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LEGISLATIVE ACTION

Senate

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House

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Floor: WD

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05/01/2013 05:27 PM

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Senator Stargel moved the following:

**Senate Amendment (with title amendment)**

Between lines 415 and 416

insert:

Section 4. Subsection (7) of section 721.15, Florida Statutes, is amended to read:

721.15 Assessments for common expenses.—

(7) (a) A purchaser, regardless of how her or his timeshare estate or timeshare license has been acquired, including a purchaser at a judicial sale, is personally liable for all assessments for common expenses which come due while the purchaser is the owner of such interest. A successor in interest is jointly and severally liable with her or his predecessor in



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14 interest for all unpaid assessments against such predecessor up  
15 to the time of transfer of the timeshare interest to such  
16 successor without prejudice to any right a successor in interest  
17 may have to recover from her or his predecessor in interest any  
18 amounts assessed against such predecessor and paid by such  
19 successor. The predecessor in interest, its agent, or a person  
20 providing resale transfer services for the predecessor in  
21 interest pursuant to s. 721.17(3) or its agent, shall deliver to  
22 the managing entity ~~provide the managing entity with~~ a copy of  
23 the recorded deed of conveyance if the interest is a timeshare  
24 estate or a copy of the instrument of transfer if the interest  
25 is a timeshare license, together with ~~containing~~ the name and  
26 mailing address of the successor in interest within 15 days  
27 after the date of transfer. After such delivery the successor in  
28 interest shall be listed by the managing entity as the owner of  
29 the timeshare interest on the books and records of the timeshare  
30 plan. The managing entity shall not be liable to any person for  
31 any inaccuracy in the books and records of the timeshare plan  
32 arising from the failure of the predecessor in interest to  
33 timely and correctly notify the managing entity of the name and  
34 mailing address of the successor in interest.

35 (b) Within 30 days after receiving a written request from a  
36 timeshare interest owner, from an agent designated in writing by  
37 such timeshare owner, or from a person providing resale transfer  
38 services for a consumer timeshare reseller pursuant to s.  
39 721.17(3), a managing entity shall provide a certificate, signed  
40 by an officer or agent of the managing entity, to the person  
41 requesting the certificate. The certificate must state the  
42 amount of any assessment, transfer fee, or other moneys



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43 currently owed to the managing entity, and of any assessment,  
44 transfer fee, or other moneys approved by the managing entity to  
45 become due within the next 90 days, with respect to the  
46 designated consumer resale timeshare interest, as well as any  
47 information contained in the books and records of the timeshare  
48 plan regarding the legal description and use plan related to the  
49 designated consumer resale timeshare interest.

50 1. A person who relies upon such certificate shall be  
51 protected thereby.

52 2. A summary proceeding pursuant to s. 51.011 may be  
53 brought to compel compliance with this paragraph, and in any  
54 such action the prevailing party may recover its reasonable  
55 attorney fees and court costs.

56 3. The managing entity may charge a fee not to exceed \$150  
57 for the preparation and delivery of the certificate. The amount  
58 of the fee must be included on the certificate.

59 Section 5. Section 721.17, Florida Statutes, is amended to  
60 read:

61 721.17 Transfer of interest; resale transfer agreements.-

62 (1) Except in the case of a timeshare plan subject to the  
63 provisions of chapter 718 or chapter 719, no developer, owner of  
64 the underlying fee, or owner of the underlying personal property  
65 shall sell, lease, assign, mortgage, or otherwise transfer his  
66 or her interest in the accommodations and facilities of the  
67 timeshare plan except by an instrument evidencing the transfer  
68 recorded in the public records of the county in which such  
69 accommodations and facilities are located or, with respect to  
70 personal property timeshare plans, in full compliance with s.  
71 721.08. The instrument shall be executed by both the transferor



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72 and transferee and shall state:

73 (a)~~(1)~~ That its provisions are intended to protect the  
74 rights of all purchasers of the plan.

75 (b)~~(2)~~ That its terms may be enforced by any prior or  
76 subsequent timeshare purchaser so long as that purchaser is not  
77 in default of his or her obligations.

78 (c)~~(3)~~ That so long as a purchaser remains in good standing  
79 with respect to her or his obligations under the timeshare  
80 instrument, including making all payments to the managing entity  
81 required by the timeshare instrument with respect to the annual  
82 common expenses of the timeshare plan, the transferee shall  
83 honor all rights of such purchaser relating to the subject  
84 accommodation or facility as reflected in the timeshare  
85 instrument.

