The Florida Senate

PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Regulated Industries Committee

BILL: CS/SB 1374

INTRODUCER: Regulated Industries Committee and Senator Jones

SUBJECT: Vacation and Timeshare Plans

DATE: March 13, 2007 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Imhof	RI	**Fav/CS**
2.			JU	
3.			GA	
4.			RC	
5.				
6.				

I. Summary:

The bill makes the following substantial changes to the Florida Vacation Plan and Timesharing Act, ch. 721, F.S.:

- Amends the formula for funding reserve accounts for capital expenditures and deferred maintenance for condominium conversions;
- Amends the purchaser to accommodation ratio from "one-to-one purchaser to accommodation ratio" to "one-to one use right to use night requirement ratio";
- Allows a seller to offer out of state timeshare interest in a real property timeshare plan without filing a public offering statement under certain circumstances;
- Amends the definition of "one-to-one purchaser to accommodation ratio";
- Adds definitions of "lead dealer," "personal contact information" and "resale service provider" that address a newly created section dealing with increased security and protection of personal information of timeshare owners that includes Florida residents;
- Deletes the public offering statement to include a description of developer financing and that it may be changed;
- Broadens the prohibition against misrepresenting the availability of resale or rental programs to include resale or rental opportunity;
- Adds a prohibition against misrepresenting or falsely implying the resale service provider is affiliated with or obtained personal contact information from a developer, managing entity or exchange company;
- Requires resale service providers and lead dealers to maintain specific and extensive records for 5 years on the lead dealer;

- Provides that if a civil or criminal action is brought that relates to wrongful possession or use of personal contact information by a resale service provider or lead dealer, any failure by a resale service provider or lead dealer to produce the records leads to a presumption that the personal contact information was wrongfully obtained;
- Provides that wrongfully obtained or wrongfully used personal contact information by a resale service provider or lead dealer can entitle the party who discovered the information to $1,000 for each owner about whom personal contact information was wrongfully obtained or used;
- Provides that failure by a managing entity to obtain and maintain insurance coverage shall constitute a breach of the managing entity's fiduciary duty;
- Provides that reserves may be waived or reduced by a majority vote and that the reserves as included in the budget go into effect if a vote is not obtained or a quorum is not attained;
- Permits the managing entity to forecast the anticipated reservation and use of accommodations using a variety of information;
- Requires that copies related to determining reserving accommodations be maintained by the managing company for five years;
- Provides that insurance cost is excluded from common expenses for purposes of a developer's guarantee but special assessments are paid proportionately by all timeshare owners;
- Provides that the cost of insurance is not included in the determination by the timeshare association that the assessments exceed 115 percent of assessments for the prior year;
- Deletes the requirement that insurance be in the amount equal to the replacement cost of the accommodations and facilities;
- Requires the managing entity use due diligence to obtain adequate casualty insurance;
- Provides factors the managing entity must take into account in determining adequate insurance coverage;
- Requires that the cost of insurance must be a common expense and the developer's institutional lender may require coverage's and reasonable deductions or reasonable exclusions for as long as the lender holds a mortgage encumbering any interest in or lien against a portion of the timeshare property;
- Provides that the Governor may appoint commissioners of deeds to take acknowledgements, proofs of execution, or oaths in international waters.

This bill substantially amends the following sections of the Florida Statutes: 721.03, 721.05, 721.07, 721.075, 721.11, 721.13, 721.15, 721.165, 721.20, 721.55, 721.552 and 721.97. It creates s. 721.121, F.S.

II. Present Situation:

Chapter 721, F.S., provides for regulation of the offering, sale, management, and operation of real and personal property timeshare plans consisting of more than seven timeshare periods over a period of at least three years in which the accommodations and facilities are located within this

state or offered within this state. A timeshare plan developer must file a public offering statement and the required exhibits with the Division of Florida Land Sales, Condominiums, and Mobile Homes (division), prior to offering the timeshare plan to the public.[1] The division is authorized to cite deficiencies in the filing, if any, and approves the filing after the developer has corrected all deficiencies.

Timeshare conversions

Section 721.03(3)(e)2., F.S., provides a formula for funding reserve accounts for condominium and cooperative timeshare conversions. It provides that reserve accounts shall be funded for each component in an amount equal to the product of the estimated current replacement cost of the component as of the date of the conversion multiplied by a fraction, the numerator of which shall be the remaining life of the component in years and the denominator of which shall be the total useful life of the component in years.

