

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2534

SPONSOR: Regulated Industries Committee and Senator Webster

SUBJECT: Timeshare Plans

DATE: April 9, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Imhof	RI	Favorable/CS
2.	_____	_____	CP	_____
3.	_____	_____	JU	_____
4.	_____	_____	FT	_____
5.	_____	_____	AGG	_____
6.	_____	_____	AP	_____

I. Summary:

The bill provides tailored regulation of personal property timeshare plans offered in Florida. It clarifies language with respect to exchange programs and incidental benefit disclosures. It addresses the issue of automatic renewal for timeshare plans, exchange programs, and incidental benefits. It provides that timeshare plans and exchange company advertising material, that is not required to be filed with the Department of Business and Professional Regulation’s Division of Timeshare (division) for approval, will not be filed with the division. It provides that notices and other information sent by the board may be sent via electronic mail. It provides timeframes for review of exchange filings, amendments, and advertising. It provides conforming, clean-up and technical corrections.

This bill substantially amends the following sections of the Florida Statutes: 721.02, 721.03, 721.05, 721.06, 721.065, 721.07, 721.075, 721.08, 721.09, 721.11, 721.12, 721.13, 721.14, 721.15, 721.16, 721.17, 721.18, 721.19, 721.20, 721.24, 721.26, 721.27, 721.52, 721.53, 721.54, 721.55, 721.551, 721.552, 721.56, 721.57, 721.84, 721.96, and 721.97.

II. Present Situation:

Chapter 721, F.S., provides for regulation of the offering, sale, management and operation of real and personal property timeshare plans. The current statutory framework is based solely upon the characteristics of real estate timeshare plans and does not address the special regulatory and consumer protection issues of personal property plans, e.g., plans involving cruise ships, houseboats, yachts, or charter buses. Therefore, industry members have not filed personal property plans with the division due to the difficult or impossibility of complying with the current real property framework. Chapter 721, F.S., currently provides a regulatory framework for exchange programs, timeshare and exchange program advertising, but lacks specifics as to

certain review timeframes. Chapter 721, F.S., is currently interpreted such that automatic renewal of timeshare plan, incidental benefit, and exchange program memberships will count towards the three-year and monetary jurisdictional thresholds but the statute lacks specifics. Chapter 721, F.S., currently does not allow the board to send notices to purchasers via electronic mail.

III. Effect of Proposed Changes:

Section 1

Purposes

Section 721.02, F.S., is amended to incorporate certain clean-up, non-substantive changes and add personal property examples that include cruise ships, vessels, houseboats, recreational vehicles and other motor vehicles, to a list of timeshare plan regimes regulated under the statute.

Section 2

Scope of chapter

Section 721.03(1)(d), F.S., is amended to address the effect on jurisdiction thresholds of automatic renewal provisions in consumer contracts. The automatic renewals are counted in determining the term of the plan for purposes of the jurisdictional thresholds of three years and \$3000. According to the Department of Business and Professional Regulation (department), it is intended to be absolute as to single-site timeshare plans and incidental benefits, which are Part I entities not being analyzed under the multisite definition of Part II. Under Part I, the developer cannot negate the automatic renewal provision by providing the purchaser with the ability to cancel the contract and receive a refund or receive special advance notice or renewal. The Part I renewal is intended to be different from the automatic renewal provision added to s. 721.52(4)(b), F.S., in the definition of a multisite timeshare plan.

Section 721.03(8), F.S., is also amended to provide that the chapter only applies to personal property timeshare plans offered in Florida. However, as to those personal property plans offered in Florida, limited management-related provisions of the chapter will apply in addition to most of the offering provisions.

Section 3

Definitions

The following definitions are added or amended in s. 721.05, F.S, to make those definitions relevant to personal property timeshare plans:

Accommodation is amended to add examples of personal property timeshare plans and specify that the property must be designed for overnight occupancy.

Agreement for transfer is added providing that legal title is not transferred on a written contract for the sale of personal property until the contract price is paid in full.

Common expenses are amended to include fees and taxes associated with the maintenance and operation of a personal property timeshare plan.

Completion of construction is amended to explain the application of this term to personal property plans.

Filed public offering statement is added to distinguish between a public offering statement filed with the division versus a public offering statement intended for purchasers. The bill deletes the definition of “registered public offering statement” and amends the statute in various places to reflect the new definition.

Interestholder is amended to add an owner of underlying personal property.

Memorandum of agreement is amended to add personal property related provisions regarding public notice of all timeshare license plans.

Owner of underlying property is amended to address ownership of personal property accommodations.

Owners association is amended to clarify that the term includes all owners of timeshare interests in all types of plans.

Personal property timeshare interest is added relating to accommodations not permanently affixed to real property.

Timeshare estate is amended to provide that a timeshare estate plan may not include a personal property timeshare interest.

Timeshare interest is amended to include a personal property timeshare interest.

