

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7025 PCB BPRS 13-02 Timeshares

SPONSOR(S): Regulatory Affairs Committee; Business & Professional Regulation Subcommittee; Eagle

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 696

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Business & Professional Regulation Subcommittee	11 Y, 0 N	Collins	Luczynski
1) Civil Justice Subcommittee	12 Y, 0 N	Cary	Bond
2) Regulatory Affairs Committee	18 Y, 0 N, As CS	Collins	Hamon

SUMMARY ANALYSIS

The bill amends the Florida Vacation Plan and Timesharing Act to:

- Exempt timeshare condominiums from the requirements related to condominium board elections;
- Revise and provide definitions; and
- Allow timeshare plan reserves to be calculated using the pooling accounting method.

The bill creates regulation for timeshare resale transfer transactions to:

- Require managing entities to provide an estoppel letter within 30 days, upon request;
- Require timeshare transfer service providers to deliver a written agreement to consumers that must include certain information;
- Require fees for timeshare resale transfer services to be held by a third party escrow agent until the services are completed;
- Set standards for the release of escrowed funds, and provide an opportunity to dispute claims;
- Provide violations and penalties; and
- Provide exemptions for certain parties from certain provisions.

The bill amends the process for timeshare foreclosures to:

- Allow the foreclosure trustee to use another country's equivalent of certified, registered mail;
- Eliminate the requirement that a title search be conducted in order to initiate a foreclosure proceeding and makes a title search a condition to the trustee's exercise of a power of sale;
- Provide that no lis pendens is recorded or pending against a timeshare interest unless properly recorded and noticed;
- Provide a good faith standard in determining whether the obligor is the person who signed the receipt of notice;
- Delineate what information is to be included in the publication notice;
- Provide that attestation in a notice affidavit that a diligent search and inquiry was made is only required if a diligent search and inquiry was specifically required to be conducted by the provisions in the timeshare law;
- Allow for notice to be perfected as to all obligors at the same address, so long as notice is perfected as to at least one obligor at that address;
- Provide a procedure for filing a lis pendens in relation to the initiation of a foreclosure proceeding;
- Allow the trustee to use a third party to conduct the foreclosure sale on behalf of the trustee; and
- Provide that it is not a violation of the law if the trustee, in good faith, makes an incorrect determination as to the identity of the signature on the receipt of notice.

The bill may have an insignificant negative fiscal impact on state and local governments. See fiscal comments.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Condominium Board Election Provisions

Current Situation

Current law provides procedures and rules related to condominium unit owner meetings, specifically the procedure for the election of members to the Board of Administration (the board).¹ Timeshare condominiums were previously exempt from these requirements under prior versions of the Condominium Act because they are not applicable to the procedures in common use by timeshare owners' associations. However, prior amendments to the Condominium Act inadvertently removed the exemption.²

Effect of Proposed Changes

The bill amends s. 718.112(2)(d)4., F.S., to specifically exempt timeshare condominiums from the requirements related to condominium board member elections. The section now conforms to prior versions of the Condominium Act.³

Definition of "Timeshare Estate"

Current Situation

Current law defines a "timeshare estate" as "an interest in a cooperative unit pursuant to s. 719.103, or an interest in a trust that complies in all respects with the provisions of s. 721.08(2)(c)4., provided that the trust does not contain any personal property timeshare interests."⁴

The statute does not specify whether this definition includes both direct and indirect interests in trusts. An example of an indirect interest in a trust is a trust beneficiary's spouse or other dependent.

Effect of Proposed Changes

The bill amends s. 721.05(34), F.S., to clarify that a "timeshare estate" includes an interest in a trust that complies in all respects with s. 721.08(2)(c)4., F.S., regardless of whether that interest is direct or indirect.

¹ Section 718.112(2)(d)4., F.S.

² Prior to 2011, the board election provisions located in s. 718.112(2)(d)4., F.S., were located in s. 718.112(2)(d)3., F.S. In 2010, the provisions of SB 1196 split subparagraph 3. of s. 718.112(2)(d), F.S., into an introduction and two separate sub-subparagraphs. The language that stipulates that subparagraph 3. does not apply to timeshare condominium associations was relocated to sub-subparagraph 3.a., which references proxy procedures. No similar exemption language was included in the introductory subparagraph that references board election procedures. In 2011, in response to concerns as to whether the proxy provisions apply to timeshare condominiums, the provisions of HB 1195 added subsection 10. to s. 718.112(2)(d), F.S., to clarify that the procedures regarding proxies do not apply to timeshare condominium associations. In order to reduce redundancy, this legislation also dropped the sub-subparagraph 3.a. exemption for timeshare condominiums. As such, there is currently no 'exemption' language remaining in s. 718.112(2)(d)4., F.S., as it relates to timeshare condominiums. This change has created uncertainty in the industry.

