the purchaser's liability for unpaid assessments and common expenses is limited.²⁵

Effect of Proposed Changes: Deletes the reference to the condominium act. Provides that a first mortgagee or its successor or assignee who acquires title as a result of foreclosure or a deed in lieu of foreclosure is exempt from liability for all unpaid assessments chargeable to the previous owner which came due prior to such acquisition of title by the first mortgagee.

Section 16 -- Amends s. 721.16, F.S., regarding liens for overdue assessments, liens for construction or materialman.

Present Situation: Section 721.16(2), F.S., provides that the managing entity may foreclose a lien for assessments in the manner a mortgage of real property is foreclosed; may bring an action for a money damages for unpaid assessments without waiving a claim of lien; and, in a timeshare plan where no real property interest is conveyed, may bring an action under the Uniform Commercial Code.

Effect of Proposed Changes: Deletes reference to the Uniform Commercial Code.

²⁴ Very similar provisions can be found in the condominium laws at s. 718.116(9)(a)2., F.S.

²⁵ As to condominiums, in some situations, the obligation is six months of assessments, or 1 percent of the original mortgage debt, whichever is less; in other situations, the purchaser has no obligation to pay unpaid assessments. See s. 718.116, F.S.

Present Situation: It is unclear whether a managing entity may impose a lien against a timeshare interest for intentional damage or destruction occasioned by a timeshare owner or guest.

Effect of Proposed Changes: New s. 721.16(6) provides that a managing entity may impose a lien on a timeshare interest for the cost of any maintenance, repairs, or replacement resulting from an act of an owner or the owners guest that results in damage to the timeshare property or facilities made available to purchasers.

Section 17 -- Amends s. 721.17, F.S., regarding transfer of interest in the underlying fee.

Present Situation: Section 721.05(24), F.S., defines the “owner of the underlying fee” as any person having an interest in the real property underlying the accommodations or facilities of the timeshare plan, and any person who purchases 15 or more timeshare periods for resale in the ordinary course of business. Section 721.17, F.S., provides that no developer or owner of the underlying fee may sell, lease, assign, mortgage, or otherwise transfer his or her interest in the accommodations or facilities of the timeshare plan except by recorded instrument, signed by both transferror and transferee,²⁶ which states that the provisions of the instrument are intended to protect the rights of all purchasers of the timeshare plan, that the terms of the timeshare plan may be enforced by any prior or subsequent timeshare purchaser not in default, that the transferee will fully honor the rights of purchasers to occupy and use the accommodations and facilities, that the transferee will fully honor all rights of timeshare purchasers to cancel contracts and receive appropriate refunds, and that the obligations of the transferee under such instrument will continue to exist despite any cancellation or rejection of the contracts between the developer and purchaser arising out of any bankruptcy proceedings. These terms are presumed even if not specifically stated in the instrument. Notice of the transfer must be mailed to each purchaser of record.

Effect of Proposed Changes: Deletes the requirement that a transferee of the underlying fee will fully honor all rights of timeshare purchasers to cancel their contracts and receive appropriate refunds, and provides that the notice of the transfer of ownership of the underlying fee is not required to be provided to a purchaser if the transfer does not affect the purchaser’s rights in or use of the timeshare plan. The amended definition of “owner of the underlying fee” in s. 721.05, F.S., deletes a person owning 15 or more timeshare periods for resale in the ordinary course of business from the definition.

See “Other Comments” herein regarding this change. The sponsor has filed an amendment removing this change.

Section 18 -- Amends s. 721.18, F.S., regarding exchange programs.

Present Situation: Section 721.18(4), F.S., requires that audio, written, or visual publications or materials relating to an exchange company or an exchange program must be filed with the division within 3 days of their use.

²⁶ A deed or other instrument of conveyance is normally only signed by the seller.

Effect of Proposed Changes: Deletes the requirement that audio, written, or visual publications or materials relating to an exchange company or an exchange program must be filed with the division within 3 days of their use.

Section 19 -- Amends s. 721.19, F.S., making grammatical changes only.

Section 20 -- Amends s. 721.20, F.S., regarding licensing requirements.

