STORAGE NAME: h0593s2z.rpp ****AS PASSED BY THE LEGISLATURE****
DATE: July 26, 2000 **CHAPTER #**: 2000-302, Laws of Florida

HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
REAL PROPERTY & PROBATE
FINAL ANALYSIS

BILL #: CS/CS/HB 593, 1st Engrossed

RELATING TO: Homeowners' Associations and Condominiums

SPONSOR(S): Committee on General Government, Committee on Real Property & Probate, and Representative Cantens and others

TIED BILL(S): none

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) REAL PROPERTY AND PROBATE YEAS 8 NAYS 2
(2) GENERAL GOVERNMENT APPROPRIATIONS YEAS 11 NAYS 0
(3)
(4)
(5)

I. SUMMARY:

This act amends numerous real property provisions relating to cooperatives, homeowners' associations, timeshare developments, and condominium associations.

This act amends Chapter 719, F.S., the Cooperative Act. Primarily, changes to the Cooperative Act reflect the current statutory provisions regarding condominium law. Technical and grammatical changes are also made.

This act amends Chapter 721, F.S., the Florida Vacation Plan and Timesharing Act to, for example, eliminate prior review by the Department of Business and Professional Regulation of timeshare advertising; reduce regulation of timeshare sales activities conducted outside of Florida; reduce liability of a successor or concurrent timeshare developer; simplify the disclosures required of a timeshare developer; and eliminate the timeshare solicitor license program.

This act amends Chapter 617, F.S., relating to homeowners' associations, to provide that homeowners' association documents may not prohibit display of the United States flag in a respectful manner.

This act amends Chapter 718, F.S., the Condominium Act, and provides more tailored requirements with respect to multicondominium associations. "Multicondominium" is defined to mean "a real estate development containing two or more condominiums all of which are operated by the same association."

This act does not appear to have a fiscal impact on local governments. The timeshare provisions in this act have an estimated negative fiscal impact of $190,000 on state revenues, the remaining provisions of this act do not appear to have a significant fiscal impact on the state.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes [x]	No []	N/A []
2.	Lower Taxes	Yes []	No []	N/A [x]
3.	Individual Freedom	Yes [x]	No []	N/A []
4.	Personal Responsibility	Yes []	No []	N/A [x]
5.	Family Empowerment	Yes []	No []	N/A [x]

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

B. PRESENT SITUATION:

Chapter 719, F.S., governs cooperative associations. A cooperative is "that form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owners of all the cooperative property."[1] A cooperative association operates similarly to a condominium association.

Chapter 721, F.S., governs vacation plans and timeshare developments. A "vacation plan" is "any timeshare plan consisting exclusively of timeshare licenses or consisting of a combination of timeshare licenses and timeshare estates."[2] A "timeshare plan" is an arrangement where "a purchaser, for consideration, receives ownership rights in or a right to use accommodations, and facilities, if any, for a period of time less than a full year during any given year . . . ."[3] Vacation and timeshare plans are regulated by the Bureau of Timeshare, of the Division of Florida Land Sales, Condominiums, and Mobile Homes, of the Department of Business and Professional Regulation.

Chapter 617, F.S., governs corporations not for profit. Sections 617.301-.312, F.S., govern homeowners' associations.[4] A "homeowners' association" is "a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel."[5]

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[1] Section 719.103(12), F.S.

[2] Section 721.05(37), F.S.

[3] Section 721.05(33), F.S.

[4] Chapter 2000-258, L.O.F. (SB 1194) moves these sections of Chapter 617, F.S., to new Chapter 720, F.S.

[5] Section 617.301(7), F.S. The term "homeowners' association" does not include a community development district or other similar special taxing district created pursuant to statute.

Chapter 718, F.S., the "Condominium Act," governs condominium associations. A condominium is "that form of ownership of real property which is created pursuant to the provisions of this chapter, which is comprised of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements."[6] The term "multicondominium association" is not defined in Chapter 718, F.S., although it has come to mean an association that contains more than one condominium operated by that association. The operation of more than one condominium by an association is permitted by s. 718.11(1)(a), F.S. There is, however, little statutory guidance regarding the operation of a multicondominium association. Existing statutory language is, in certain instances, confusing when applied to multicondominium associations; for example, whether the year-end financial reporting requirements should be geared solely to the income of the individual condominiums; whether consolidated financial statements are appropriate; and whether the operating funds of a multicondominium association can be commingled or whether its reserve funds can be commingled.

Condominium and cooperative associations are regulated by the Bureau of Condominiums of the Department of Business and Professional Regulation. In fiscal year 1998-99, there were approximately 1,081,411 condominium and cooperative units; for that fiscal year, total Bureau revenues were $5,342,632, expenditures were $5,748,589, resulting in a deficit of $405,957.[7] 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.[8] 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.[9] No state agency regulates homeowners' associations.

See the "Section-by-Section Analysis" for the Present Situation specific to each section amended by this act.

C. EFFECT OF PROPOSED CHANGES:

See the "Section-by-Section Analysis"

D. SECTION-BY-SECTION ANALYSIS:

Chapter 719, F.S. -- Cooperatives

Section 1 -- Amends s. 719.103, F.S., regarding definitions.

Present Situation: Section 719.103(21), F.S., defines "residential cooperative" to differentiate between a cooperative for residential use and a cooperative for commercial or industrial use.

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[6] Section 718.103(11), F.S.

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

[8] 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.

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

Effect of Proposed Changes: Amends the definition of "residential cooperative" to provide that, in a timeshare cooperative, the timeshare instrument governs the intended use of each unit.[10]

Present Situation: "Timeshare estate" is not defined.

Effect of Proposed Changes: Defines "timeshare estate" to mean "any interest in a unit under which the exclusive right of use, possession, or occupancy of the unit circulates among the various purchasers of a timeshare plan pursuant to chapter 721 on a recurring basis for a period of time."

Section 2 -- Amends s. 719.107, F.S., regarding common expenses and assessments.

Present Situation: Section 719.107, F.S., provides that an owner of a cooperative unit is liable to the cooperative association for assessments and other charges. Unpaid common expenses or assessments, extinguished by foreclosure of a superior lien or by deed in lieu of foreclosure, are common expenses collectible from all the unit owners in the cooperative in which the unit is located.

Effect of Proposed Changes: Provides that all owners of timeshare estates in a cooperative unit are jointly and severally liable to the cooperative association for assessments and other charges assessed against that cooperative unit, unless the cooperative documents provide otherwise.

Section 3 -- Amends s. 719.114, F.S., regarding ad valorem taxation of cooperative parcels.

Present Situation: In a cooperative, the cooperative association owns the land and the building or buildings. An owner of a cooperative unit does not own the unit as real property, but owns a share of the cooperative association together with the right to lease the cooperative unit. Under traditional ad valorem tax concepts, a cooperative association would be assessed ad valorem taxes on the land and building or buildings as a whole. Because taxing the land and the building as a whole makes administration of the homestead exemption difficult, s. 719.114, F.S., provides that ad valorem taxes and special assessments by taxing authorities are to be assessed against the cooperative parcels and not upon the cooperative property as a whole. Section 192.037, F.S., provides that all of the timeshare estates in a development are to be grouped together, and taxed as a single entry. A timeshare cooperative is governed by both s. 719.114, F.S., and s. 192.037, F.S., and these two sections are in conflict.

Effect of Proposed Changes: Provides that, if cooperative property is divided into timeshare estates, the provisions of s. 192.037, F.S., apply; accordingly the assessed value of each timeshare development will be the value of the combined individual timeshare periods or timeshare estates contained therein.

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[10] A similar provision is in the condominium laws at s. 718.103(22), F.S.

Section 4 -- Amends s. 719.3026, F.S., regarding contracts by a cooperative association.

Present Situation: Section 719.3026, F.S., provides that a contract by a cooperative association that is not fully performed within one year, or any contract for the provision of services, must be in writing. Additionally, the association must obtain competitive bids for any contract that requires payment by the association in an amount which in the aggregate exceeds 5 percent or more of the annual budget. Contracts with "employees of the association, and contracts for attorney, accountant, architect, engineering, and landscape architect services" are not subject to this section.

Effect of Proposed Changes: Provides that contracts between a cooperative association and a community association manager or a timeshare management firm are not required to be in writing, and are not subject to competitive bidding requirements.[11]

Section 5 -- Amends s. 719.401, F.S., regarding leaseholds.

Present Situation: Section 719.401(1), F.S., provides that a cooperative may be created on lands held under lease, provided the unexpired term of the lease is at least 50 years.

Effect of Proposed Changes: Provides that if a cooperative is a timeshare development, the lease must have an unexpired term of at least 30 years.[12]

Section 6 -- Amends s. 719.503, F.S., regarding disclosure prior to sale.

Present Situation: Section 719.503, F.S., requires the developer of a cooperative to disclose certain information to prospective purchasers prior to or at the time of sale.

Effect of Proposed Changes: Adds additional disclosure requirements for a contract for the sale or transfer of a cooperative unit, and for sales brochures, when timeshare estates are or may be created in a cooperative development.[13] More particularly, in part the contract must state that for the purpose of ad valorem taxes or special assessments levied against a timeshare estate, the managing entity is generally considered the taxpayer and that rights to challenge an assessment exist.

Section 7 -- Amends s. 719.504, F.S., regarding the prospectus or offering circular.

Present Situation: Section 719.504, F.S., requires a developer to prepare a prospectus or offering circular that discloses certain facts and information regarding a cooperative. The prospectus must be filed with the division and a copy provided to prospective purchasers.

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[11] A similar exemption is in condominium law at s. 718.3026(2)(a)1., F.S.

[12] A similar provision is in condominium law at s. 718.401(1), F.S.

[13] Similar disclosures are required by condominium law at s. 718.503(1)(a)8., F.S.