³ For procedures and rules related to timeshare condominium unit owner meetings, see generally, s. 721.13, F.S.

⁴ Section 721.05(34), F.S.

Reserves

Current Situation

Prior to offering any timeshare plan, the developer must submit a filed public offering statement to the Division of Condominiums, Timeshares and Mobile Homes (hereinafter “Division”) for approval, which must include certain information and disclosures.⁵ Specifically, the filed public offering statement must include an estimated operating budget for the timeshare plan and a schedule of the purchaser’s expenses to be paid to the timeshare plan and the managing entity.⁶ A common expense to be paid to the managing entity is a reserve for deferred maintenance and capital expenditures.

Current law provides that reserves for timeshare plans must be calculated by a formula based upon the estimated life and replacement cost of each reserve item.⁷ This is also known as the ‘straight-line accounting method.’ Conversely, a second type of calculation formula, the ‘pooling method,’ is based upon the pooling of two or more assets. The pooling method is authorized to be used when calculating reserves for condominiums.⁸

Effect of Proposed Changes

The bill amends s. 721.07(5)(t)3.a.(XI)(A), F.S., to allow timeshare plan reserves to be calculated using the pooling accounting method. Reserves may still be calculated based on the straight-line accounting method, if desired.

Resale Transfer Transactions

Current Situation

A timeshare interest transfer company (hereinafter “transfer company”) is a business that solicits timeshare owners to give up or transfer ownership of their timeshare to another entity or person for a fee.⁹ This transaction is meant to relieve the timeshare owner from paying maintenance fees and other related obligations of ownership.

Certain fraudulent practices believed to occur involving these timeshare interest transfers include:

- Failure by the transfer company to actually transfer the timeshare interest, as promised; or
- Transfer of the timeshare interest by the transfer company to a third party whom the transfer company knows does not have the ability or intent to use the timeshare, or to pay the required fees and taxes associated with the interest.

The Federal Trade Commission (hereinafter “FTC”) has recognized the potential for fraudulent activity in these types of transactions, and has warned timeshare interest owners to be cautious when dealing with resellers who specialize in reselling timeshares.¹⁰

Moreover, the American Resort Development Association (hereinafter “ARDA”) and the ARDA Resort Owners’ Coalition estimate that unethical timeshare resale transfer activity accounts for approximately \$8 million in currently-delinquent maintenance fees.¹¹

⁵ See, generally: ss. 721.07 and 721.07(5), F.S.

⁶ Section 721.07(5)(t)3., F.S.

⁷ Section 721.07(5)(t)3.a.(XI)(A), F.S.

⁸ See: Fla. Admin. Code 61B-22.005(3).

⁹ American Resort Development Association, Timeshare Transfer Companies, Consumer Advisory on Resale Companies- Advisory V, page 1, dated July 15, 2010, on file with subcommittee.

¹⁰ <http://www.consumer.ftc.gov/articles/0073-timeshares-and-vacation-plans#selling>, last accessed on March 22, 2013.

¹¹ American Resort Development Association, Timeshare Transfer Companies- What Are They And How Do They Operate?, page 2, dated 2/5/2013, on file with subcommittee.

Effect of Proposed Changes

Definitions

The bill creates ss. 721.05(51) and 721.05(52), F.S., to define the terms “resale transfer agreement” and “timeshare interest transfer services,” respectively.

- “Resale transfer agreement” is defined as a contract or other agreement between a person offering timeshare interest transfer services and a consumer timeshare reseller, in which the person offering timeshare interest transfer services agrees to provide such services as described in s. 721.17(3), F.S.
- “Timeshare interest transfer services” is defined as any good or service relating to an offer or agreement to transfer ownership of a consumer resale timeshare interest, or assistance with or promise of assistance in connection with the transfer of ownership of a consumer resale timeshare interest, as described in s. 721.17(3), F.S.