Present Situation: Section 721.20(1), F.S., requires a timeshare solicitor to purchase an occupational license from the division. The license fee is \$100, and is effective for two years. A timeshare solicitor is exempt from the real estate sales licensing of Chapter 475, F.S. A timeshare solicitor is subject to discipline by the division.

Effect of Proposed Changes: Eliminates the requirement that a timeshare solicitor obtain a timeshare occupational license and pay a licensing fee. Maintains provision that a timeshare solicitor may be disciplined by the division, and adds a provision that makes a developer liable for actions of a timeshare solicitor under the direction or supervision of the developer.

The Department of Business and Professional Regulation has assigned a annual negative fiscal impact of \$190,000 to this change.²⁷

Section 21 -- Amends s. 721.21, F.S., making grammatical changes only.

Section 22 -- Amends s. 721.24, F.S., regarding fire safety.

Present Situation: Certain timeshares, including timeshare condominiums, are subject to specified fire safety regulations.

Effect of Proposed Changes: Provides that timeshare cooperatives meeting the same criteria are also subject to the same fire safety regulations.

Section 23 -- Amends s. 721.26, F.S., regarding regulation by the division.

Present Situation: Section 721.26(5)(d)2., F.S., provides that the division may bring an action in circuit court to place a timeshare plan into receivership. If the events giving rise to the receivership cannot be reasonably and timely corrected in a cost-effective manner, the court is given broad power to amend or modify the timeshare plan in order to resume effective operation, or the power to order sale of the timeshare property.

Effect of Proposed Changes: Provides that, in the event of a court-ordered sale of the timeshare property, all rights, title and interest held by the association or any purchaser shall be extinguished and shall vest in the person who purchases the property at the court-ordered sale.

²⁷ Department of Business and Professional Regulation, Legislative Analysis for HB 593, February 10, 2000.

Section 24 -- Amends s. 721.27, F.S., regarding annual fee to the division.

Present Situation: The managing entity of a timeshare plan must pay the division a fee of \$2 per 7-day use availability that exists within the timeshare plan, by January 1 of every year. There is a 10% late fee (\$250 minimum) after March 1.

Effect of Proposed Changes: Restricts payment of the annual fee to timeshare units located in the state. Deletes the calculation based on a 7-day use period, therefore, a timeshare interest longer than 7-days only pays one fee of \$2. Deletes the mandatory penalty for late payment, but allows the division to assess a civil penalty as any other violation of Chapter 721, F.S.²⁸ If an administrative case is filed by the division against a managing entity regarding late payment of the annual fee, the recommended penalty is a \$1,000 fine in addition to the statutory late fee.²⁹

The fiscal impact statement received from the Department of Business and Professional Regulation did not examine the fiscal impact of this change. There is also a concern regarding the deletion of the automatic late fee. See "Fiscal Comments" herein.

Section 25 -- Creates s. 721.29, F.S., regarding recording of timeshare documents.

Present Situation: Several provisions of Chapter 721, F.S., require recording of documents in the public records. It is unclear how this requirement is to be applied to a timeshare in a jurisdiction that does not have a recording system or that will not accept a particular document for recording.

Effect of Proposed Changes: Provides that, if any timeshare plan accommodations or facilities are located in any jurisdiction that does not have recording laws or will not record any document or instrument required to be recorded pursuant to Chapter 721, F.S., the division may accept an alternative method of protecting purchasers' rights that will be effective under the laws of the other jurisdiction.

Chapter 721, F.S., Part II -- Vacation Clubs

Section 26 -- Amends s. 721.51, F.S., regarding the legislative purpose and scope of Part II of Chapter 721, F.S.

Present Situation: Section 721.51(3), F.S., provides that a multisite timeshare plan which includes accommodations located in Florida, but which is offered exclusively outside of the United States, is exempt from all other requirements of Chapter 721, F.S., provided the plan meets certain criteria. Section 721.03(1)(b), F.S., also provides that a timeshare plan that includes accommodations located in Florida, but is offered exclusively outside of the United States, is exempt from all other requirements of Chapter 721, F.S., provided the plan meets certain criteria.

²⁸ Section 721.26(5)(e), F.S., provides that the division may impose a civil penalty of up to \$10,000 for a violation of Chapter 721, F.S.