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

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

93 (2) Should any transfer of the interest of the developer,  
94 the owner of the underlying fee, or the owner of the underlying  
95 property occur in a manner which is not in compliance with  
96 subsection (1) ~~this section~~, the terms set forth in this section  
97 shall be presumed to be a part of the transfer and shall be  
98 deemed to be included in the instrument of transfer. Notice  
99 shall be mailed to each purchaser of record within 30 days after  
100 the transfer unless such transfer does not affect the



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101 purchaser's rights in or use of the timeshare plan. Persons who  
102 hold mortgages or liens on the property constituting a timeshare  
103 plan before the filed public offering statement of such plan is  
104 approved by the division shall not be considered transferees for  
105 the purposes of subsection (1) ~~this section~~.

106 (3) (a) In the course of offering timeshare interest  
107 transfer services, a person may not:

108 1. Engage in any timeshare interest transfer services for  
109 consideration, or the expectation of receiving consideration,  
110 without first obtaining a written resale transfer agreement  
111 signed by the consumer timeshare reseller which complies with  
112 the provisions of this subsection.

113 2. Fail to provide both the consumer timeshare reseller and  
114 the escrow agent required by paragraph (c) with an executed copy  
115 of the resale transfer agreement.

116 3. Fail to comply with the requirements of paragraphs (b)  
117 and (c).

118 (b) Each resale transfer agreement must contain:

119 1. A statement that no fee, cost, or other compensation may  
120 be paid to the person providing the timeshare resale transfer  
121 services before the delivery to the consumer timeshare reseller  
122 of written evidence that all promised timeshare interest  
123 transfer services have been performed, including, but not  
124 limited to, delivery to both the consumer timeshare reseller and  
125 the timeshare plan managing entity of a copy of the recorded  
126 instrument or other legal document evidencing the transfer of  
127 ownership of or legal title to the consumer resale timeshare  
128 interest to the transferee, accompanied by the full name,  
129 address, and other known contact information for the transferee.



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130           2. The name, address, current phone number, and current  
131 electronic mail address of the escrow agent required by  
132 paragraph (c).

133           3. A statement that the person providing the timeshare  
134 resale transfer services will provide the consumer timeshare  
135 reseller with written notice of the full performance of the  
136 timeshare resale transfer services, together with a copy of the  
137 recorded instrument or other legal document evidencing the  
138 transfer of ownership of or legal title to the consumer resale  
139 timeshare interest from the consumer timeshare reseller to a  
140 transferee.

141           4. A statement in substantially the following form in  
142 conspicuous type immediately preceding the space in the resale  
143 transfer agreement provided for the consumer timeshare  
144 reseller's signature:

145  
146           ...(Name)... has agreed to provide you with timeshare  
147 resale transfer services pursuant to this resale  
148 transfer agreement. After those services have been  
149 fully performed, ...(Name)... is obligated to provide  
150 you with written notice of such full performance and a  
151 copy of the recorded instrument or other legal  
152 document evidencing the transfer of ownership of or  
153 legal title to the consumer resale timeshare interest  
154 to the transferee. Any fee or other compensation paid  
155 by you under this agreement before such full  
156 performance by ...(Name)... must be held in escrow by  
157 the escrow agent specified in this agreement, and  
158 ...(Name)... is prohibited from receiving any such fee



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159 or other compensation until all promised timeshare  
160 interest transfer services have been performed.

161  
162 (c)1. Before entering into a resale transfer agreement, a  
163 person providing timeshare resale transfer services shall  
164 establish an escrow account with an escrow agent for the purpose  
165 of protecting the funds or other property of consumer timeshare  
166 resellers required to be escrowed by this subsection. An  
167 attorney who is a member in good standing with The Florida Bar,  
168 a licensed Florida real estate broker in good standing, or a  
169 licensed Florida title insurer or agent in good standing, any of  
170 whom also provides timeshare interest transfer services as  
171 described in this subsection, may serve as escrow agent under  
172 this subsection. The escrow agent shall maintain the escrow  
173 account only in such a manner as to be under the direct  
174 supervision and control of the escrow agent. The escrow agent  
175 has a fiduciary duty to each consumer timeshare reseller to  
176 maintain the escrow account in accordance with good accounting  
177 practices and to release the consumer timeshare reseller's funds  
178 or other property from escrow only in accordance with this  
179 subsection.