Effect of Proposed Changes: Provides that, if timeshare estates are or may be created within a cooperative, then an additional disclosure must be made in the prospectus or offering circular regarding same.[14]

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

Section 8 -- 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,[15] 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 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 division[16] has received and accepted satisfactory evidence that the timeshare plan has been filed and accepted by the appropriate agency in the other state.[17] The division may require that certain disclosures be made to purchasers regarding the offer.

Effect of Proposed Changes: Provides that sales activities in another state regarding the sale of timeshare interests in Florida will not be regulated by Florida; accordingly, such sales activities would only be regulated by the state where the sales activity occurs.[18] Eliminates the requirement that the division receive and accept evidence that the timeshare plan has been filed and accepted by another state.

Present Situation: Section 721.03(1)(b), F.S., provides that the offer or sale of a Florida timeshare outside the United States is exempt from Chapter 721, F.S.[19] A filing fee of $2 per 7 day timeshare interest is applicable.[20] A contract for sale requires a disclaimer stating that the offering of the timeshare plan is exempt from regulation by Florida. The contract must also disclose any financial interest that the developer or salesperson has in the timeshare development.

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[14] A similar disclosure is required by condominium law at s. 718.504(5)(b), F.S.

[15] Reference to “other states” means the other 49 states in the United States and also includes United States territories (District of Colombia, Puerto Rico, U.S. Virgin Islands, Guam).

[16] “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.

[17] Section 721.03(1)(a), F.S.

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

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

[20] Section 721.07(4), F.S.

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 a 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 contractual disclaimers used in such instances must still be given; however, the disclosure of any financial interest that the developer or salesperson has in the timeshare is no longer required.

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 comply with 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 multisite timeshare development).

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 comply with 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 meet the requirements of 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 another 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 Chapter 718, F.S., or Part VI of Chapter 719, F.S., both relating to conversions,[21] 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 on a pro-rata basis from the proceeds of the sale of units as they are sold and pay in for shortfalls in the reserves during the sales period, or provide each purchaser with a warranty of fitness and merchantability.[22]

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[21] Part VI in Chapter 718, F.S., and in Chapter 719, F.S., are similar in wording, scope, and effect.

[22] The specific warranty of fitness and merchantability is described at s. 718.618(6), F.S., or s. 719.618(6), F.S.: "[T]he developer shall be deemed to have granted to the purchaser of each unit 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."

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 financial obligation from $1,500 to $3,000 in order for Chapter 721, F.S., regulations to not apply.

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 rates.

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

Present Situation: Section 721.06(4), F.S., prohibits a developer from "overbooking" a timeshare development. Because of its location in the statutes, this prohibition only applies to single site timeshare plans.

Effect of Proposed Changes: The prohibition against overbooking is moved to new s. 721.03(10), F.S., where it is applicable to all timeshare plans, whether single site or multisite.

Section 9 -- 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.

Effect of Proposed Changes: Adds to the definition of "closing" the conveyance of beneficial title to a timeshare interest.

Present Situation: Section 721.05(5), F.S., defines "common expenses". Section 192.037, F.S., provides that ad valorem taxes are assessed against a timeshare development as a whole, and that the management entity is responsible for prorating the taxes among the owners of timeshare interests, collecting the taxes, and remitting the funds in one payment to the property tax collector. Current law does not address how the management entity is to address nonpayment of taxes by an owner of a timeshare interest.

In practice, a management company, when faced with an owner of a timeshare interest who is delinquent in paying ad valorem taxes, advances the funds necessary to pay those taxes from the operating account of the timeshare development in order to prevent the property from being lost in a tax sale. Any payment made from the operating account of the timeshare association, if not reimbursed, becomes a common expense and thus charged against all owners of timeshare interests. Presumably, the association adds this advance to the assessment against the delinquent timeshare interest, and through collection practices up to and including foreclosure of the timeshare interest, is reimbursed in most cases. This practice is not specifically authorized by law; however, the division will not file an administrative complaint against a management company that pays the property tax bill in this manner because the effect of not paying the property tax is loss of the whole

property, and allowing a loss of the whole property would be a breach of the fiduciary duty owed by the management company to timeshare owners.[23]

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 allows the unpaid taxes of an owner of a timeshare interest 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 accordance with the original advertising and public offering statements. Provides 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: Deletes from the definition of "completion of construction" the above-described exceptions to the requirement that all accommodations and facilities be complete at the time of disclosure. Similar provisions are added by this act to s. 721.11, F.S., at subsections (7), (8), and (9).

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.

Present Situation: Section 721.05(9), F.S., defines "developer" and provides exceptions to the definition. A developer is any person who creates the timeshare plan (original developer), a person who succeeds to the interest of a developer by sale, lease, assignment, mortgage, or other transfer and who offers timeshare periods in the ordinary course of business (successor developer), and any person acting concurrently with a developer for the purpose of offering timeshare periods in the ordinary course of business (concurrent developer).

The term "developer" also includes an owner of a timeshare period who has acquired the timeshare period for other than his or her own use and who later offers it for resale. A person who has acquired more than seven timeshare periods is presumed to have acquired them for other than his or her own use; however, a person who has acquired more than seven units and sells those units to a single purchaser in a single transaction will not by that action be deemed a developer.

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[23] Meeting with Ross Fleetwood, Director of the Division of Florida Land Sales, Condominiums, and Mobile Homes, and Laura Glenn, Bureau Chief of the Bureau of Timeshare, March 9, 2000.

The term “developer” may also include a management entity of a timeshare plan that otherwise qualifies as a developer, except that the activities of a managing entity in selling timeshare interests it owns to existing purchasers in the timeshare plan, or the activities of selling timeshare interests in compliance with s. 721.065, F.S. (resale contracts), will not by themselves subject a management entity to classification as a developer. Section 721.065(1), F.S., provides that a management entity that offers fewer than 20 timeshare periods for sale in a year to persons who are not existing purchasers may also use a resale purchaser agreement which complies with s. 721.065, F.S.

Throughout Chapter 721, F.S., the activities of a developer are regulated. A developer must supervise, manage, and control all aspects of a timeshare plan;[24] must use the contract and sale provisions in s. 721.06, F.S. (sales contracts by developers), rather than the less restrictive provisions of s. 721.065, F.S.; must write, file, and provide to purchasers a public offering statement;[25] must disclose the terms and conditions of incidental benefits offered and must make them available for a specified period of time;[26] must place deposits by purchasers into an authorized escrow account;[27] must honor a purchaser’s 10-day right of rescission;[28] must file advertising for review prior to use and comply with advertising restrictions;[29] must honor prize and gift offers;[30] must create or provide for a management entity;[31] must pay all common expenses until a management entity is formed, and after a managing entity is formed must either pay the assessments on all owned timeshare periods or must pay the actual common expenses of the development in excess of that amount collected from purchasers when the developer has guaranteed that assessments will not exceed a specified amount;[32] and, if transferring the developer’s interest in the development, the developer must include in any agreement that the transferee of the developer’s interest will agree to honor the use and occupancy rights of timeshare purchasers and agree to honor the timeshare instrument.[33] Any purchaser or group of purchasers may bring an action for damages against a developer for a violation of Chapter 721, F.S.[34]

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[24] Section 721.056, F.S.

[25] Section 721.07, F.S.

[26] Section 721.075, F.S.

[27] Section 721.08, F.S.

[28] Section 721.10, F.S.

[29] Section 721.11, F.S.

[30] Section 721.111, F.S.

[31] Section 721.13, F.S.

[32] Section 721.15, F.S. This time period is commonly known as the “guarantee period”.

[33] Section 721.17, F.S.

[34] Section 721.21, F.S.

Section 721.17, F.S., provides that a transferee,[35] of the developer's or owner's underlying fee interest in the accommodations and facilities, must comply with the timeshare instrument by providing to timeshare purchasers the accommodations, facilities, and amenities that the timeshare purchasers were promised.[36]

In Smith v. Department of Business Regulation, Division of Land Sales, Condominiums and Mobile Homes,[37] a "financier" purchased the outstanding mortgages on 28 timeshare periods, and was assigned 6 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 and sued the "financier". The court found that the "financier" met the definition of "seller", and thus was required under s. 721.17, F.S., to honor the rights of timeshare purchasers to cancel their contracts and receive appropriate refunds. The court ordered the "financier" to assume the developer's other obligations to timeshare purchasers, including the right to occupy and use the timeshare periods pursuant to their contracts.

Effect of Proposed Changes: Amends the definition of "developer" as follows:

- Makes grammatical changes throughout the subsection.
- Amends the provisions regarding whether a managing entity is a developer, to provide that a managing entity, that offers timeshare interests that it owns for sale in a timeshare plan that the managing entity manages, will not be deemed a developer, provided that the managing entity complies with s. 721.065, F.S. (simplified procedures for resale of a timeshare interest). A managing entity may also engage a third party to offer for sale the timeshare interests that it owns.
- Amends the provisions regarding ownership and resale of more than seven timeshare interests, to provide that a "single transaction" may occur in stages.

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[35] A transferee can receive an interest through sale, lease, assignment, mortgage, or other type transfer.

[36] Section 721.17, F.S., provides: 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.

[37] 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).

- Creates a new exemption from the definition of "developer" for a "person who has acquired or has the right to acquire more than 7 timeshare interests from a developer or other interestholder in connection with a loan, securitization, conduit, or similar financing arrangement . . . and who subsequently arranges for all or a portion of the timeshare interests to be offered by one or more developers in the ordinary course of business on their own behalves or on behalf of such person".

The Smith case stands for the proposition that a person involved in financing a timeshare development may become so involved that the person becomes liable to timeshare purchasers when the development fails. This change may affect the continued precedential value of Smith.

The amended definition further provides that "[a] successor or concurrent developer shall be exempt from any liability inuring to a predecessor or concurrent developer of the same timeshare plan", unless the transfer of the developer's interest was a fraudulent transfer, and defines fraudulent transfer. Notwithstanding the limitation on liability, a successor or concurrent developer must pay outstanding assessments against any timeshare interests assumed, must meet all obligations occurring after the timeshare interest is transferred to the successor or concurrent developer, and must comply with the provisions of any applicable timeshare instrument.