²⁹ F.A.C. 61B-41.003.

Effect of Proposed Changes: Deletes the exemption in this section.³⁰

Section 27 -- Amends s. 721.52, F.S., regarding definitions.

Present Situation: Section 721.52(4), F.S., provides a definition of “multisite timeshare plan”. Multisite timeshare plans are regulated under Part II of Chapter 721, F.S. Excluded from the definition is a plan where the maximum total financial obligation of the purchaser is \$1,500 or less; accordingly, such a plan is exempt from regulation under Part II of Chapter 721, F.S.

Effect of Proposed Changes: Increases the maximum total financial obligation of a purchaser from \$1,500 to \$3,000 to qualify a timeshare plan to be exempt from regulation under Part II of Chapter 721, F.S.³¹

Section 28 -- Amends s. 721.53, F.S., regarding subordination agreements or alternative security arrangements.

Present Situation: Section 721.53(1), F.S., requires a developer of a multisite timeshare plan to provide the division with satisfactory evidence that some form of subordination agreement or alternative security is in place. A subordination agreement or alternative security agreement assures purchasers that their interest in the timeshare plan will be superior to claims of creditors of the developer or the managing entity. Four types of assurance are set forth.

Effect of Proposed Changes: Provides an additional form of alternate security arrangement, where the interestholder transfers the interest in the subject accommodation or facility, or all use rights therein, to a trust that meets specific guidelines.

Section 29 -- Amends s. 721.55, F.S., regarding multisite timeshare plan public offering statements.

Present Situation: Section 721.55(4), F.S., requires a developer to cross-reference the location in the public offering statement the location of each exhibit; requires that the average level of occupancy for each component site be disclosed in the public offering statement; and requires certain specific disclosures regarding facilities available for use by a purchaser at each component site.

Effect of Proposed Changes: Removes the requirement to cross-reference exhibits in the public offering statement text; deletes the requirement that the average level of occupancy for each component site be disclosed; and deletes the requirement that the public offering statement disclose the capacity of a facility in terms of the number of people who can use it at any one time, and whether a swimming pool is heated or not.

³⁰ The section of this bill relating to s. 721.03(1)(b), F.S., does not delete the exemption.

³¹ The same change from \$1,500 to \$3,000 was made in Section 1 of this bill regarding single-site timeshare plans.

Section 30 -- Amends s. 721.551, F.S., making grammatical changes only.

Section 31 -- Amends s. 721.552, F.S., making grammatical changes only.

Section 32 -- Amends s. 721.56, F.S., regarding management of multisite timeshare plans.

Present Situation: Section 721.56(1), F.S., requires a developer to obtain an affidavit from a component site managing entity containing a statement that all assessments on inventory are fully paid as required by applicable law; the amount of delinquent assessments existing at the component site, if any; the latest annual audit of the component site shows that, if required, reserves are adequately maintained with respect to each component site; and the component site managing entity specifically acknowledges the existence of the multisite timeshare plan relating to the use of the accommodations and facilities of the component site by purchasers of the plan. Section 721.56(2), F.S., requires the affidavit to be renewed annually.

Effect of Proposed Changes: Eliminates the annual filing requirement.

Section 33 -- Amends s. 721.58, F.S., regarding filing fees.

Present Situation: Section 721.58(2), F.S., provides that the managing entity of a multisite timeshare plan shall pay the annual fee required by s. 721.27, F.S.; provided, however, that the maximum amount of such annual fee is \$25,000 or the total annual fee due with respect to the timeshare units in the multisite timeshare plan that are located in this state calculated pursuant to s. 721.07(4)(a), F.S., whichever is greater.

Effect of Proposed Changes: Deletes this annual fee.

The fiscal impact statement received from the Department of Business and Professional Regulation did not examine the fiscal impact of deleting this fee. An amendment filed by the sponsor restores this fee. See "Fiscal Comments" herein.

Chapter 721, F.S., Part III -- Foreclosure of Liens on Timeshare Estates

Section 34 -- Amends s. 721.81, F.S., making grammatical change.

Section 35 -- Amends s. 721.82, F.S., adding cross-reference to Chapter 719, F.S. (cooperatives) to match existing cross-reference to Chapter 718, F.S. (condominiums).