Definitions

A *developer* is defined by s. 721.05(10), F.S. to include:

- A "creating developer," which means any person who creates the timeshare plan;
- A "successor developer," which means any person who succeeds to the interest of the persons in this subsection by sale, lease, assignment, mortgage, or other transfer, but the term includes only those persons who offer timeshare interests in the ordinary course of business; and
- A "concurrent developer," which means any person acting concurrently with the persons in this subsection with the purpose of offering timeshare interests in the ordinary course of business.

The term developer does not include:

- An owner of a timeshare interest who has acquired the timeshare interest for his or her own use and occupancy and who later offers it for resale; provided that a rebuttable presumption shall exist that an owner who has acquired more than seven timeshare interests did not acquire them for his or her own use and occupancy;
- A managing entity, not otherwise a developer, that offers, or engages a third party to offer on its behalf, timeshare interests in a timeshare plan which it manages, provided that such offer complies with the provisions of s. 721.065;
- A person who owns or is conveyed, assigned, or transferred more than seven timeshare interests and who subsequently conveys, assigns, or transfers all acquired timeshare interests to a single purchaser in a single transaction, which transaction may occur in stages; or
- A person who has acquired or has the right to acquire more than seven timeshare interests from a developer or other interestholder in connection with a loan, securitization, conduit, or similar financing arrangement transaction 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.

[1] Section 721.07, F.S.

An *Exchange Company* is defined by s. 721.05(15), F.S., as "any person owning or operating, or owning and operating, an exchange program."

An *Exchange program* means:

> any method, arrangement, or procedure for the voluntary exchange of the right to use and occupy accommodations and facilities among purchasers. The term does not include the assignment of the right to use and occupy accommodations and facilities to purchasers pursuant to a particular multisite timeshare plan's reservation system. Any method, arrangement, or procedure that otherwise meets this definition, wherein the purchaser's total contractual financial obligation exceeds $3,000 per any individual, recurring timeshare period, shall be regulated as a multisite timeshare plan in accordance with part II [of ch. 721, F.S.].[2]

Managing Entity: For each timeshare plan, the developer must provide for a managing entity, which must be the developer, a separate manager or management firm, or an owners' association. Any owners' association must be created prior to the recording of the timeshare instrument.[3] Current law sets forth the duties of the managing entity.[4]

One-to-one purchaser to accommodation ratio: a developer or seller may not offer timeshare interests that would cause the total number of timeshare interests offered to exceed a one-to-one purchaser to accommodation ratio. This is calculated on a given day during a given calendar and is used to prevent overselling of accommodation availability. The calculation requires that each purchaser be counted at least once, and no individual timeshare unit be counted more than 365 times per calendar year.

Public Offering statement

Section 721.07, F.S. provides that every filed public offering statement for a timeshare plan which is not a multisite timeshare plan shall contain a description of any financing to be offered to purchasers by the developer or any person or entity in which the developer has a financial interest, together with a disclosure that the description of the financing may be changed by the developer and that any change in the financing offered to prospective purchasers will not be deemed to be a material change.

[2] Section 721.05(16), F.S.
[3] Section 721.13(1)(a), F.S.
[4] Section 721.13(3)(a) to (j), F.S.

Advertising materials; oral statements

Section 721.11, F.S., provides that sellers of timeshare interests are prohibited from using false or misleading advertising or making false oral statements. Misrepresentation of the availability of a resale or rental program offered by or on behalf of the developer is prohibited.

Reserve Accounts

Section 721.03(3)(e), F.S., provides that the developer of a timeshare that is subject to chs. 718 and 719, F.S., must fund reserve accounts for capital expenditures and deferred maintenance for the roof, plumbing, air-conditioning, and any component of the structure that has a useful life that is less than the useful life of the overall structure when the timeshare is converted to a condominium or cooperative. These reserve accounts are funded using a formula, which is the product of the estimated current replacement cost of the component as of the date of conversion multiplied by a fraction with the numerator being the remaining life of the component in years and the denominator being the total useful life of the component in years.[5]

Public Offering

Sellers of out-of-state timeshare plans offering to in-state residents must file a public offering statement with the division for examination and approval under s.721.07, F.S., or s. 721.55, F.S. whichever is applicable.[6]

