

By the Committee on Banking and Insurance; and Senator Detert

597-02424-13

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1 A bill to be entitled
 2 An act relating to charitable contributions; amending
 3 s. 726.102, F.S.; defining the terms "charitable
 4 contribution" and "qualified religious or charitable
 5 entity or organization"; amending s. 726.109, F.S.;
 6 providing that a transfer of a charitable contribution
 7 that is received in good faith by a qualified
 8 religious or charitable entity or organization is not
 9 a fraudulent transfer; providing exceptions; amending
 10 ss. 213.758, 718.704, and 721.05, F.S.; conforming
 11 cross-references; providing an effective date.
 12

13 Be It Enacted by the Legislature of the State of Florida:
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15 Section 1. Present subsections (3), (4), (5), (6), (7),
 16 (8), (9), (10), (11), (12), and (13) of section 726.102, Florida
 17 Statutes, are renumbered as subsections (4), (5), (6), (7), (8),
 18 (9), (10), (11), (13), (14), and (15), respectively, and new
 19 subsections (3) and (12) are added to that section, to read:

20 726.102 Definitions.—As used in ss. 726.101-726.112:

21 (3) "Charitable contribution" means a charitable
 22 contribution as that term is defined in s. 170(c) of the
 23 Internal Revenue Code of 1986, if that contribution consists of:

24 (a) A financial instrument as defined in s. 731(c)(2)(C) of
 25 the Internal Revenue Code of 1986; or

26 (b) Cash.

27 (12) "Qualified religious or charitable entity or
 28 organization" means:

29 (a) An entity described in s. 170(c)(1) of the Internal

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30 Revenue Code of 1986; or

31 (b) An entity or organization described in s. 170(c)(2) of
32 the Internal Revenue Code of 1986.

33 Section 2. Subsection (7) is added to section 726.109,
34 Florida Statutes, to read:

35 726.109 Defenses, liability, and protection of transferee.—

36 (7) (a) The transfer of a charitable contribution that is
37 received in good faith by a qualified religious or charitable
38 entity or organization is not a fraudulent transfer under s.
39 726.105(1) (b) .

40 (b) However, a charitable contribution from a natural
41 person is a fraudulent transfer if the transfer was received on,
42 or within 2 years before, the earlier of the date of
43 commencement of an action under this chapter, the filing of a
44 petition under the federal Bankruptcy Code, or the commencement
45 of insolvency proceedings by or against the debtor under any
46 state or federal law, including the filing of an assignment for
47 the benefit of creditors or the appointment of a receiver,
48 unless:

49 1. The transfer was consistent with the practices of the
50 debtor in making the charitable contribution; or

51 2. The transfer was received in good faith and the amount
52 of the charitable contribution did not exceed 15 percent of the
53 gross annual income of the debtor for the year in which the
54 transfer of the charitable contribution was made.

55 Section 3. Paragraph (c) of subsection (1) of section
56 213.758, Florida Statutes, is amended to read:

57 213.758 Transfer of tax liabilities.—

58 (1) As used in this section, the term:

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59 (c) "Insider" means:

60 1. Any person included within the meaning of insider as
61 used in s. 726.102~~(7)~~; or

62 2. A manager of, a managing member of, or a person who
63 controls a transferor that is a limited liability company, or a
64 relative as defined in s. 726.102~~(11)~~ of any such persons.

65 Section 4. Subsection (4) of section 718.704, Florida
66 Statutes, is amended to read:

67 718.704 Assignment and assumption of developer rights by
68 bulk assignee; bulk buyer.—

69 (4) An acquirer of condominium parcels is not a bulk
70 assignee or a bulk buyer if the transfer to such acquirer was
71 made:

72 (a) Before the effective date of this part;

73 (b) With the intent to hinder, delay, or defraud any
74 purchaser, unit owner, or the association; or

75 (c) By a person who would be considered an insider under s.
76 726.102~~(7)~~.

77 Section 5. Subsection (10) of section 721.05, Florida
78 Statutes, is amended to read:

79 721.05 Definitions.—As used in this chapter, the term:

80 (10) "Developer" includes:

81 (a) 1. A "creating developer," which means any person who
82 creates the timeshare plan;

83 2. ~~(b)~~ A "successor developer," which means any person who
84 succeeds to the interest of the persons in this subsection by
85 sale, lease, assignment, mortgage, or other transfer, but the
86 term includes only those persons who offer timeshare interests
87 in the ordinary course of business; and

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88 3.~~(e)~~ A "concurrent developer," which means any person
89 acting concurrently with the persons in this subsection with the
90 purpose of offering timeshare interests in the ordinary course
91 of business.

92 (b)~~(d)~~ The term "developer" does not include:

93 1. An owner of a timeshare interest who has acquired the
94 timeshare interest for his or her own use and occupancy and who
95 later offers it for resale; provided that a rebuttable
96 presumption exists ~~shall exist~~ that an owner who has acquired
97 more than seven timeshare interests did not acquire them for his
98 or her own use and occupancy;

99 2. A managing entity, not otherwise a developer, that
100 offers, or engages a third party to offer on its behalf,
101 timeshare interests in a timeshare plan which it manages,
102 provided that such offer complies with the provisions of s.
103 721.065;

104 3. A person who owns or is conveyed, assigned, or
105 transferred more than seven timeshare interests and who
106 subsequently conveys, assigns, or transfers all acquired
107 timeshare interests to a single purchaser in a single
108 transaction, which transaction may occur in stages; or

109 4. A person who acquires ~~has acquired~~ or has the right to
110 acquire more than seven timeshare interests from a developer or
111 other interestholder in connection with a loan, securitization,
112 conduit, or similar financing arrangement transaction and who
113 subsequently arranges for all or a portion of the timeshare
114 interests to be offered by a developer ~~one or more developers~~ in
115 the ordinary course of business on its ~~their~~ own behalf ~~behalfes~~
116 or on behalf of such person.

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117 (c)~~(e)~~ A successor or concurrent developer is ~~shall be~~
118 exempt from any liability inuring to a predecessor or concurrent
119 developer of the same timeshare plan, except as provided in s.
120 721.15(7)., provided that This exemption does ~~shall~~ not apply to
121 any of the successor or concurrent developer's responsibilities,
122 duties, or liabilities with respect to the timeshare plan which
123 ~~that~~ accrue after the date the successor or concurrent developer
124 became a successor or concurrent developer, and ~~provided that~~
125 such transfer does not constitute a fraudulent transfer. ~~In~~
126 ~~addition to other provisions of law,~~ A transfer by a predecessor
127 developer to a successor or concurrent developer shall be deemed
128 fraudulent if the predecessor developer made the transfer:

129 1. With actual intent to hinder, delay, or defraud any
130 purchaser or the division; or

131 2. To a person that would constitute an insider under s.
132 726.102~~(7)~~.

133

134 ~~The provisions of~~ This paragraph does ~~shall~~ not ~~be construed to~~
135 relieve any successor or concurrent developer from the
136 obligation to comply with the provisions of any applicable
137 timeshare instrument.

138 Section 6. This act shall take effect July 1, 2013, and
139 applies to all charitable contributions made on or after that
140 date.