Section 36 -- Amends s. 721.84, F.S., making a grammatical change.

Section 37 -- Amends s. 721.85, F.S., making a grammatical change.

Section 38 -- Amends s. 721.86, F.S., adding a cross-reference to Chapter 719, F.S. (cooperatives) to match existing cross-reference to Chapter 718, F.S. (condominiums).

Chapter 718, F.S. -- Condominiums

Section 39 -- Amends s. 718.103, F.S., correcting a cross-reference.

Severability and Effective Date

Section 40 -- Provides that, if any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 41 -- Provides that this bill will take effect upon becoming law, however, all documents filed and approved prior to the effective date of the act, or any amendments thereto made after the date of this bill but in compliance with Chapter 721, F.S., prior to the effective date of this bill, will be deemed to be in compliance with the filing requirements of Chapter 721, F.S.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The division's analysis of this bill states that the bill has an annual negative fiscal impact of \$190,000 on revenue to the Bureau of Timeshare of the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation. All income to the division is deposited in the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund.³²

There is a concern that the fiscal impact of this bill is perhaps greater than \$190,000. See "Fiscal Comments" herein.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

none

³² Department of Business and Professional Regulation, Legislative Analysis for HB 593, February 10, 2000.

2. Expenditures:

none

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill eliminates the requirement of a state issued occupational license for timeshare solicitors currently required by s. 721.20(2), F.S. Timeshare solicitors are individually charged a fee of \$100 every two years.

This bill changes filing and disclosure requirements for developers of timeshares, and thus may have an indirect positive fiscal impact on developers by lowering their business overhead.

D. FISCAL COMMENTS:

Section 1. The fiscal analysis of the Department of Business and Professional Regulation did not include an analysis of the fiscal effect of changing the filing fee of a timeshare sold outside of Florida from \$2 per 7-days of use availability to a flat \$100 per development. A representative of the division has stated that the division “seldom” receives developer filings that would fall in this classification, and that accordingly the fiscal impact is “minimal”.³³

Section 11. The fiscal analysis received from the Department of Business and Professional Regulation did not include an analysis of the fiscal effect of deleting the requirement to file prize and gift offers under s. 721.111, F.S. Specifically, s. 721.111(6), F.S., requires payment of a \$100 fee for filing of every prize and gift offer; \$500 if it is a game of chance. Also, the annual filing of a report regarding prize and gift offers is deleted from s. 721.111(8), F.S. The division states that the \$500 fee is “very seldom” assessed and that accordingly the fiscal impact of deleting the \$500 fee is minimal.³⁴

Section 24 (Annual Fees). The fiscal analysis received from the Department of Business and Professional Regulation did not include an analysis of the fiscal effect of changing the annual fee for a timeshare unit under s. 721.27, F.S. Specifically, current law requires payment of a \$2 annual fee per 7-day annual use availability. The amended provisions limit the fee to timeshare units in the state, and do not calculate the fee based on a fixed 7-day period but simply on timeshare units or timeshare interests. The fiscal effect of eliminating a charge against out-of-state units is not explained. The fiscal effect of, for example, changing the fee on 2 week long timeshare units from \$4 each under current law to \$2 each under the amended law is not explained. An amendment filed by the sponsor restores the annual fee to the current formula.

Section 24 (Late Fees). The fiscal analysis received from the Department of Business and Professional Regulation did not analyze the fiscal effect of deleting the automatic late fee in at s. 721.27, F.S. There is also a concern that, by deleting the automatic late fee, the only method that the division has to penalize untimely payment is by the filing of an administrative case against a managing entity.

³³ Telephone conference with Laura Glenn, bureau chief of the Bureau of Timeshare, February 24, 2000.

³⁴ Id.