The public offering statement includes important disclosures for the timeshare purchaser including the background and experience of the developer, any pending lawsuits, and many details about the operation of the timeshare plan. The purchaser has a 10-day cancellation period after all required documents have been provided,[7] including amendments that the developer deems to be material.[8] The purchaser's purchase deposit is held in escrow by an escrow agent who must be independent from the developer.[9] The purchase deposit cannot be released from escrow until several conditions have been satisfied including expiration of the purchaser's 10-day cancellation period and proof that the developer can convey the timeshare period unencumbered or with a recorded non-disturbance and notice to creditor's instrument or similar protection.[10]

Purchasers must receive a fully executed paper copy of the purchase contract.[11] The public offering statement may be provided through alternative media in lieu of receiving the written, paper material.[12]

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[5] (a x b/c = x) where a is the replacement cost of component, b is the remaining life of component, c is the total life of component, and x is the required funding of reserve account.
[6] Sections 721.03(1), and s. 721.07, F.S.
[7] Section 721.10, F.S.
[8] Section 721.07(3), F.S.
[9] Sections 721.05(18), F.S. and s. 721.08, F.S.
[10] Section 721.08, F.S.
[11] Section 721.07(6), F.S.
[12] Rule 61B-39.008 F.A.C.

According to industry representatives, the public offering requirements prevent timeshare companies from being able to talk to their owners about projects that are part of their timeshare portfolios but not registered in Florida.

Assessments for common expenses

When calculating the obligation of a developer under a guarantee of the developer that the assessment of common expenses imposed upon the owners would not increase over a stated dollar amount, depreciation expenses related to real property shall be excluded from common expenses incurred during the guarantee period, except that for real property that is used for the production of fees, revenues, or other income, depreciation expenses shall be excluded only to the extent that they exceed the net income from the production of other fees, revenues or other income.

Insurance

Timeshare sellers and thereafter the managing entity are responsible for obtaining insurance to protect the accommodations and facilities in an amount equal to replacement cost and that failure to obtain and maintain the insurance during any period of control of the managing entity is a violation of s. 721.12(2)(a), F.S., unless the managing entity can show that it exercised due diligence. According to the division insuring in an amount equal to replacement cost has become more problematic over the past few years.

Licensing

Section 721.20, F.S., provides that any seller of a timeshare plan must be a licensed real estate broker, broker associate, or sales associate as defined in s. 475.01, F.S., except as provided in s. 475.011, F.S. Solicitors who engage only in solicitation of prospective purchasers and any purchaser who refers no more than 20 people to a developer per year or who otherwise provides testimonials on behalf of a developer are exempt from the provisions of ch . 475, F.S.

Timeshare commissioner of deeds

Section 721.97, F.S., provides that the Governor may appoint commissioners of deeds to take acknowledgments, proofs of execution, or oaths in any foreign country or any possession, territory, or commonwealth of the United States outside the 50 states.

III. Effect of Proposed Changes:

Scope of chapter

The bill amends the formula for funding reserve accounts for capital expenditures and deferred maintenance for condominium conversions by changing “remaining life” to “age” in the

numerator of the fraction that is multiplied by the estimated replacement cost of reserve components in s.721.03(3)(e)2., F.S.[13]

It amends the purchaser to accommodation ratio by changing "one-to one" purchaser to accommodation ratio to "use right" to "use night requirement" ratio in s. 721.03(10), F.S. According to the department, this change in terminology is to standardize language between states regulating timeshare plans.

The bill creates s. 721.03(11), F.S., to provide that a seller can offer timeshare interests in a real property timeshare plan located outside the state of Florida without filing a public offering statement pursuant to s. 721.07, F.S., or s. 721.55, F.S., provided all of the following criteria have been satisfied:

- The seller provides a disclosure statement to each prospective purchaser that contains information that is substantively equivalent to the disclosures required in timeshare and multi-state timeshare public offering statements. The disclosure statement must also include exhibits of the following documents:
    - Declaration of condominium;
    - Cooperative documents;
    - Declaration of covenants and restrictions;
    - Articles of incorporation creating the owners' association;
    - Bylaws of the owners' association;
    - Management agreement and all maintenance and other contracts regarding the management and operation of the timeshare property which have terms in excess of one year;
    - Estimated operating budget for the timeshare plan and the required schedule of purchasers' expenses; and
    - Any other documents or instruments creating the timeshare plan.

- If the seller delivers the disclosure statement in a way that satisfies the above requirements, the delivery shall be deemed to satisfy the requirements of ch. 721, F.S., regarding a public offering statement and nonmaterial errors or omissions shall not be actionable.