Pursuant to this change, a successor or concurrent developer is not liable for any obligation or agreement made by a predecessor developer except for those items specifically stated in the timeshare instrument. Accordingly, a successor developer or concurrent developer will not be liable for providing incidental benefits; honoring promises in advertising that are not otherwise set forth in the timeshare instrument; providing short-term products; honoring prize and gift offers; or honoring oral agreements or agreements arising from custom and usage of the timeshare plan that are not otherwise specifically set forth in the timeshare instrument. The successor or concurrent developer may also not be required to honor the guarantee period.[38] This change appears to effectively overrule existing case law.

In Bell v. R.D.I. Resort Services Corp.,[39] Mr. and Mrs. Bell, sued R.D.I. Resort Services Corporation (R.D.I.), a management company, and Tropical Sands Resort Condominium Association, Inc., for damages for the alleged breach of their contract to purchase a time-share interest. The contract, entered into in 1988, provided that "[i]n addition to your deeded vacation time here at Tropical Sands Resort, you are also entitled to a yearly bonus week giving you more time at our resort...." The bonus week was "subject to availability," a term that was not defined. Mr. and Mrs. Bell alleged that they were verbally told that "subject to availability" meant that the time-share operators would not be responsible for natural disasters, such as fires, floods, or hurricanes. They also alleged they were told that the time-share plan required fifteen percent of the units to be retained in order to ensure availability of the bonus week, and that there would be no public access or rentals.

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[38] The guarantee period may be set forth in the timeshare instrument, in which case the successor or concurrent developer would continue to be liable, or may be set forth by agreement with a majority of the owners, in which case the successor or concurrent developer is not liable.

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

Based on these understandings, Mr. and Mrs. Bell purchased one timeshare week, which they understood entitled them to the promised bonus week. Mr. and Mrs. Bell further alleged that in 1988, 1989, and 1990, the developer and R.D.I. honored the agreement. However, in 1991, R.D.I. refused to honor Mr. and Mrs. Bell's request for their bonus week because all of the units had been sold, contrary to Mr. and Mrs. Bell's understanding that fifteen percent of units would be retained to ensure availability of the bonus week. In addition, R.D.I. operated a rental program, also contrary to Mr. and Mrs. Bell's understanding of the purchase agreement.

R.D.I. argued that it made no representations to Mr. and Mrs. Bell at the time of purchase and that any representations were made by representatives of Tex La Miss Corporation, the original developer. R.D.I. was retained to manage the time-share development by Coast Bank, which had taken over the resort from Tex La Miss, the original developer, and by Tropical Sands Resort Condominium Association, Inc. (Tropical Sands). R.D.I. argued that neither it nor Tropical Sands had any affiliation with the original developer, Tex La Miss. As such, R.D.I. argued it only had knowledge of those rules, regulations, restrictions, and representations that were matters of record. R.D.I. argued that any representations made to appellants were by the developer, who was no longer in business or associated with Tropical Sands; and R.D.I., as the managing entity, had no liability to Mr. and Mrs. Bell. The Second District Court of Appeal disagreed with R.D.I., stating:

> In view of what we perceive to be the legislature's intent to protect purchasers of time-share units from all third party participants in the operation of those units, we conclude that [Mr. and Mrs. Bell] have alleged actions for which [R.D.I.] could be liable . . . .[40]

The Bell decision stands for the proposition that third parties involved in timeshare developments may be liable for verbal promises made by a predecessor. The change to existing law will probably affect the continued precedential value of Bell.[41]

Present Situation: Section 721.05(13), F.S., defines "escrow agent" and requires an escrow agent that is an attorney, a real estate broker, or a title insurance agent, to post a $50,000 surety bond before being permitted to act as an escrow agent.

Effect of Proposed Changes: Deletes the escrow agent bond requirement, and adds "a title insurer authorized to transact business in this state" to the definition of "escrow agent".

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

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[40] Id. at 961.

[41] Bill proponents originally asserted that the change in the definition of "developer" would not effect the continued precedential value of Bell and Smith. Neither a summary of the bill provisions prepared by bill proponents (letter from William Guthrie, Esquire, dated January 25, 2000), nor the summary of the bill's provisions prepared by the division, address why the definitions of "developer" and "seller" exclude securitization entities, or why successor or concurrent developers are exempted from liability. In a meeting on February 9, 2000, bill proponents again asserted that HB 593 does not affect Bell and Smith. However, in a letter dated March 10, 2000, bill proponents acknowledged that limiting the definitions and expressly limiting liability are necessary to assist purchasers of troubled resorts. (letter from William Guthrie, Esquire, dated March 10, 2000). These provisions as written, however, are not limited to just the purchase or financing of troubled resorts, but apply to all timeshare developments. The Bell and Smith decisions were both related to the activities of persons buying troubled resorts.

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;[42] 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;[43] an owner of the underlying fee must be treated by a management company equally with all other timeshare owners and the developer;[44] and an owner of the underlying fee cannot sell the underlying fee except by recorded instrument that must include certain disclosures and assurances.[45]

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 text and any exhibits attached thereto as required by s. 721.07, F.S. (regarding public offering statements for single site timeshare plans), or by ss. 721.55 and 721.551, F.S. (regarding public offering statements for multisite timeshare plans). 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. (regarding public offering statements for single site timeshare plans), or s. 721.551, F.S. (regarding public offering statements for multisite timeshare plans).

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. (regarding public offering statements for single site timeshare plans), or s. 721.55, F.S. (regarding public offering statements for multisite timeshare plans).

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"[46] of a timeshare plan under certain conditions.

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[42] Section 721.06(1)(b), F.S. This act removes the requirement to disclose who the owner is of the underlying fee in a contract for purchase.

[43] Section 721.07(5)(l), F.S. Renumbered by this act to s. 721.07(5)(k), F.S.

[44] Section 721.13(6)(g), F.S.

[45] Section 721.17, F.S.

[46] 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.[47]

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 owning more than seven timeshare periods that sells all of such periods to a single purchaser.

Effect of Proposed Changes: Amends the definition of "seller" to exempt: a managing entity that engages a third party to offer, on behalf of the managing entity, timeshare interests in a timeshare plan, provided such offer complies with the resale purchase requirements set forth in s. 721.065, F.S. (resale requirement by seller other than a developer); and, a person that acquires or has the right to acquire more than seven timeshare interests in connection with a loan, securitization, conduit, or other similar financing arrangement, who arranges for the timeshare interests to be sold through a developer.

Present Situation: Section 721.05(29), F.S., defines "timeshare estate" to mean a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property, or a specified portion thereof. 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 14 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.

Effect of Proposed Changes: Defines at new s. 721.05(34), F.S., "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

[47] 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.

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

Present Situation: Section 721.06(1), F.S., provides that a seller[48] 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 regarding cancellation of the contract, if the sale is of a timeshare license; the actual interest of the developer in the accommodations or facilities; and, if the accommodations or facilities are subject to a lease, a disclosure regarding same.

Effect of Proposed Changes: Eliminates the requirement of disclosing the name and address of the owner of the underlying fee; eliminates the requirement that the total financial obligation of the purchaser be disclosed, thereby narrowing the required disclosures to the total amount of the initial payment, any annually recurring use charge, and next year's estimated assessment for common expenses and for ad valorem taxes, if available; 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.

The disclosure language on the 10-day right to cancel is modified to reflect the changes to public offering statements in amended s. 721.07(2)(d), F.S.

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), F.S. (in Section 8 of this act).

Section 11 -- Amends s. 721.065, F.S., regarding resale purchase agreements other than those used by regulated developers or sellers.

Present Situation: Section 721.065, 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

[48] The term "seller" in this context does not include all sellers of timeshare interests. The developer of a timeshare is included within the definition of "seller". See s. 721.05(31), F.S., as amended by this act.

certain disclosures in a contract for sale of the timeshare interest but does not have to comply with the more extensive requirements of s. 721.06, F.S. (contracts to be used by developers). A management entity that sells fewer than 20 of its own timeshare periods may also use this section rather than s. 721.06, F.S., and may therefore sell units under the same disclosure requirements as those required 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 for sale timeshare periods for its own account in a timeshare plan which it manages 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. Furthermore, provides 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 s. 721.065, F.S., rather than the more extensive disclosure requirements of a sale by a developer. Adds the requirement that the resale purchase agreement used by certain persons, as described, must contain the date of the first year in which occupancy will be permitted.

Section 12 -- 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 statement, the sale is only voidable under certain circumstances. Section 721.07(2)(d), F.S., as amended, provides for disclosures relating to 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 may be canceled if 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 a developer to pay a filing fee of $2 per 7 days of annual use availability for filing an offering statement, and allows the division to, by rule, increase the fee to $3. The division has not raised 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.[49]

Present Situation: Section 721.07(5), F.S., references "multistate" timeshare plans, and exempts such plans from the requirements of s. 721.07(5), F.S. However, the term "multistate" is not defined by Chapter 721, F.S. It appears that the reference to "multistate" should be a reference to "multisite" timeshare plans that are regulated under Part II of Chapter 721, F.S. The division states that they have interpreted the statute in this manner.

Effect of Proposed Changes: Changes "multistate" to "multisite".

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; however, 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 detailed description required in the offering statement regarding the facility, including recreational and other commonly used facilities; thereby allowing generalized descriptions of the facilities.

Present Situation: Section 721.07(5)(p), F.S., requires that a public offering statement include a statement as to whether the developer's plan includes a program of leasing units or leasing timeshare periods in addition to selling timeshare interests.

Effect of Proposed Changes: Deletes the requirement that a public offering statement disclose any leasing program.

Present Situation: Section 721.07(5)(w), F.S., requires that a public offering statement include a description of the manner in which utility and other services are supplied to the timeshare development, together with the name of the person or entity providing the utilities or other services.

Effect of Proposed Changes: Deletes the requirement that a public offering statement disclose utility and other services.