180 2. All funds or other property that is received from or on  
181 behalf of a consumer timeshare reseller pursuant to a resale  
182 transfer agreement shall be deposited into an escrow account  
183 pursuant to this paragraph. A fee, cost, or other compensation  
184 that is due or that will be paid to the person providing the  
185 timeshare resale transfer services must be held in such escrow  
186 account until the person providing the timeshare resale transfer  
187 services has fully complied with all of its obligations under



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188 the resale transfer agreement and under this subsection.

189 3. The funds or other property required to be escrowed  
190 hereunder may be released from escrow only as follows:

191 a. On the order of the person providing the timeshare  
192 resale transfer services upon presentation of an affidavit by  
193 such person that all promised timeshare interest transfer  
194 services have been performed, including delivery to both the  
195 consumer timeshare reseller and the timeshare plan managing  
196 entity of a copy of the recorded instrument or other legal  
197 document evidencing the transfer of ownership of or legal title  
198 to the consumer resale timeshare interest to the transferee.

199 b. To a managing entity to pay any assessments, transfer  
200 fees, or other moneys owed with respect to the timeshare  
201 interest as set forth in the certificate provided for in s.  
202 721.15(7)(b), or to pay a governmental agency for the purpose of  
203 completing and perfecting the transfer. A managing entity shall  
204 accept any funds remitted to it by an escrow agent pursuant to  
205 this sub-subparagraph.

206 4. The escrow agent shall retain all resale transfer  
207 agreements, escrow account records, and affidavits received  
208 pursuant to this subsection for a period of 5 years.

209 (d) A person who provides timeshare resale transfer  
210 services, agent or third-party service provider therefor, or  
211 escrow agent who intentionally fails to comply with the  
212 provisions of this subsection concerning the establishment of an  
213 escrow account, deposits of funds into escrow, withdrawal  
214 therefrom, and maintenance of records commits a felony of the  
215 third degree, punishable as provided in s. 775.082, s. 775.083,  
216 or s. 775.084.





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217       (e) A person may not participate, for consideration or with  
218 the expectation of consideration, in any plan or scheme, a  
219 purpose of which is to transfer a consumer resale timeshare  
220 interest to a transferee that the person knows does not have the  
221 ability, means, or intent to pay all assessments and taxes  
222 associated with the consumer resale timeshare interest.

223       (f) Providing timeshare interest transfer services with  
224 respect to a consumer resale timeshare interest in a timeshare  
225 property located or offered within this state, or in a multisite  
226 timeshare plan registered or required to be registered to be  
227 offered in this state, including acting as an agent or third-  
228 party service provider for a resale service provider,  
229 constitutes operating, conducting, engaging in, or carrying on a  
230 business or business venture in this state for the purposes of  
231 s. 48.193(1).

232       (g) A managing entity may bring an action to enforce the  
233 provisions of paragraph (e). In any such action, the managing  
234 entity may recover its actual damages, and the prevailing party  
235 may recover its reasonable attorney fees and court costs.

236       (h) Paragraphs (a)-(d) do not apply to:

237       1. A resale broker who offers timeshare interest transfer  
238 services to a consumer timeshare reseller, so long as the resale  
239 broker complies in all respects with chapter 475 and with s.  
240 721.20; or

241       2. An attorney who is a member in good standing with The  
242 Florida Bar or a licensed Florida title insurer or agent in good  
243 standing who offers timeshare interest transfer services to a  
244 consumer timeshare reseller, so long as the total consideration  
245 paid by the consumer timeshare reseller to such person does not



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246 exceed \$600, exclusive of any assessments, transfer fees, or  
247 moneys owed with respect to the consumer timeshare resale  
248 interest as set forth in the certificate provided for in s.  
249 721.15(7)(b), and exclusive of any fees owed to a governmental  
250 agency for the purpose of completing and perfecting the  
251 transfer.

252 (i) This subsection does not apply to the transfer of  
253 ownership of a consumer resale timeshare interest from a  
254 consumer timeshare reseller to the developer or managing entity  
255 of that timeshare plan.

256  
257 ===== T I T L E A M E N D M E N T =====

258 And the title is amended as follows:

259 Delete line 9

260 and insert:

261 property timeshare plans; amending s. 721.15, F.S.;

262 requiring a certificate in certain timeshare resale

263 transfer transactions; amending s. 721.17, F.S.;

264 prohibiting certain activities related to offering

265 timeshare interest transfer services; requiring resale

266 transfer agreements to contain specified information;

267 requiring the establishment of an escrow account for

268 certain purposes; providing requirements and duties of

269 the escrow agent; providing penalties; providing for

270 applicability; amending s. 721.82, F.S.;