- The seller utilizes and furnishes to each purchaser of an out-of-state timeshare plan offered, a fully completed and executed copy of a purchase contract that contains the statement in s. 721.065(2)(c), F.S., in conspicuous type located immediately prior to the space in the contract reserved for the purchaser's signature. The contract must also contain the initial purchase price and any additional charges to which the purchaser may be subject to in connection with the purchase of the timeshare plan, such as financing, or that will be collected from the purchaser on or before closing, such as the current year's annual assessment for common expenses.

[13] (a x b/c = x) where a is estimated replacement cost, b is the age and c is the useful life in years, and x is the required funding of the reserve account.

- All purchase contracts for out-of-state timeshare plans offered must also contain the following statements in conspicuous type:[14]
    - This timeshare plan has not been reviewed or approved by the State of Florida.
    - The timeshare interest you are purchasing requires certain procedures to be followed in order for you to use your interest. These procedures may be different from those followed in other timeshare plans. You should read and understand these procedures prior to purchasing.
- The out-of-state timeshare plan may only be offered by the seller on behalf of:
    - The developer of a timeshare plan that has been approved by the division within the preceding seven years pursuant to ss. 721.07 or 721.55, F.S. or which has been amended by the developer and approved by the division within the preceding seven years, which timeshare plan has neither been terminated nor withdrawn; or
    - A developer is under common ownership or control with a developer described above, provided that any common ownership shall constitute at least a 50-percent ownership interest.
- An out-of-state timeshare plan may only be offered under this provision to a person who already owns a timeshare interest in a timeshare plan filed by a developer noted above.
- Except for ss. 721.06, 721.065, 721.07, 721.27, 721.55, and 721.58,[15] any out-of-state timeshare plan must meet all the requirements of ch. 721, F.S. The plan is also eligible for any exemptions provided under ch. 721, F.S.
- Any escrow account required to be established by s .721.08, F.S. for any out-of-state timeshare plan offered may be maintained in the situs jurisdiction.
- Notice of the plan must be provided to the division on a form prescribed by the division, along with payment of a one-time fee not to exceed $1,000 per filing.

[14] Section 721.05(8), F.S., defines conspicuous type to mean: "(a) Type in upper and lower case letters two point sizes larger than the largest nonconspicuous type, exclusive of headings, on the page on which it appears but in at least 10-point type; or (b) Where the use of 10-point type would be impractical or impossible with respect to a particular piece of written advertising material, a different style of type or print may be used, so long as the print remains conspicuous under the circumstances." The type must be separated on all sides from other type and print. "Conspicuous type may be utilized in contracts for purchase or public offering statements only where required by law or as authorized by the division."

[15] Section 721.06, F.S., provides for contracts for purchase of timeshare interests, s. 721.065, F.S., provides for resale purchase agreements, s. 721.07, F.S., provides for the public offering statement, s. 721.27, F.S., provides for the annual fee for each timeshare unit in the plan, s. 721.55, F.S., provides for multi-site timeshare plan public offering statements, and s. 721.58, F.S., provides for the filing and annual fees.

Definitions

The bill deletes the "one-to-one purchaser to accommodation ratio" and its definition and replaces it with a "one-to-one use right to use night requirement ratio and changes the calendar year to a given 12-month period. It retains the requirement that no timeshare unit may be counted as providing more than 365 use nights per 12-month period or more than 366 use nights per 12-month period that includes February 29. The use rights of any owner are to be counted even if the rights have been suspended.

It adds the definition of "lead dealer" and defines it as any person who sells or otherwise provides a resale service provider or any other person with personal contact information for five or more owners of timeshare interests. In the event a lead dealer is not a natural person, the term shall also include the natural person providing personal contact information to a resale service provider or their person on behalf of the lead dealer entity. The term does not include developers, managing entities, or exchange companies to the extent they provide others with personal contact information about owners of timeshare interests in their own timeshare plans or members of their own exchange programs.

It adds the definition of "personal contact information" and defines it as any information that can be used to contact the owner of a specific timeshare interest, including, but not limited to, the owner's name, address, telephone number, and e-mail address.

It adds the definition of "resale service provider" and defines it as any person who uses unsolicited telemarketing, direct mail, or e-mail in connection with the offering of resale brokerage or resale advertising services to owners of timeshare interests. The term does not include developers, managing entities of exchange companies to the extent they offer resale brokerage or resale advertising services to owners of timeshare interests in their own timeshare plans or members of their own exchange programs.