Present Situation: Section 721.07(5)(x), F.S., requires that a public offering statement include an estimated operating budget, and provides requirements for preparation and presentation of the budget.

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[49] The Bureau of Timeshare has had an operating surplus each of the past six fiscal years. The operating surplus totals $4,335,909, according to the division, or $3,846,656, according to a revised expense allocation formula of the Auditor General. (Auditor General Review of Cost Allocations for the Division of Florida Land Sales, Condominiums, and Mobile Homes, February 18, 2000).

Effect of Proposed Changes: Provides that the capital improvement reserve account requirements apply only to timeshare plans located in the state. Provides that reserve account calculations for a timeshare development located outside of Florida be calculated according to the requirements of the state where the timeshare development 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. Adds specific disclosures regarding phased timeshare plans.

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

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

Present Situation: Section 721.07(5), F.S., lists the information and documents that must be included in a public offering statement. In a traditional timeshare plan, a timeshare purchaser buys the right to use the timeshare during a specific week of the year in a specific unit of a timeshare development. In practice, many timeshare purchasers utilize an exchange program whereby they trade weeks and locations with other timeshare owners. A reservation plan is a flexible form of timeshare plan, modeled after the exchange concept, in which a timeshare purchaser is not assigned a specific unit nor a specific time during the year, but is given the right to make a reservation to use a timeshare unit for a specified length of time under the conditions of the plan.

Effect of Proposed Changes: Adds subsections (cc) and (dd) which require a public offering statement to include disclosure of rules and regulations regarding reservations, and include disclosure language regarding reservations. Also 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 in a public offering statement including the nature of any conflict between current law and the timeshare instrument.

Present Situation: Section 721.07(5)(hh), F.S., requires a developer to attach certain documents to a public offering statement.

Effect of Proposed Changes: Moves subsection (hh) to subsection (ff), and provides that, if the timeshare plan is not approved at the time of dissemination of the public offering statement, the developer must attach the proposed documents.

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.”

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

Section 13 -- 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, but not for more than 3 years. The developer is not required to make the incidental benefit available for longer than 18 months after the date of purchase.

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

Section 14 -- Amends s. 721.08, F.S., regarding escrow agreements, nondisturbance agreements, and alternate security arrangements.

Present Situation: A developer selling a timeshare must place a purchaser's deposit into an escrow account until such time as the developer is entitled to the funds. Section 721.08(2)(c), F.S., provides conditions under which an escrow agent is allowed to distribute escrowed funds.

Effect of Proposed Changes: Adds additional conditions under which an escrow agent may distribute funds in 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 which notifies all persons of the identity of an independent escrow agent or trustee who must maintain records of accommodations subject to the plan and regarding each purchaser of a timeshare license. 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 to the party entitled to them 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 is held by an escrow agent for approximately 10 years.[50]

Effect of Proposed Changes: Adds new s. 721.08(8), F.S., 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 for the rightful owner 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

[50] 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.

Trust Fund, at which point the purchaser will have no further claim on the funds and the escrow agent is relieved from further liability.

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.

Section 15 -- 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, or hold a leasehold interest, and funds received must be placed in escrow pending approval of the development by the division. This section further provides that the timeshare plan must be filed with the division within 90 days after the date the division approves the reservation agreement filing. If the plan is not timely filed, all reservations for the purchase of a timeshare unit must be canceled.

Effect of Proposed Changes: Additionally allows a developer to establish a reservation plan regarding property upon which the developer holds an option to purchase or lease. Also extends from 90 to 180 days after the date the division approves the reservation agreement filing within which a developer must file the timeshare plan.

Section 16 -- 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 calendar days after signing the agreement or 10 calendar days after the “day on which the purchaser received the last of all documents required to be provided to him or her”, whichever is later.

Effect of Proposed Changes: Provides that the “last of all documents” includes the notice required to be furnished to the purchaser pursuant to s. 721.07(2)(d)2., F.S., where applicable. Section 721.07(2)(d), F.S., as amended, provides for disclosures relating to 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. Section 721.07(2)(d)2., F.S., provides that, after the receipt of approval of the public offering statement by the division and prior to closing, if any revisions made to the documents contained in the purchaser public offering statement materially alter or modify the offering in a manner adverse to the purchaser, the developer must send to the purchaser such revisions together with a notice stating that the purchaser has 10 calendar days within which to cancel the agreement.

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 has apparently the 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 17 -- 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 disseminated 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. However, 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 substantial noncompliance with the advertising requirements, the division may file administrative charges or seek an injunction, in addition to requiring the developer to correct the deficiency. "Advertising material" does 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 used for soliciting a sale of a different timeshare development. Materials "exclusively 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.

Present Situation: Section 721.11(4), F.S., lists certain types of statements which are prohibited in any advertising or oral statement made by a seller; generally, false or misleading statements. One of these prohibited statements is for a seller to describe an improvement that is not required to be built or that is uncompleted, unless the improvement is conspicuously labeled as "need not be built", "proposed", or "under construction", with 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), F.S.

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 timeshare or a vacation membership, and allows alternative disclosures that comply with the requirements of another jurisdiction.

Effect of Proposed Changes: 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), F.S., 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)(c), F.S.

New s. 721.11(8), F.S., 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, provided the statements are in broadcast or print media and provided the dissemination does not fall within the definition of advertising at s. 721.11(3)(e), F.S.

New s. 721.11(9)(a), F.S., 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 act). New s. 721.11(9)(b), F.S., 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 provides for disclosures that must be made regarding possible accommodations or facilities, and provided that the seller provide a conspicuous disclosure described in new s. 721.11(9)(c), F.S. New s. 721.11(9)(d), F.S., 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. 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. These provisions are substantially similar to provisions contained in current law at s. 721.553, F.S.

Section 18 -- 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 for 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 filing with the division to provide, among other things, the information upon which the developer relies 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 requirement to list 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. The additional $400 fee for including games of chance is eliminated.

Section 19 -- Amends s. 721.12, F.S., regarding recordkeeping by a seller, making grammatical changes only.

Section 20 -- 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: Changes the time by which a developer must create or provide for a managing entity from “before the first sale of a timeshare period” to “prior to the recording of timeshare instrument”. Also provides that a timeshare managing entity in a condominium or cooperative is not governed by Chapter 718, F.S., or Chapter 719, F.S., unless the timeshare management entity manages the entire condominium or cooperative.

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: Changes the time by which a managing entity must file a copy of the annual budget from "within 30 days after its adoption by the managing entity" to "within 30 days after 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., F.S., as amended, provides that the board of directors of a timeshare development may 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 neither publish the list nor provide it to any purchaser or third party. The managing entity must initiate a mailing to the persons on the owner's list on request of any timeshare purchaser 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: Provides that a mailing regarding recall of a board member must refer to a board member elected by the timeshare owners; requires that a requested mailing must occur within 30 days after receipt by the association of the purchaser's request for the mailing; provides that if the purpose of the mailing is a proxy solicitation to recall one or more board members elected by timeshare owners, or if the purpose is to discharge the manager or management firm, and the managing entity does not timely mail the materials, a circuit court may summarily order a mailing; provides that a court must dispose of an application to require a mailing "on an expedited basis"; and provides that a managing entity that is compelled by a court to perform a mailing will be liable to the complaining timeshare owner unless the managing entity can prove that it refused the mailing in good faith because of a reasonable basis for doubt about the legitimacy of the mailing.[51]

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

[51] The word "mail" was supposed to be inserted in this section before the phrase "to those persons", but was inadvertinently omitted.

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, and allows the managing entity to cancel a confirmed reservation for any purchaser who is delinquent in the payment of assessments.[52] Requires 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. Changes the time for issuing a notice of delinquency to 30 days after the date the assessment is due.

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 to make a material alteration or substantial addition to common areas. Thus, 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 cases, by a unanimous vote).

Effect of Proposed Changes: Adds new s. 721.13(8), F.S., 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 shares the common expenses, unless all affected owners, together with the record owners of all liens on the affected timeshare interests, consent to the amendment. Further provides that, if the condominium or cooperative contains residential units that are not timeshare units, the record owners of all of those residential units, and the record owners of all liens against those units, must also agree to the amendment.

Section 21 -- Amends s. 721.14, F.S., regarding discharge of a managing entity, making grammatical changes only.

Section 22 -- Amends s. 721.15, F.S., regarding assessments for common expenses.

Present Situation: An owner of a timeshare period may not 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

[52] 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.

notwithstanding the developer assurance that assessments would not exceed a stated amount, provided the association complied with the insurance requirements of s. 721.165, F.S.[53] Section 721.165, F.S., as amended, provides that failure to maintain insurance is a breach of the fiduciary duty owed by the management entity to the owners of timeshare interests, unless the management entity can show that, despite such failure, it exercised due diligence in trying to obtain and maintain the insurance.

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.[54]

Effect of Proposed Changes: Deletes the reference to s. 718.116, F.S., for timeshare condominiums. 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 23 -- Amends s. 721.16, F.S., regarding liens for overdue assessments, and for labor performed on, or material furnished to, a timeshare unit.

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: 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 an owner's guest that results in damage to the timeshare property or facilities made available to the timeshare owner.

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; and may bring an action for money damages for unpaid assessments, without waiving a claim of lien.

Additionally, in a timeshare plan where no real property interest is conveyed, the managing entity may bring an action under the Uniform Commercial Code. As worded, it could be argued that bringing an action under the Uniform Commercial Code is the sole remedy of a managing entity in a timeshare plan where no real property interest is conveyed; and it could also be argued that this provision would allow an action to be filed under the Uniform Commercial Code even though the form of the transaction would not have otherwise allowed an action to be filed under the Uniform Commercial Code. There are no reported decisions on this issue.

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[53] Similar provisions can be found in the condominium laws at s. 718.116(9)(a)2., F.S.