Timeshare license is amended to exclude a personal property timeshare interest.

Timeshare plan is amended to include a “personal property timeshare plan” and a “real property timeshare plan.”

Vacation ownership plan and vacation membership plan are deleted because the terms are not used anywhere in the statute.

Section 4

Contracts for purchase of timeshare interests

Section 721.06, F.S., is amended to reflect different contract disclosures for real property timeshare plans and personal property timeshare plans. It clarifies purchaser contract cancellation rights and delineates the filing requirements for agreements for transfer.

Section 5

Resale purchase agreements

Section 721.065, F.S., is amended to include pertinent personal property timeshare plan disclosures in the resale purchase contract.

Section 6**Public Offering Statement**

Section 721.07, F.S., is amended to make conforming changes consistent with other existing sections or amendments. It adds pertinent disclosures to the public offering statement related to the offering of personal property timeshare plans. It provides that specific disclosures pertaining to point systems are required, and if located in a vessel, identifying numbers, fire safety plans, status of the title to personal property, and a description of any judgments. It clarifies that unlike real property timeshare plans, managing entities for personal property timeshares plans are not required to maintain deferred maintenance and capital expenditure reserve accounts, and imposes a special disclosure for plans that do not maintain such accounts. It provides additional documents that are required under a time share agreement. It changes the filing fee that developers pay upon the filing of a filed public offering statement. from \$2 to \$1.

Section 7**Incidental benefits**

Section 721.075, F.S., is amended to clarify that incidental benefit filings are to be reviewed for compliance purposes by the division. It requires a disclosure regarding the services, points or other products that constitute the incidental benefit.

Section 8**Escrow accounts; nondisturbance instruments; alternate security arrangements; transfer of legal title**

Section 721.08, F.S., is amended to deal with the conditions under which purchase deposits may be lawfully released from escrow to ensure that timeshare accommodations are available in the manner portrayed and protected from future encumbrances that would endanger the use rights of purchasers. Specifically, it is amended as follows:

It clarifies that property other than funds can be the subject of escrow.

It delineates the circumstances under which a purchaser's funds or other property may be released from escrow upon compliance with specified conditions by the developer, which have been trifurcated into the compliance conditions that apply to timeshare licenses, timeshare estate, and personal property timeshare interest, respectively.

Provisions are added that address the specific circumstances that accompany the offering of timeshare plan interests on a cruise ship or passenger vessel. It also covers the circumstances under which a trust or owners' association may be used as a financial assurance vehicle, and provides for a special transfer restriction to be placed on the certificate of title for personal property plan accommodations that are transferred in that manner.

It clarifies existing law and procedure for the substitution of a financial assurance for funds held in escrow.

Provisions are reworded to make the plans parallel to the existing nondisturbance and notice to creditor requirements of s. 721.53, F.S., and to address the different manners

in which constructive notice of such requirements is given for real property and personal property timeshare plans.

In lieu of the requirements in s.721.08(2)(c)3.e.(111), it gives the division director discretion to accept alternate means of protecting the use rights of purchasers in the subject accommodations and facilities of the timeshare plan against unfilled and inferior claims.

The director of the division is given discretion to accept other methods of protecting the long-term interests of consumers against the claims of interestholders and their creditors.

It differentiates between the transfers of title to timeshare estates and to personal property timeshare interests.

It extends third-degree felony punishment to regulated parties who intentionally fail to comply with the financial assurance provisions of this section pertaining to the creation and operation of trusts and owners' associations.

Section 9

Reservation agreements; escrows.

Section 721.09, F.S., is amended to make a conforming change by changing the phrase "registered public offering" to "filed public offering".

Section 10

Advertising materials; oral statements.

Section 721.11, F.S., is amended to make filing advertising materials with the division voluntary but requires the division to review all materials submitted and notify the developer of any deficiencies.

Section 11

Recordkeeping by seller

Section 721.12, F.S., creates a provision for personal property timeshares that requires a seller to keep a copy of the contract until an instrument of transfer is delivered to the purchaser.

Section 12

Management

Section 721.13, F.S., is amended to change the requirements placed on managing entities as follows:

It clarifies that a developer must create an owners' association (for those plans that have owners' associations) prior to the first closing of a sale of a timeshare interest.

It provides the managing entity with an alternative to sending out numerous copies of assessment budgets to owners during the budget approval process, if it has been delivered pursuant to ch. 718 or ch. 719, F.S.

It also clarifies that any reserves left over upon termination of a timeshare plan are to be refunded pro rata to purchasers.

It clarifies that an owner's e-mail address in the hands of the managing entity is to remain private without his or her prior consent.

It permits the use of e-mail for legal association communications with an owner's advance consent, including the transmission of proxies.

It exempts the management of personal property timeshare plans from certain provisions of this section.