Estoppel Letter

The bill amends s. 721.15(7), F.S., to require a managing entity¹² to provide an estoppel letter within 30 days, upon receiving a written request from a timeshare interest owner or from a person providing resale transfer services for a timeshare reseller. The estoppel letter must indicate that all assessments and other money owed to the managing entity by the timeshare interest owner have been paid in full with respect to the timeshare interest. The managing entity may charge a reasonable fee for the preparation and delivery of the estoppel letter. This provision closely follows the estoppel provisions that currently exist for condominiums.¹³

Timeshare Resale Transfer Transaction Regulation

Resale Transfer Agreement

The bill creates s. 721.17(3), F.S., to provide for regulation of timeshare resale transfer transactions. Specifically, the bill requires transfer companies to deliver a written agreement to consumers, signed by both the person offering the services and by the timeshare reseller, which includes the following information:

- A statement that no fee, cost, or other compensation may be paid to the person providing the transfer services prior to the delivery to the timeshare reseller of written evidence that all promised services have been completed;
- The name, address, current phone number and electronic mail address of the escrow agent;
- A statement that the person providing the transfer services will provide the timeshare reseller with written notice of the full performance of the transfer services, together with a copy of the recorded instrument or other legal document evidencing transfer of ownership or other completion of the promised services;
- A statement that the timeshare reseller has five business days from receipt of the notice of performance to notify the escrow agent of the disputed performance; and
- A statement in conspicuous type immediately preceding the space in the resale transfer agreement provided for the reseller’s signature that sets forth the above rights.

Escrow

The bill also requires that, prior to entering into any resale transfer agreement, the person providing transfer services must establish an escrow account for the purpose of protecting the funds or other property of the timeshare reseller that is intended to be transferred. The funds or property must be held

¹² The managing entity shall be the developer, a separate manager or management firm, or an owners’ association. Sections 721.05(22) and 721.13(1)(a), F.S.

¹³ See, generally: s. 718.116(8), F.S.

with the escrow agent until the person providing transfer services has fully complied with the obligations under the resale transfer agreement and under the newly-created provisions of the subsection.

As it relates to the disbursement of the escrow funds or property, the escrow agent may only release the funds or property upon presentation of an affidavit by the person providing the transfer services that all promised services or obligations have been performed. The timeshare reseller has five days to dispute the contents of the affidavit and to prevent the disbursement of the funds or property. As such, the escrow agent must wait until at least five days have passed after receipt of the affidavit to actually disburse the funds, assuming that no dispute is made by the timeshare reseller within the five day dispute period.

In the event that the escrow agent receives conflicting demands for the funds or property held in escrow, the agent shall notify the Division, and shall promptly:

- Submit the matter to arbitration; or
- Seek adjudication of the matter by court, whether by interpleader or otherwise.

Moreover, the escrow agent shall retain all records relating to resale transfer transactions for a period of five years.

Violations

The bill provides that any escrow agent or person who provides resale transfer services, or an agent or third-party service provider therefor, who intentionally fails to comply with the provisions regarding the establishment, of the escrow account, the deposit or withdrawal of funds therefrom, or the maintenance of records is guilty of a third degree felony.

Moreover, the bill prohibits the transfer of a timeshare interest to someone that the person knows does not have the ability, means, or intent to fulfill the financial obligations of ownership. A transfer or series of transfers, or any other action made by a person for the purpose of circumventing the above provision, is also a violation.

The bill also provides for a civil penalty not to exceed \$10,000 per violation, pursuant to s. 721.26(5)(e), F.S., for any violations of the newly-created subsection, which may be levied in addition to any other penalty set forth in the subsection.

A managing entity is specifically provided a private right of action, wherein it may:

- Recover actual damages, plus attorney fees and court costs;
- Bring an action to obtain a declaratory judgment; and
- Bring an action to obtain an injunction.

The bill clarifies that it is not a violation for a managing entity to perform administrative acts that are necessary to satisfy its fiduciary duties or to otherwise comply with the requirements of ch. 721, F.S., including fulfilling the requirement to maintain and update the books and records of the timeshare plan.¹⁴

Exemptions

Finally, the bill stipulates that the provisions of the newly-created subsection do not apply to:

- Resale advertisers who offer resale advertising services to a timeshare reseller, unless such person also offers transfer services to the timeshare reseller; or
- The transfer of ownership of a timeshare interest from a timeshare reseller to the developer or managing entity of that timeshare plan.