[54] As to condominiums, the obligation of a first mortgagee or its successors or assignees for assessments due at the time of purchase of a condominium (by foreclosure or by deed in lieu of foreclosure) is six months of assessments, or 1 percent of the original mortgage debt, whichever is less; although in some situations, a first mortgagee or its successors or assignees has no obligation to pay assessments due at the time of purchase. See s. 718.116, F.S.

Effect of Proposed Changes: Deletes the reference to the Uniform Commercial Code. Accordingly, in a timeshare plan where no real property interest is conveyed (and thus no foreclosure may be filed), the managing entity may bring an action against the purchaser to recover a money judgment for the unpaid assessments. A managing entity is not precluded from seeking any other form of legal remedy otherwise permitted by the form of the transaction.

Section 24 -- Amends s. 721.165, F.S., regarding insurance.

Present Situation: The seller, initially, and thereafter the managing entity, is responsible for obtaining insurance to protect the accommodations and facilities of the timeshare plan in an amount equal to the replacement cost of such accommodations and facilities.

Effect of Proposed Changes: Adds an additional provision regarding insurance, providing that the failure to obtain and maintain insurance during any period of developer control of the managing entity is a breach of the fiduciary duties owed by the managing entity to owners of timeshare interests, unless the managing entity can show that it exercised due diligence to obtain and maintain the required insurance.

Section 25 -- Amends s. 721.17, F.S., regarding transfer of interest in a timeshare plan.

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,[55] 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: 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.

Other portions of this act affect this section of law. The amended definition of "owner of the underlying fee" in s. 721.05, F.S., deletes from the definition a person owning 15 or more timeshare periods for resale in the ordinary course of business. The amended definition of "developer" may lessen the number of persons that may be liable to timeshare purchasers. See discussions of Bell and Smith herein.

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[55] A deed or other instrument of conveyance is normally only signed by the seller.

Section 26 -- Amends s. 721.18, F.S., regarding exchange programs, making grammatical changes only.

Section 27 -- Amends s. 721.19, F.S., regarding validity of provisions requiring owners' association or unit owners to purchase or lease any portion of the timeshare property, making grammatical changes only.

Section 28 -- 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 the license is effective for two years. A timeshare solicitor is exempt from the real estate sales licensing requirements 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 the 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.[56]

A new subsection is also added which provides that local governments may adopt codes of conduct regarding timeshare solicitors operating on public property.

Section 29 -- Amends s. 721.21, F.S., regarding purchasers' remedies, making grammatical changes only.

Section 30 -- Amends s. 721.24, F.S., regarding fire safety.

Present Situation: Certain timeshare accommodations and facilities, including timeshare condominiums, are required to be equipped with an automatic sprinkler system, as specified.

Effect of Proposed Changes: Requires timeshare cooperatives, meeting certain criteria, to also be equipped with an automatic sprinkler system, as specified.

Section 31 -- Amends s. 721.26, F.S., regarding regulation by the division.

Present Situation: Section 721.26(5)(a)1., F.S., lists the persons or entities whose conduct may be regulated by the division.

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

Effect of Proposed Changes: Adds "manager" to the list of persons or entities whose conduct may be regulated 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 a 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 timeshare property at the court-ordered sale.

Section 32 -- Amends s. 721.27, F.S., regarding fees 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 percent late fee ($250 minimum) after March 1.

Effect of Proposed Changes: Provides that the annual fee assessed against timeshare units only applies to timeshare units located within the state, and provides that the annual fee restriction of s. 721.58, F.S., may be applicable. Deletes the mandatory penalty for late payment, but allows the division to assess a civil penalty as with any other violation of Chapter 721, F.S.[57] 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.[58]

Section 33 -- 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 official 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 certain document or instrument required to be recorded pursuant to Chapter 721, F.S.

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 a 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 that jurisdiction.

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

[57] 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.

[58] F.A.C. 61B-41.003.

Section 34 -- 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, F.S., sets forth the scope of Part II of Chapter 721, F.S. 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.

Effect of Proposed Changes: Deletes the exemption in this section which provides that certain multisite timeshare plans offered exclusively outside of the United States are exempt from regulation under certain parts of Chapter 721, F.S., provided certain information is filed with the division. A similar exemption exists at s. 721.03(1)(b), F.S. This act amends s. 721.03(1)(b), F.S., to include substantially similar filing requirements as those deleted from s. 721.51, F.S.

Section 35 -- 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, excluding the aggregate amount of any common expense assessments and special assessments levied by an owners' association or other person who is not an affiliate of the seller or the developer provided that any such assessment obligations are fully described as accurately as possible in the purchase agreement; 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. In calculating the $3,000 sum, all sums paid by the purchaser are included.[59]

Section 36 -- 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

[59] A similar change from $1,500 to $3,000 was made in Section 8 of this act regarding single-site timeshare plans.

accommodation or facility, or all use rights therein, to a trust that meets specific requirements.

Section 37 -- 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, 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; 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.

Section 38 -- Amends s. 721.551, F.S., regarding delivery of multisite timeshare plan public offering statements, making editorial changes only.

Section 39 -- Amends s. 721.552, F.S., regarding additions, substitutions, or deletions of component site accommodations or facilities and purchaser remedies for violations; making grammatical changes only.

Section 40 -- Repeals s. 721.553, F.S., regarding portrayal of proposed component sites. Provisions similar to those repealed in this section of the act are at new s. 721.11(9), F.S.[60]

Section 41 -- Amends s. 721.56, F.S., regarding management of multisite timeshare plans.

Present Situation: Section 721.56(1), F.S., requires a developer to file with the division 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 showing, if required, that reserves are adequately maintained with respect to each component site; and a specific acknowledgment by the component site managing entity regarding 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.

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[60] New s. 721.11(9), F.S., does not contain the requirement currently in s. 721.553, F.S., that a seller of a multisite timeshare plan may not make representations in advertisements and in a public offering statement regarding possible accommodations and facilities of a possible component site until after the developer has entered into a contract to purchase the real property underlying the possible component site, under which contract all contingencies pertaining to zoning, development, and any necessary consents and permits have been either satisfied or waived.

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

Section 42 -- Amends s. 721.81, F.S., regarding the legislative purpose of Part III of Chapter 721, F.S., making an editorial change.

Section 43 -- Amends s. 721.82, F.S., adding a cross-reference in the definition of "assessment lien" to s. 719.108, F.S. (cooperatives); there is an existing reference to s. 718.116, F.S. (condominiums).

Section 44 -- Amends s. 721.84, F.S., regarding appointment of a registered agent, making an editorial change.

Section 45 -- Amends s. 721.85, F.S., regarding service of process to notice address or on registered agent, making an editorial change.

Section 46 -- Amends s. 721.86, F.S., regarding foreclosure proceedings against timeshare estates, to add a cross-reference to Chapter 719, F.S. (cooperatives); there is an existing reference to Chapter 718, F.S. (condominiums).

Chapter 617, F.S. -- Not for Profit Corporations[61] (Homeowners' Associations)

Section 47 -- Amends s. 617.3075, F.S., regarding prohibited clauses in homeowners' association documents.

Present Situation: Homeowners' associations, and their members, are governed by recorded covenants and restrictions, and the articles of incorporation and bylaws, of the association. Recently, homeowners' associations and members of those associations have had disagreements over whether architectural control provisions in association documents may be used to prohibit display of the United States flag.

In the past, similar disputes between condominium associations and residents led to an amendment to the condominium act to specifically allow certain displays of the United States flag. In Gerber v. Longboat Harbour North Condominium, Inc.,[62] the United States District for the Middle District of Florida found that condominium unit owners have a right to respectfully display the United States flag, and that a statute passed to ensure that right[63] during the course of the dispute did not unconstitutionally impair existing contract rights, it merely recognized existing rights.

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[61] The sections in Chapter 617, F.S., relating to homeowners' associations are moved to new Chapter 720, F.S., by Chapter 2000-258, L.O.F.

[62] Gerber v. Longboat Harbour North Condominium, Inc., 724 F.Supp. 884 (M.D. Fla. 1989), vacated in part on rehearing on other grounds, 757 F.Supp. 1339.

[63] Section 718.113(4), F.S., provides that a condominium "unit owner may display one portable, removable Unites States flag in a respectful way regardless of any declaration rules or requirements dealing with flags or decorations."

Effect of Proposed Changes: Provides that homeowners' association documents may not preclude the display of one United States flag by a property owner, provided the flag is displayed in a respectful way; and, that the display may be subject to reasonable standards for size, placement, and safety, as adopted by the homeowners' association, and consistent with federal law[64] and local ordinances.

Chapter 718, F.S. -- Condominiums

Section 48 -- Amends s. 718.103, F.S., regarding definitions; making grammatical and editorial changes; deletes superfluous language; defines "multicondominium"; defines "voting interests" with respect to multicondominiums; and adds language to the definition of "conspicuous type" that further limits the use of bold typeface in certain documents.

Section 49 -- Amends s. 718.104, F.S., regarding the creation of condominiums and the contents of a declaration of condominium ("declaration").

Present Situation: When creating a condominium, a developer is required to record in the public records a declaration of condominium. After such recording, s. 718.104(2), F.S., requires the developer to file the recording information with the division[65] within 30 business days. It has been reported that it often takes longer, sometimes substantially longer, than 30 days for some clerks of court to record and return documents. Accordingly, compliance with the time limit is often not possible.

Effect of Proposed Changes: The filing requirement is changed from 30 business days to 120 calendar days.

Present Situation: A declaration must state as a percentage or fraction the undivided share of the common elements appurtenant to each unit which, in the aggregate, must equal the whole. The proportion or percentages of and manner of sharing common expenses and owning common surplus for a residential condominium must be the same as the undivided share in the common elements.

Effect of Proposed Changes: Specifies that a declaration must state the undivided share of ownership of the common surplus as a percentage or fraction of the whole. Provides that the percentage or fractional shares of liability for the common expenses of the condominium and ownership of the common surplus must be the same as the undivided share of ownership in the common elements and common surplus appurtenant to each unit. A declaration recorded on or after July 1, 2000, in which the developer reserves the right to create a multicondominium development, must state, or provide a specific formula for determining, the fractional or percentage shares of liability for common expenses and of ownership of the common surplus to be allocated to the units in each condominium to be operated by the association. If the declaration does not set forth such information, then the share of liability for the common expenses of the association and ownership of the common surplus of the association allocated to

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[64] 36 U.S.C. §§ 175-178.