Section 13

Discharge of managing entity

Section 721.14, F.S., is amended to exempt personal property timeshare plans from provisions relating to the discharge of the managing entity.

According to the department, the exemption is based upon the fact that Florida is not asserting jurisdiction or control over most management-related duties because those functions are taking place outside the state.

Section 14

Assessments for common expenses

Section 721.15, F.S., is amended to clarify that depreciation expenses for income-producing property may only be excluded from the obligation of a developer under a developer guaranty to the extent that such depreciation expenses exceed the net income produced from the property. It exempts personal property timeshare plans from this section since, by its nature, personal property is movable from jurisdiction to jurisdiction.

Section 15

Liens for overdue assessments

Section 721.16, F.S., is amended to provide that lien provisions relating to real property timeshare plans will not be applicable to personal property timeshare plans. The department commented that the "section presupposes the ability to place liens on a real property timeshare interest and foreclose on such liens, which would not typically be possible in a personal property scenario."

Section 16

Transfer of interest

Section 721.17, F.S., is amended to add personal property timeshare plans to the coverage of the section. It is reworded to make it parallel to the existing nondisturbance and notice to creditor requirements of s. 721.53, F.S. and to the proposed amendments to s. 721.08(3), F.S.

Section 17

Exchange programs; filing of information and other materials; filing fees; unlawful acts in connection with an exchange program.

Section 721.18(1)(f), F.S., is amended to require that purchaser participation in an exchange program is voluntary (other than as it pertains to purchasers of multisite timeshare plans). It requires the disclosure of any conversion or other fees payable to a third party. It requires an exchange company to file consumer membership agreements and applications with the division for review and established procedures for such review. The division shall review any promotional material filed by an exchange company upon request.

Section 18

Provisions requiring purchase or lease of timeshare property by owners' association or purchasers; validity.

Section 721.19, F.S., is amended to apply the law to personal property timeshares.

Section 19

Licensing requirements; suspension or revocation of license; exceptions to applicability; collection of advance fees for listings unlawful.

Section 721.20, F.S., is amended to make it unlawful to charge an advance fee for the listing of a personal property timeshare interest. It exempts personal property timeshare plans from certain provisions of the section since personal property, by its nature, is movable from jurisdiction to jurisdiction.

Section 20

Firesafety

Section 721.24, F.S., is amended to exempt personal property timeshares from the provisions of the section since personal property, by its nature, is movable from jurisdiction to jurisdiction.

Section 21

Regulation by division

Section 721.26, F.S., is amended to make conforming changes so that it is clear that the division's enforcement and compliance powers apply to personal property timeshares.

Section 22

Annual fee for each timeshare unit in plan.

Section 721.27, F.S., is amended to change the annual fee from \$2.00 per 7 days of annual use availability to \$1.50 per period.

Section 23

Definitions

Section 721.52, F.S., is part of Part II of ch. 721, F.S., related to vacation clubs (multisite timeshare plans). The definitions under this section are amended as follows:

Multisite timeshare plan is amended to provide that automatic renewal of the membership contract is counted for purposes of determining jurisdictional thresholds, unless the purchaser can terminate the membership at any time with a pro rata refund or receives notice of no less than 30 days and no more than 60 days prior to renewal as to the right to terminate prior to automatic renewal;

Nonspecific multisite timeshare plan is added to include personal property timeshare plans and multisite timeshare license plans for which the purchaser receives a right to use all accommodations through the reservation system but no right to use particular accommodations in the event of termination of the plan;

Specific multisite timeshare plan is added to include a multisite timeshare license plan or personal property timeshare plan for which the purchaser receives a specific right to use accommodations at a particular component site with use rights in the other accommodations through a reservation system.

Section 24

Subordination instruments; alternate security arrangements.

Section. 721.53, F.S., is amended to require that developers must comply with applicable provisions of s. 721.08, F.S. (relating to nondisturbance of accommodations and facilities), relating to personal property timeshares in multisite timeshare plans.

Sections 25 - 29

These sections make conforming changes so the sections will conform to definition changes made elsewhere in the bill. These sections amend ss. 721.54, 721.55, 721.551, 721.552, and 721.56, F.S.

Section 30

Offering of timeshare estates in multisite timeshare plans; required provisions in the timeshare instrument.

Section 721.57, F.S., is amended to clarify that trust timeshare estate plans are governed by s. 721.08, F.S., and not s. 721.57, F.S.

Section 31 - 33

These sections make conforming changes to ss. 721.84, 721.96, and 721.97, F.S., to make these sections applicable to personal property timeshares.

Section 34

This section, gives additional time to any timeshare plan or exchange program filing approved by the division prior to the date the act becomes law.

Section 35

This section provides that the bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

B. Private Sector Impact:**C. Government Sector Impact:**

According to the department, reducing the fee in s. 721.27, F.S., from \$2 to \$1.50 will reduce revenue by \$1,173,696 in fiscal year 2003-04.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.