Prior to the institution of late fees, only 28 percent of timeshare association annual fees were timely received by the division. The division also did not routinely impose civil penalties for failure to timely pay fees, and administrative actions filed for failure to pay the fees were routinely dismissed without penalty upon receipt of payment. Accordingly, the Office of the Auditor General recommended in 1989 that an automatic 10 percent late fee be enacted.³⁵ The division concurred in the recommendation.³⁶

The division asserts that the industry has changed in the past 11 years, and that the late fee is not necessary and creates administrative burdens. According to the division, the "majority of managing entities pay [the annual fee] in January (they have till March 1 but they pay early), leading to the assumption that they pay in January regardless of a late fee threat, and penalizing with the greater of 10% or \$250 is often rigid and onerous in that it requires a late fee if someone accidentally unpaid by a mere \$2 or even if the department's records were in error and caused an underpayment by the managing entity."³⁷ The division also states that guilty of late payment are nearly always timeshare developments that have significant other problems, that an administrative case or a receivership petition would be filed at or before the time of delinquency, and that accordingly deletion of the automatic late fee would have a minimal fiscal impact.³⁸

Section 33. The fiscal analysis received from the Department of Business and Professional Regulation did not include an analysis of the fiscal effect of deleting the fee at s. 721.58(2), F.S. An amendment filed by the sponsor restores the fee.

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

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This 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 a state tax shared with counties or municipalities.

³⁵ Office of the Auditor General, Performance Audit of the Real Estate Time-Share Regulation Program, Report No. 11227, May 1989, at 39-42.

³⁶ Letter from Stephen R. MacNamara, then Secretary of the Department of Business Regulation, May 19, 1989.

³⁷ Correspondence from Laura Glenn, Esquire, Bureau Chief of the Bureau of Timeshare, March 5, 2000.

³⁸ Telephone conference with Laura Glenn, Esquire, Bureau Chief of the Bureau of Timeshare, February 21, 2000.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

none

B. RULE-MAKING AUTHORITY:

none

C. OTHER COMMENTS:

Sections 2 and 17. Liability to Timeshare Purchasers.

This bill appears to overrule the effect of Bell v. R.D.I. Resort Services Corp.³⁹ and appears to overrule the effect of Smith v. Department of Business Regulation, Division of Land Sales, Condominiums and Mobile Homes.⁴⁰ This bill also expressly limits the obligation of a successor owner of the underlying fee to a timeshare purchaser who exercises the purchaser's 10 day right of rescission, although an amendment filed by the sponsor will restore this obligation.

Section 7. Escrow Agents and Unclaimed Escrow Funds

Currently, escrow agents hold thousands of dollars of unclaimed deposits placed by persons who had intended to purchase timeshare units, but for some reason did not. According to bill proponents, the typical deposit is between \$800 and \$1200, and has been held by an escrow agent for approximately 10 years.⁴¹ This bill provides that an escrow agent is to make one attempt at returning the funds to the purchaser, at the last known address of the purchaser. The escrow agent is not required to make any attempt at searching for the purchaser. If that attempt fails, the name of the purchaser is published once in a newspaper of general circulation in the county where the funds are being held, and if the funds are not claimed within 30 days of publication, the funds are to be paid into the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund. It is unclear why no search for the owner of the funds is required, and why the unclaimed funds are paid into the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund rather than being treated as any other unclaimed funds are treated under Florida law (paid over to the Department of Banking and Finance, published statewide and on the Internet for owners to perhaps claim the funds, and if not claimed then transferred to the General Revenue Fund).

Section 10. Advertising

³⁹ Bell v. R.D.I. Resort Services Corp., 637 So.2d 960 (Fla. 2nd DCA 1994).

⁴⁰ Smith v. Department of Business Regulation, Division of Land Sales, Condominiums and Mobile Homes, 504 So.2d 1285 (Fla. 1st DCA 1987), review denied, 513 So.2d 1063 (Fla. 1987).

⁴¹ Meeting with bill proponents Brian Bibeau, Esquire, and William C. Guthrie, Esquire, together with representatives of the Bureau of Timeshare and the Department of Business and Professional Regulation, and House and Senate staff, February 9, 2000.

There is a concern that the exemption of advertising materials at s. 721.11(1)(g), as amended, may be overly broad. This section provides that “any materials shown, displayed, or presented in a sales center or during a sales presentation” is not advertising subject to the restrictions of s. 721.11, F.S. As written, a developer could exempt all of the developer’s advertising from filing and review simply by placing one copy of each such advertising somewhere in a sales center. An amendment filed by the sponsor addresses this concern.