[65] The "division" refers to the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation.

each unit shall be a fraction of the whole where the numerator is 1 and the denominator is the total number of units in the condominiums operated by the association.

Section 50 -- Amends s. 718.106, F.S., regarding condominium parcels, appurtenances, possession and enjoyment.

Present Situation: A condominium unit is a real property interest. When a condominium unit is sold, certain legal rights must be sold with the unit, known as appurtenances. Section 718.107, F.S., prohibits a unit owner from transferring the rights in common elements separate from the sale or transfer of that owner's condominium unit. An appellate court has ruled that s. 718.107, F.S., prohibits the transfer of appurtenances separate from the condominium unit. See Brown v. Rice, 716 So.2d 807 (Fla. 5th DCA 1998).

Effect of Proposed Changes: Creates the right to transfer appurtenances to a condominium unit to another unit owner, if otherwise permitted by the declaration. The intent of the legislation is to effectively overrule Brown v. Rice, 716 So.2d 807 (Fla. 5th DCA 1998).

In Brown, a unit owner had purchased from the developer a reserved garage space (not all units in the condominium had a reserved garage space). Some time later, that unit owner attempted to sell the reserved garage space to another unit owner of the same condominium. The court invalidated the sale, ruling that s. 718.107, F.S., prohibited the transfer. The court held that the garage space could not be separated from the original unit. This act allows a unit owner to transfer an appurtenance to another unit owner, if permitted by the declaration. The act further permits an association to amend its declaration under the provisions of s. 718.110(2), F.S., to allow the transfer of appurtenances, if the declaration does not already allow it.

Section 51 -- Amends s. 718.110, F.S., regarding amendment of a declaration.

Present Situation: This section refers to certain defined terms such as "common expenses," "common surplus," and "voting interests," but the language is unclear as to how the terms apply to a multicondominium. This section also provides that an amendment to a declaration may be adopted if "all the record owners of all other units approve the amendment", how this provision is to apply to a multicondominium association is unclear.

Effect of Proposed Changes: Makes editorial changes; clarifies the voting process relating to an amendment to a declaration under subsections (4) or (9) by stating that individual condominium associations within a multicondominium vote to amend their own declarations; adds subsection (12) relating to multicondominiums; provides that unless approval by a greater number is uniformly required in the declarations of all condominiums comprising a multicondominium, an amendment may not change the fractional or percentage share of liability for the common expenses and of ownership of the common surplus unless approved by at least a majority of the total voting interests of each condominium operated by the multicondominium association; authorizes amendment of a declaration to set forth a formula for sharing common expenses and common surplus that is already in use, but not previously stated in the declaration; and, allows the creation or enlargement of a multicondominium development by merger or consolidation of two or more condominium associations.

Section 52 -- Amends s. 718.111, F.S., regarding a condominium association and its official records.

Present Situation: Section 718.111(12), F.S., provides that certain records prepared by an attorney or prepared at the attorney's express direction are not accessible to unit owners.

Effect of Proposed Changes: Amends s. 718.111(12), F.S., to provide that documents that are not available for inspection by unit owners include any document otherwise protected by the lawyer-client privilege described in s. 90.502, F.S.

Present Situation: Section 718.111(13), F.S., contains financial reporting requirements for condominiums. Within 60 days following the end of the fiscal or calendar year, associations must mail or furnish by personal delivery to each unit owner a complete financial report of actual receipts and expenditures, or a complete set of financial statements prepared in accordance with generally accepted accounting principles, for the preceding year. The report must show the receipts and expenses by accounts and classifications including certain listed examples. The statute is unclear as to whether this section applies to all associations.

Section 718.111(14), F.S., states that the Department of Business and Professional Regulation, Division of Land Sales, Condominiums, and Mobile Homes *shall* adopt rules which *may* require that an association provide a set of financial statements in lieu of the report required by subsection (13). The financial statements must be delivered to the unit owners within 90 days following the end of the previous fiscal year or annually on some other date provided in the bylaws. The division's rules *may* require compiled, reviewed, or audited financial statements and must consider the criteria set forth in s. 718.501(1)(j), F.S. However, if a majority of the voting interests of the association waive the requirement for financial statements, the rules do not apply. If the developer has not turned control of the association over to the unit owners, the developer "may vote to waive" the audit requirement for the first two years of the association's operation; however, after the first two years, waiver must be approved by a majority of voting interests *other* than the developer. The meeting must be held prior to the end of the fiscal year and the waiver is effective for only one year. This section applies only to condominiums with more than 50 units.

Effect of Proposed Changes: Merges subsections (13) and (14) into a new subsection (13), and substantially changes the financial reporting requirements for associations, as follows:

- Extends from 60 to 90 days the time within which the board must prepare or have a third party prepare the annual financial report, and requires the association to either mail or hand deliver a copy of the financial report to all unit owners within 21 days after the association receives the report, or alternatively allows the association to provide notice within the 21 days to each unit owner that a copy of the report is available at no charge;

- Requires the Department of Business and Professional Regulation ("DBPR") to adopt rules setting forth uniform accounting principles and standards for all associations, including multicondominium associations, and directs DBPR to consider the number of members and annual revenue of an association when adopting such rules;

- Requires an association to prepare financial statements in accordance with generally accepted accounting principles ("GAAP").[66] The type of financial statement required is determined, based on the association's annual revenues, as follows:[67]

  Compiled, if revenues are less than $200,000;
  Reviewed, if revenues are between $200,000 and $400,000; or
  Audited,[68] if revenues are in excess of $400,000;

- Provides a limited exception for an association, operating less than 50 units or with $100,000 or less in annual revenues, to prepare a Report of Cash Receipts and Expenditures disclosing certain specified expenses instead of preparing a financial statement;

- Authorizes the board of an association to prepare financial statements of the type required of an association with greater annual revenues; and

- Authorizes the members of an association to allow the association to prepare financial statements, or to prepare a Report of Cash Receipts and Expenditures, required of an association with lesser annual revenues, provided approval of such occurs at a meeting of the membership. The approval by the membership must be renewed annually. After the second fiscal year of operation of the association, if the developer has not turned over control of the association to the owners, the developer may not vote for a type of financial statement required of an association with lesser annual revenues.

Present Situation: Section 718.111(15), F.S., provides that all funds of an association must be maintained separately in the association's name and that reserve and operating funds must not be commingled; provides an exception to the prohibition on commingling funds if combined for investment purposes so long as the funds are separately accounted for and so long as the overall account balance does not fall below the minimum reserve; and provides that certain persons may not commingle association funds with personal funds or with funds of any other condominium or community association.

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[66] Generally Accepted Accounting Principals consist of the combined pronouncements of the Financial Accounting Standards Board. *See generally*, Preface to *Wiley GAAP 2000*, published by the American Institute of Certified Public Accountants.

[67] The types of financial statement required, together with the exception for associations under 50 units or $100,000 or less in revenues, are from current administrative rules regarding condominium associations at F.A.C. 61B-22.006. Thus, there should be no change in practice for associations nor any increase in cost to associations or to the public.

[68] At http://www.aicpa.org/members/tools/brochure/under.htm, the American Institute of Certified Public Accountants explains the three types of financial statements: A Certified Public Accountant ("CPA") may provide a client with three distinct services involving financial statements. Each is designed to meet a different need. A compilation is useful to small, privately held companies that need help in preparing their financial statements. A review, on the other hand, may be adequate for entities that must report their financial positions to third parties, such as creditors or regulatory agencies. Reviewed financial statements also may be useful to business owners who are not actively involved in managing their companies. An audit is the third and most extensive service. An audit is appropriate for businesses that must offer a higher level of assurance to outside parties. An unqualified audit opinion signifies that the CPA obtained reasonable assurance that the entity's financial statements fairly present its financial position and results of operations in accordance with the accounting principles used.

Effect of Proposed Changes: Moves the contents of subsection (15) to subsection (14), eliminating subsection (15), and rewrites subsection (14) to include provisions for multicondominiums; maintains the general prohibition against commingling of funds, but allows commingling of an association's reserve and operating funds for "investment purposes only"; requires that commingled funds must be accounted for separately, and a commingled account may not be less than the amount required as reserve funds; provides that a multicondominium association may commingle the operating funds of separate condominiums and the reserve funds of separate condominiums, and that operating and reserve funds may be commingled together for investment purposes only; and prohibits certain persons from commingling the funds of an association with personal funds or with the funds of other condominium or community associations.

Section 53 -- Amends s. 718.112(2)(d), F.S., regarding unit owner meetings; s. 718.112(2)(e), F.S., relating to budget meetings; and s. 718.112(2)(f), F.S., relating to the annual budget.

Present Situation: In 1998 the following sentence was added to s. 718.112(2)(d)1., F.S.: "In order to be eligible for board membership a person must meet the requirements set forth in the declaration." This sentence was added pursuant to CS/HB 3321, ch. 98-322, L.O.F. The division construed the sentence to allow declarations to contain a requirement that a person must be a resident of the condominium in order to become a member of the board.[69] That sentence was not intended to allow a residency requirement; it was simply intended to support other requirements set forth in the declaration. This intent is clear based upon the previous sentence in that subparagraph, which states that "any unit owner" desiring to be a candidate is eligible. The pertinent provision in the 1998 legislation added language that was intended to prevent convicted felons (who did not have their rights restored) from serving on condominium association boards.[70]

Effect of Proposed Changes: Removes the sentence which was added in 1998, which the division construed to allow residency requirements with regard to membership on the board, and deletes superfluous language.