Public offering statement

The bill amends s. 721.07(5), F.S., to remove the requirement that the public offering statement include a description of any financing to be offered to purchasers by the developer or any person or entity in which the developer has a financial interest. The disclosure requiring that the description of the financing may be changed by the developer and that any change in the financing being offered would not constitute a material change is also removed.

The bill amends s. 721.07(5)(u), F.S., that limits the requirement of the developer to provide a schedule of estimated closing expenses to be paid by purchaser or lessee of a timeshare interest to those timeshare plans for which the purchase or closing of timeshare interests is not subject to the requirements of the Real Estate Settlement Procedures Act (RESPA).[16] According to the department, this eliminates duplication since the federal act already requires these disclosures to purchasers.

[16] 12 U.S.C. s. 2601, et seq.

It adds a provision that provides authorization for the division and another state to agree on a unified timeshare disclosure statement, i.e. a public offering statement that may be offered and accepted in both localities. According to the department, its staff is currently engaged with California regulators of timeshare plans in an effort to develop a public offering statement that would be suitable for filing in both California and Florida.

Advertising materials; oral statements

Section 721.11(k), F.S., is amended to broaden the prohibition against misrepresenting the availability of a resale or rental program to include resale or rental opportunity. According to the department, by deleting the modifying phrase "offered by or on behalf of other developers" this broadens the prohibition to others such as resale service providers.

It adds a prohibition against misrepresenting or falsely implying the resale service provider is affiliated with, or obtained personal contact information from, a developer, managing entity or exchange company.

Recordkeeping by resale service providers and lead dealers

The bill creates s. 721.121(1), F.S., to require resale service providers and lead dealers to maintain specific and extensive records for a period of five years on the lead dealer. The information required includes the name, home and work address, home, work, and cellular telephone numbers. It requires a copy of a current government issued photographic identification, canceled checks, copies of all personal contact information in the exact form and media in which they were received, sources of the personal contact information, methodologies used for researching and assembling, photos identification and contact information for the individuals doing the research and assembling.

It creates s. 721.121(2), F.S., which provides that in any civil or criminal action relating to wrongful possession or use of personal contact information by a resale service provider or lead dealer, any failure by a resale service provider or lead dealer to produce the records required by subsection (1) shall lead to a presumption that the personal contact information was wrongfully obtained.

It creates s. 721.121(3), F.S., to provide that any use of personal contact information by a resale service provider or lead dealer that is wrongfully obtained shall be considered wrongful use and result in the resale service provider or lead dealer paying $1,000 for each owner about whom personal contact information was wrongfully obtained or used. Upon prevailing, the plaintiff shall be entitled to recover reasonable attorney's fees and costs.

Management

The bill amends s. 721.13(2), F.S., to provide that failure by a managing entity to obtain and maintain insurance coverage as required under s. 721.165, F.S. during any period of developer control of the managing entity shall constitute a breach of the managing entity's fiduciary duty.

The bill amends s. 721.13(3), F.S., to provide that reserves may be waived or reduced by a majority vote of the voting interests that are present, in person or by proxy, at a duly called meeting of the owners' association. The reserves as included in the budget go into effect if a vote is not obtained or a quorum is not attained.

Section 712.13(12)(a) and (b), F.S., is created to provide that managing entities are given authorization to manage the reservation and use of accommodations using those processes, analyses, procedures, and methods that are in the best interests of the owners as a whole. The managing entity shall have the right to forecast anticipated reservations and use of accommodations using a variety of data and pertinent factors. It also is authorized to reserve accommodations, in the best interests of the owners as a whole, for the purposes of depositing the reserved use with an affiliated exchange program or renting the reserved accommodations in order to facilitate the use or future use of the accommodations or other benefits made available through the timeshare plan. A statement to this effect must be conspicuously disclosed in the public offering statement.

Section 712.13(12)(c), F.S., is created to provide that the managing entity must maintain copies for five years of all pertinent data utilized by the managing entity in its determination to reserve accommodations. If the division investigates the managing entity for failure to comply with the subsection, the managing entity must make all records, data and information available for inspection. The records, data and information are considered a trade secret if the managing entity complies with the provision of the section on trade secrets in s. 721.071, F.S.