Section 13. List of Owners.

An interested party has voiced concerns regarding the current restriction at s. 721.13(4), F.S., that prohibits a management entity from releasing a list of the current owners of timeshare interests in a timeshare that the entity manages. An owner of a timeshare interest that wishes to communicate with fellow owners must route the communications through the management entity, and such communication is restricted to “legitimate association business”. The concerned party believes that the provisions are too restrictive, that the provisions make a management change too difficult to accomplish, that a timeshare owner has too little voice in management because of the restriction, and that the restriction interferes with the resale of timeshare periods by purchasers. The party would like to see the list of owners available to any current owner of a timeshare in that development in order that owners may freely communicate among each other.⁴²

Representatives of developers, and representatives of the division, disagree. They believe that for-profit solicitors would buy a single timeshare interest in a development for the sole purpose of obtaining list of owners. They believe that these solicitors would then burden those current timeshare owners with mail and telephone solicitations. They believe that the privacy interest of timeshare owners outweighs the claimed need for private communication among owners. These representatives believe the current law gives sufficient rights to an owner that has concerns regarding management of the timeshare.⁴³

A 1996 survey found that 56.9% of respondents indicated that owners do communicate outside of official association meetings, while 31.5% indicated that timeshare period owners need more opportunities to communicate outside of official meeting, and 65% of respondents stated that timeshare period owners should be able to communicate with owners of adjacent weeks or units.⁴⁴ At that time, the division recommended that s. 721.13(4), F.S., be amended to provide that communication between owners for the purpose of selling and buying neighboring timeshare periods should be classified as “legitimate association business”.⁴⁵

⁴² http://www.wizbizsolutions.com/gag.htm#_Florida_Legislates_Concealment

⁴³ Id.

⁴⁴ Regulation of Timeshare and Vacation Club Operation and Management, A Report by the Division of Florida Land Sales, Condominiums, and Mobile Homes, January 1996 at 5.

⁴⁵ Id. at 7. This recommendation was made under a prior administration, and does not reflect the current position of the division.

Section 17. Transfer of the Underlying Fee

It is unclear why this bill deletes the requirement that a transferee of the underlying fee would not be obligated to fully honor the rights of timeshare purchasers to cancel their contracts and receive appropriate refunds. An amendment filed by the sponsor deletes this section of the bill.

Section 41. Effective Date

There would ordinarily be a concern when a bill of this magnitude takes effect upon becoming law. The division and the regulated developer interests, however, are not concerned and believe that the change is manageable.

Other Issues

Interested parties have stated their intent to bring two issues before the committee for consideration. One of those parties would like statutory clarification regarding a timeshare development where cruise ship space will be sold as a timeshare. The other believes that a licensed real estate agent should be permitted to collect an advance commission or fee for resale of a timeshare interest.

The real estate license law provides that a licensed real estate agent must deposit 75% of any advance fee or commission into trust, may only disburse portions of that advance fee or commission from trust for the direct benefit of the client and only with permission of the client, and if the property does not sell the agent must return any unspent funds remaining in trust.⁴⁶ The timeshare law modifies this restriction to prohibit a licensed real estate agent from collecting any advance commission or fee for sale of a timeshare.⁴⁷ Before this prohibition was enacted, advance fees collected by resale companies had generated numerous complaints. During the calendar years 1986 and 1987, the Department of Agriculture and Consumer Services received "more complaints about time-share resale companies than they [did] about the time-share industry."⁴⁸ The most frequent complaint was that a resale company had accepted payment for marketing services but failed to provide the services anticipated by the timeshare owner. The average of the advance fees complained of then was \$414.⁴⁹

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

⁴⁶ Section 475.452, F.S.

⁴⁷ Section 721.20(4), F.S.

⁴⁸ Office of the Auditor General, Performance Audit of the Real Estate Time-Share Regulation Program, Report No. 11227, May 1989, at 27.

⁴⁹ *Id.*

STORAGE NAME: h0593a.rpp

DATE: March 6, 2000

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VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY AND PROBATE:

Prepared by:

Staff Director:

Nathan L. Bond, J.D.

J. Marleen Ahearn, Ph.D, J.D.