Present Situation: Section 718.112(2)(d)2., F.S., requires that notice of the required annual meeting be delivered by mail.[71]

Effect of Proposed Changes: Allows hand delivery of the notice of the annual meeting in lieu of mail delivery; clarifies and specifies that notice by mail must be to the address last furnished to the association by the unit owner; and deletes superfluous language.

Present Situation: Section 718.112(2)(d)3., F.S., provides that no unit owner shall permit any other person to vote his or her ballot. The next sentence in that section provides that a "unit owner who needs assistance in casting a ballot for the reasons stated in s. 101.051,

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[69] *In re: Petition for Declaratory Statement, Harry Starr, Golden Lakes Village Condominium Association "A", Inc.,* DBPR Declarator Statement 98-029, at 10.

[70] House Committee on Real Estate [sic.] & Probate, FINAL Analysis Research & Economic Impact Statement for CS/HB 3321, June 3, 1998, at 10.

[71] Some condominium associations have commented that the mailing requirement creates an unnecessary expense, and that hand delivery to resident owners is the equivalent to mailing but less expensive.

F.S.,[72] may obtain assistance in casting the ballot". The following sentence provides that "[a]ny unit owner who violates this provision may be fined by the association". Because of the order of the sentences, it is arguable that the fine applies only the failure to provide assistance to a disabled person.

Effect of Proposed Changes: Corrects language by switching the order of the sentences. Accordingly, no unit owner shall permit any other person to vote his or her ballot, and any unit owner who permits any other person to vote his or her ballot may be fined by the association. The changed order of sentences maintains the requirement that an association assist individuals with disabilities in casting ballots[73]. Additionally, the act deletes superfluous language contained in this subparagraph.

Present Situation: Section 718.112(2)(e), F.S., addresses the annual budget meeting. If an adopted annual budget requires assessments against the unit owners in any fiscal *or* calendar year which exceed 115 percent of the assessments for the preceding year, the board, upon written application of 10 percent of the voting interests, must "*call"* a special meeting within 30 days of the request. Notice of the special budget meeting must be made not less than 10 days prior to the meeting. The notice must be in writing, but the statute does not regulate the form of delivery, nor is there a requirement that the association keep proof that the notice was sent or delivered. There is no time limit for filing a demand for a special budget meeting, so theoretically this meeting could be called at any time.

At the special meeting, unit owners *must* consider and enact a budget. The adoption of a budget requires approval by at least a majority of the voting interests, unless the bylaws require approval by a greater number. If a quorum is not obtained, or the substitute budget does not pass, the adopted budget goes into effect as scheduled.

Effect of Proposed Changes: This act eliminates the reference to "fiscal or calendar year" in favor of "fiscal year." Also, it limits the time for requesting a special budget meeting to 21 days after the adoption of the annual budget, and requires the special meeting to be conducted within 60 days after the adoption of the budget. The notice of the special meeting must be given by mail or hand delivery, at least 15 days prior to the meeting, and proof of delivery by affidavit must be placed in the official records.

Present Situation: Section 718.112(2)(f), F.S., lists the items that must be included in the annual budget, and provides that the developer may waive reserves or reduce the funding of reserves for the first 2 years of the association's operation.

Effect of Proposed Changes: This act adds additional budget requirements when a multicondominium association is involved. A multicondominium association must adopt a separate budget for each condominium and a separate budget of common expenses for the association. As to funding of the reserves in all condominium associations, this act specifies that the 2 "fiscal" years within which a developer may waive or reduce reserves begins with the fiscal year in which the initial declaration is recorded in the county records, and provides that only after turnover of control of the association to the

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[72] Section 101.051, F.S., provides for voting assistance for those who are blind, disabled, or unable to read or write.

[73] The association will continue to be liable to any person with disabilities who does not receive assistance in balloting, under s. 718.303(1), F.S. The amendatory language is not intended to diminish the rights of persons with disabilities.

unit owners may the developer vote its voting interest to waive or reduce the funding of reserves.

This act further clarifies that, in a multicondominium association, only those persons or entities that are subject to assessment may vote to waive or reduce funding of reserves, or to use reserves for purposes other than those intended.

Section 54 -- Amends s. 718.113, F.S., relating to material alterations or substantial additions to the condominium property.

Present Situation: If a declaration does not specify the procedure for approval of material alterations or substantial additions, 75 percent of the total voting interests of the association must approve the alteration or addition.

Effect of Proposed Change: As to multicondominium associations, this act requires an affirmative vote of 75 percent of the total voting interests of each affected condominium to approve a material alteration or substantial addition to the common elements or to association real property operated by the multicondominium association, and allows the declaration to specify a different procedure for approval of a material alteration or substantial addition to the common elements.

Section 55 -- Amends s. 718.115, F.S., relating to common expenses and common surplus.

Present Situation: Defines common expenses of a condominium association, places limits on how certain funds may used, and specifies that collection of the funds necessary for common expenses must be by assessment.

Effect of Proposed Changes: Adds provisions relating to multicondominium associations; provides that common expenses of a multicondominium association are those not directly attributable to the operation of a specific condominium, but may include categories of expenses related to property within a specific condominium if all members of the association have use rights therein or receive a tangible economic benefit,[74] and requires that such common expenses be identified in the declaration or bylaws; and provides that in a multicondominium association, the total common surplus owned by a unit owner consists of the unit owner's share of the common surplus of the multicondominium association and that owner's share of the common surplus of the condominium in which the owner's unit is located.

Present Situation: Section 718.115(1)(b), F.S., states that if a condominium so provides in its declaration, the cost of a master antenna television system or duly franchised cable television service (cable television) may be a common expense of the association. The common expenses of a condominium association are divided among the condominium unit owners according to the formula set forth in the declaration. If the declaration does not provide a mechanism for the association to enter into a cable television agreement, the association may nonetheless enter into such an agreement, although the cost must be allocated on a per-unit basis.

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[74] There is a concern that the phrase "tangible economic benefit" is not a defined term.

Section 718.115(1)(b)2., F.S., further provides that any contract for cable television service must allow a hearing impaired or legally blind unit owner, who does not occupy the unit with a non-hearing impaired or sighted person, to discontinue the service without incurring disconnect fees, penalties, or subsequent service charges; and any such condominium unit owner will not be liable for the future common expense related to the service.

Effect of Proposed Changes: This act provides that a condominium unit owner receiving supplemental security income under Title XVI of the Social Security Act or food stamps as administered by the Department of Children and Family Services, may also discontinue receiving cable television service through a contract entered into by the condominium association without incurring disconnect fees, penalties, or subsequent service charges; and any such condominium unit owner will not be liable for the future common expense related to the service.[75]

Section 56 -- Amends s. 718.116(9), F.S., making editorial and cross-reference changes, and adding provisions for multicondominium associations.

Present Situation: Section 718.116(9)(a)1., F.S., provides a limited right to the developer to waive assessments against developer-owned units until the first day of the fourth calendar month after closing on the first unit sold.

Effect of Proposed Changes: Specifies that, in a multicondominium development, the first day of the fourth month applies separately to each condominium of the multicondominium association.

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[75] This provision is identical to that which passed the House in 1998 in HB 3259. The House of Representatives, Committee on Real Property & Probate, Bill Research & Economic Impact Statement, February 18, 1998, explained at pages 2-3:

This bill results from a constituent who is receiving public assistance benefits, and living in a condominium, who cannot afford to pay the common expense for cable television service. In current law, there is no provision permitting an individual who cannot afford the common expense of cable television services to discontinue services.

Public assistance is defined in chapter 414 Florida Statutes as benefits paid on the basis of temporary cash assistance, food stamps, Medicaid, or optional state supplementation. The language in this bill is similar to that in state programs providing public assistance to persons receiving Federal entitlement. Eligibility for food stamps and Social Security Income pursuant to the U.S.C. and C.F.R. eligibility criteria are the criteria for qualifying for this exception to cable television service common expense. This bill is designed to capture some persons receiving assistance from Federal entitlement. Therefore, the bill does not specify eligibility criteria, instead it references the U.S.C.S., Title XVI of the Social Security Act.

Title XVI of the Social Security Act is a federal program that guarantees a minimum monthly income to every person who is age 65 or older, or disabled, or blind and meets the federal income and asset requirements. See 42 U.S.C.A. §§ 301 et seq.; 1201 et seq.; 1351 et seq.; 1381 et seq. Eligibility for SSI based on resources and income are subject to annual cost of living adjustments and federal wage increases. For example, an aged, blind, or disabled individual without a spouse, whose income (other than excluded income) was not more than $1,992, and whose resources (other than those excluded) were not more than $2,000 on January 1, 1989 (for the calendar year), may be determined eligible for the program.

The United States Department of Agriculture determines eligibility and benefit levels for food stamps based upon need and, in doing so, it acts through state agencies such as the Department of Children & Families. See Food Stamp Act of 1977, 7 U.S.C. Secs. 2011 et. seq. Food stamp benefits are granted to households, not individuals. The maximum allowable resources, including liquid and nonliquid resources, of all members of the family may not exceed $2,000. See section[] 414.075 Florida Statutes. There are specified exclusions from the $2,000 limit. For example, a licensed vehicle needed for an individual subject to the work participation requirement, not to exceed a combined value of $8,500, and needed for training, employment, or education purposes is excluded.

Present Situation: Section 718.116(9)(a)2., F.S., provides a limited right to the developer to waive assessments against developer-owned units for the period of time that the developer guarantees that assessments against sold units will not exceed a stated amount, and the developer agrees to pay actual common expenses incurred in excess of the assessments to be collected from sold units (known as the "guarantee period").

Effect of Proposed Changes: Rewords the provisions authorizing the developer to be excused from payment of periodic assessments on unsold units during the guarantee period; and adds a cross reference to new s. 718.115(4), F.S., which addresses multicondominium association assessments.

Present Situation: Section 718.116(9)(b), F.S., provides that, during any guarantee period, the association may not use any funds other than those specifically collected for common expenses, for the payment of common expenses.

Effect of Proposed Changes: Makes grammatical changes but does not change current law.