Assessments for common expenses

Section 721.15(2)(c), F.,S. is amended to provide that for purposes of calculating the obligation of a developer's guarantee, the cost of insurance shall be excluded from common expenses, but that any special assessment imposed for amounts excluded from the developer guarantee shall be paid proportionately by all the timeshare owners, including the developer for those timeshare interests owned by the developer.

Section 721.15(11), F.S., is created to provide that in determining whether assessments exceed 115% of assessments for the prior year, the cost of insurance will be excluded from the calculation. Both the Condominium Act and The Cooperative Act provide that if assessments exceed 115% of assessments for the prior fiscal year, the owners have the right, if 10% of the voting interests request a special meeting, to consider a substitute budget.

Insurance

The bill deletes the requirement in s. 721.165(1), F.S., that insurance must be in an amount equal to the replacement cost of the accommodations and facilities. It requires that the managing entity use due diligence to obtain adequate casualty insurance against all reasonably foreseeable perils, subject to reasonable exclusions and reasonable deductibles. According to the department, this is similar to the developer due diligence standard for condominiums at s. 718.111(11), F.S.

The bill creates s. 721.165(2), F.S. to provide for the factors taken into account when a managing entity must make a determination as to whether adequate insurance is obtained. The factors include:

- Available insurance coverage's and related premiums in the marketplace;
- Amounts of any related deductibles, types of exclusions, and coverage limitations, provided that a deductible of five percent or less is deemed to be reasonable;
- The probable maximum loss relating to the insured timeshare property during the policy term;
- The extent to which a given peril is insurable under commercially reasonable terms;
- Amounts of any deferred maintenance or replacement reserves on hand;
- Geography and any special risks associated with the location of the timeshare property; and
- The age and type of construction of the timeshare property.

It creates s. 721.165(3), F.S., which provides that the cost of insurance is a common expense maintained by the managing entity for the timeshare property. The cost is subject to reasonable deductions or reasonable exclusions as may be required by:

- An institutional lender to a developer for as long as the lender holds a mortgage encumbering any interest in or lien against a portion of the timeshare property; or
- Any holder or pledgee of, or any institutional lender having a security interest in, a pool of promissory notes secured by mortgages or the security interests relating to the timeshare plan, executed by purchasers in connection with the purchasers' acquisition of timeshare interests in the timeshare property or any agent, underwriter, placement agent, trustee, service, custodian or other portfolio manager acting on behalf of the holder, pledgee, or institutional lender, for so long as any such notes and mortgages or other security interests remain outstanding.

It creates s. 721.165(4), F.S., which provides that the managing entity is authorized to apply any existing reserves for deferred maintenance and capital expenditures toward payment of insurance deductibles or the repair or replacement of the timeshare property after a casualty without regard to the purposes which the reserves were originally established.

Conforming Amendments

Conforming amendments are made to ss. 721.557 and 721.552, F.S.

Timeshare Commissioner of Deeds

The bill amends s. 721.97, F.S., to provide that the Governor may appoint the commissioner of deeds to take acknowledgements, proofs of execution, or oaths in international waters. According to the representatives from the timeshare industry, this provision would allow the commissioner of deeds to operate on cruise lines that offer timeshares.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

According to the department, by only allowing developers, who have previously filed plans, to offer out of state timeshare plans may raise equal protection challenges from developers who have not previously filed and are unable to offer out of state plans.

In Florida, regulations which do not limit fundamental rights or promulgate suspect classifications will generally be upheld under the rational basis test. The test requires that the law be rationally related to a legitimate state interest.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the department, there will be recordkeeping costs for resale service providers and lead dealers.

C. Government Sector Impact:

According to the department, s. 721.03, F.S., will exempt developers from registering certain out-of-state timeshare plans. The division will therefore not be receiving registration fees ($2/timeshare week) for those exempted timeshare plans. This will be partially off-set by the one-time fee of $1,000 payable to the division by the developer for the developer's exercising this exemption from filing.

The department further provides that there are currently 92 out-of-state timeshare projects (217,012 timeshare weeks) filed with the division. During FY 2005/06, 13 projects (59,091 timeshare weeks) were approved. The division is unable to determine the number of projects that would have been entitled to this exemption. The division estimates that based upon FY 2005/06 filings and if all 13 projects were entitled to this exemption, the division would receive $13,000 in exemption fees instead of $118,182 in filing fees and

$88,284 in annual fees since not all the out-of-state unit weeks were part of a multistate timeshare plan.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.