Present Situation: There are no specific statutory provisions regarding guarantee periods related to multicondominium associations.

Effect of Proposed Changes: Adds new paragraph (c), relating to multicondominium associations, to s. 718.116(9), F.S., providing that in a multicondominium association, if a developer is excused from paying assessments under paragraph (a), then the developer must pay the common expenses of a condominium affected by the guarantee, including funding of reserves, which exceed the regular periodic assessments at the guaranteed level against all other unit owners within that condominium; and the developer must pay according to the same formula used to calculate the common expenses of the multicondominium association.

Section 57 -- Creates subsection (11) of s. 718.117, F.S., regarding termination of a condominium, clarifying that s. 718.117, F.S. (the general rules and procedures relating to the termination of a condominium), does not apply to the termination of a condominium incident to a merger of a condominium with another condominium.

Section 58 -- Amends s. 718.403, F.S., regarding phase condominiums.

Present Situation: When adding phases to a condominium, a developer is required to record in the public records an amendment to the declaration of condominium. Section 718.104(2), F.S., requires the developer to file the recording information regarding that amendment with the division within 30 working days. It has been reported that it often takes longer, sometimes substantially longer, than 30 days for some clerks of court to record and return documents. Accordingly, compliance with the time limit is often not possible.

Effect of Proposed Changes: The filing requirement is changed from 30 working days to 120 calendar days.

Section 59 -- Creates s. 718.405, F.S., regarding multicondominiums, which provides:

That an association may operate more than one condominium if the declarations of affected condominiums so provide and disclose or describe the following:

- The manner or formula by which assets, liabilities, and common expenses will be apportioned;
- Whether unit owners in other condominiums, or any other persons, will have use rights to recreational areas, facilities, or amenities, and the formula by which other users will share the common expenses related thereto;
- The recreational facilities or amenities the developer has committed to provide that are owned or leased by the association but are not included within any condominium, and requiring, if applicable, specific disclosure language in the prospectus for each condominium; and
- The voting rights of the owners of each unit in the election of directors and other matters.

That a cause of action may be brought by the association or any unit owner to enforce a declaration requirement that the developer convey lands or facilities to a multicondominium association, either by specific performance or by suit for money damages.

A requirement that the declaration of condominium of a multicondominium may not, at the time of recording, contain any provision that is inconsistent with law or with the declaration of another condominium being operated by the association.

For the formation of a multicondominium association by the merger or consolidation of two or more condominium associations.

Section 60 -- Repeals s. 718.5019, F.S., regarding the Advisory Council on Condominiums, eliminating the council.

Section 61 -- Amends s. 718.504, F.S., regarding the prospectus or offering circular, by creating a new subsection (15) for multicondominiums, requiring that if a condominium is or may become part of a multicondominium, the following information must be disclosed in the prospectus or offering circular:

- A statement in conspicuous type stating that the condominium is or may be part of a multicondominium;
- A summary of the provisions in the declaration and bylaws which establish and provide for the operation of the multicondominium development;
- The minimum and maximum number of condominiums and the minimum and maximum number of units in each of those condominiums, which will or may be operated by the association, and the latest date by which the exact numbers will be finally determined;
- Whether any of the condominiums may include nonresidential units, and the permitted purpose of such units; and

- A general description of the land on which any additional condominiums to be operated by the association may be located.

Section 62 -- Amends s. 718.501, F.S., deleting subsection (1)(j) regarding rulemaking authority. This subsection is unnecessary because the rulemaking authority for financial reporting is in s. 718.111(13), F.S., as amended by this act. Section 718.111(13), F.S., as amended, is substantially similar to the deleted subsection (1)(j), except that s. 718.111(13), F.S., as amended, makes the rulemaking authority more specific.

Severability and Effective Date

Section 63 -- 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 64 -- Provides that this act 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 act but in compliance with Chapter 721, F.S., prior to the effective date of this act, 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 HB 593 estimates that HB 593 has an annual negative fiscal impact of $190,000 on revenue to the Bureau of Timeshare as a result of eliminating registration of timeshare solicitors. All income to the division is deposited in the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund.[76]

2. Expenditures:

none

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

none

[76] 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 act 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 act 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 8. The Department of Business and Professional Regulation's fiscal analysis 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".[77]

Section 18. The Department of Business and Professional Regulation's fiscal analysis did not include an analysis of the fiscal effect of deleting the $400 additional fee for filing a prize and gift offer that includes a game of chance. The division states that the $400 additional fee is "very seldom" assessed and that accordingly the fiscal impact of deleting the fee is minimal.[78]

Section 32. The Department of Business and Professional Regulation's fiscal analysis did not include an analysis of the fiscal effect of deleting the automatic late fee in s. 721.27, F.S.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

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

[78] Id.

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

none

B. RULE-MAKING AUTHORITY:

none

C. OTHER COMMENTS:

Sections 9 and 25. Liability to Timeshare Purchasers.

This act appears to affect the continued precedential value of Bell v. R.D.I. Resort Services Corp.[79] and Smith v. Department of Business Regulation, Division of Land Sales, Condominiums and Mobile Homes.[80]

Section 14. Escrow Agents and Unclaimed Escrow Funds

Currently, escrow agents hold thousands of dollars of unclaimed deposits paid 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, which is held by an escrow agent for approximately 10 years.[81] This act 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 other 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 the publication, the funds are 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 other unclaimed funds are treated under Florida law; that is, paid over to the Department of Banking and Finance, which publishes information regarding unclaimed funds statewide and on the Internet, for owners to perhaps

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

[80] 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).

[81] 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.

claim the funds. If the funds are not claimed, then the funds are transferred to the General Revenue Fund.

Section 20. 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.[82]

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 a 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.[83]

In a 1996 survey by the division, 56.9 percent of respondents indicated that owners do communicate outside of official association meetings, while 31.5 percent indicated that timeshare period owners need more opportunities to communicate outside of official meetings, and 65 percent of the respondents stated that timeshare period owners should be able to communicate with owners of adjacent weeks or units.[84] 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".[85]

Other Issues

At the meeting of the Committee on Real Property & Probate on March 15, 2000, several persons appeared and discussed their position that a licensed real estate agent should be permitted to collect an advance commission or fee for resale of a timeshare interest. No amendment was introduced on the subject.

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[82] http://www.wizbizsolutions.com/gag.htm#_Florida_Legislates_Concealment

[83] 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.

[84] 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.

[85] Id. at 7. The division's recommendation was made under a prior administration, and does not reflect the current position of the division.

The real estate license law provides that a licensed real estate agent must deposit 75 percent of any advance fee or commission into a trust or escrow account, may only disburse portions of that advance fee or commission from the trust or escrow account 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.[86] 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.[87] 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 then they [did] about the time-share industry".[88] 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.[89]

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 15, 2000, the Committee on Real Property & Probate adopted one "remove everything after the enacting clause" amendment to HB 593. That amendment

- Eliminates the requirement that attorneys, real estate brokers, and title companies that hold timeshare escrow funds obtain a separate surety bond.
- Makes technical changes regarding timeshare developments where timeshare interests are held in a trust.
- Restores fees deleted by the original bill.
- Amends cooperative law to conform to timeshare condominium law.
- Restores language regarding owner lists to current law.
- Allows a management company to place a lien on a timeshare interest for the cost of repairing intentional damage.
- Provides that local governments may adopt ordinances regarding the conduct of timeshare solicitors on public property.

Thirteen amendments to the amendment were adopted, and provide as follows:

1. Makes a technical change to the definition of "closing", to clarify that a beneficial interest is conveyed by an instrument other than a deed.

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[86] Section 475.452, F.S.

[87] Section 721.20(4), F.S.

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

[89] Id.

2. Requires, in a condominium or cooperative that has both residential and timeshare units, that the owners and lienors of all residential units must agree to any material alteration or substantial addition to the common areas.

3. Makes the $100 fee for filing a prize or gift offer mandatory.

4. Requires that, if actual documents are not available because the timeshare plan has not been approved, that proposed documents be attached to a public offering statement.

5. Deletes an unnecessary word.

6-8. Clarifies who a "managing entity" is.

9-10. Clarifies that the 10-day time period within which a purchaser may cancel a contract for purchase of a timeshare interest is "10 calendar days".

11. Corrects the catchline to s. 721.08, F.S., to more accurately reflect the contents of that section, as amended.

12. Adds clarifying language. Although s. 721.07(5), F.S., as amended, provides that it applies only to a public offering statement for a timeshare plan that is not a multisite timeshare plan, s. 721.55, F.S., provides that a public offering statement for a multisite timeshare plan must comply with s. 721.07, F.S. Section 721.55, F.S., is amended to say, except as otherwise provided, s. 721.07, F.S., applies to multisite timeshare plans.

13-16. Amendments numbered 13-16 were not adopted.

17. Requires a managing entity to mail out materials requested by a purchaser to be mailed out to other purchasers regarding legitimate association business, within 30 days of the request, and provides a circuit court remedy for purchasers if the managing entity fails to comply.

The amendment, as amended, was adopted, and HB 593 was reported favorably as a committee substitute.

On April 11, 2000, the Committee on General Government Appropriations adopted one amendment to CS/HB 593 that adds "a title insurer authorized to transact business in this state" to the definition of "escrow agent" at s. 721.05(13), F.S., and CS/HB 593 was reported favorably as a committee substitute.

On May 3, 2000, the Senate adopted one amendment which adds HB 1465 (condominiums) to CS/CS/HB 593, together with a provision regarding the display of the United States flag (see Section 47 of this analysis). CS/CS/HB 593, as amended, returned to the House, which concurred in the Senate amendment.

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:	Staff Director:
Nathan L. Bond, J.D.	J. Marleen Ahearn, Ph.D, J.D.

AS REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

Prepared by:	Staff Director:
Juliette Noble	Cynthia P. Kelly

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:	Staff Director:
Nathan L. Bond, J.D.	J. Marleen Ahearn, Ph.D, J.D.