¹⁴ See, generally: ss. 721.13(4) and 721.15(7), F.S.
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Moreover, the provisions relating to the resale transfer agreement and escrow do not apply to real estate brokers, so long as the broker complies in all respects with ch. 475, F.S., and with s. 721.20, F.S.

Definition of “Notice Address”

Current Situation

In order to institute trustee foreclosure proceedings, adequate notice must be provided to the mortgagor, the owner of the timeshare interest if different than the mortgagor, and any junior interestholder.¹⁵

Current law defines “notice address” as the address that is used in the books and records of the timeshare plan.¹⁶ However, a mortgagor, owner, or junior interestholder’s current address may be different than the address used in the timeshare plan’s books and records.

Effect of Proposed Changes

The bill creates s. 721.82(9)(d), F.S., to include as a “notice address,” any address that is known to be the current address of a timeshare mortgagor, owner, or junior interestholder.

Definition of “Permitted Delivery Service”

Current Situation

A “permitted delivery service” is “any nationally recognized common carrier delivery service or international airmail service that allows for return receipt service.”¹⁷ The current statutory language does not permit the trustee to use a foreign country’s equivalent of certified, registered mail.

Effect of Proposed Changes

The bill amends s. 721.82(11), F.S., to also allow the trustee to use a foreign country’s equivalent of certified, registered mail.

Title Searches

Current Situation

Currently, in order to initiate a trustee foreclosure proceeding against a timeshare interest, the lienholder must deliver an affidavit and a title search of the timeshare interest identifying junior lienholders.¹⁸ The title search must have been conducted within 60 days of the date of the affidavit.¹⁹

Effect of Proposed Changes

The bill amends ss. 721.855(2)(c)1. and 721.856(2)(b)1., F.S., to eliminate the requirement that the title search be conducted within 60 days of the date of the affidavit.

The bill creates ss. 721.855(4)(f) and 721.856(4)(g), F.S., to instead require that a title search be conducted and delivered to the trustee prior to the sale of the timeshare interest. The trustee may not

¹⁵ See, generally: ss. 721.855(5)(a) and 721.856(5)(a), F.S.

¹⁶ Section 721.82(9), F.S.

¹⁷ Section 721.82(11), F.S.

¹⁸ Sections 721.855(2)(c)1. and 721.856(2)(b)1., F.S.

¹⁹ *Id.*

exercise his or her power of sale of the timeshare interest until a title search has been conducted and delivered. Moreover, the title search must have been conducted within 60 days of the date that it is delivered to the trustee.

If incorrect obligors or junior interestholders were served or additional obligors or junior interestholders have not been served, the foreclosure action may not continue until the correct or additional notices have been served.

Recording of a Lis Pendens

Current Situation

A lis pendens has the effect of notifying potential claimants and interested parties of the action, and establishes a priority right against future claims. Current statutory language is unclear as to whether the initiation of a trustee foreclosure action operates as a lis pendens on the timeshare interest. This has caused confusion in the industry, as a trustee may not proceed with a sale if a lis pendens has been filed.²⁰

Effect of Proposed Changes

The bill amends ss. 721.855(4)(c) and 721.856(4)(c), F.S., to clarify that the initiation of a foreclosure proceeding against a timeshare interest does not automatically act as a lis pendens.

The bill also creates ss. 721.855(5)(h) and 721.856(5)(h), F.S., to provide that the initiation of a trustee foreclosure action operates as a lis pendens on the timeshare interest if a notice of lis pendens is recorded in the county in which the deed conveying the timeshare interest to the obligor was recorded.

The notice of lis pendens must include:

- The name of the obligor;
- The date of the initiation of the trustee foreclosure action;
- The name and contact information of the trustee;
- The legal description of the timeshare interest; and
- A statement that a trustee foreclosure action has been initiated against the timeshare interest.

Permitted Delivery Service Typographical Error

Current Situation

Current law provides that giving notice by use of any “permitted delivery service” is an alternative to providing notice by the use of any “permitted delivery service.”²¹ The second use of “permitted delivery service” is redundant.

Effect of Proposed Changes

The bill amends ss. 721.855(5)(a), 721.855(5)(a)4., 721.855(5)(b)1., 721.856(5)(a), 721.856(5)(a)4., and 721.856(5)(b)1., F.S., to correct the redundancy.

Standard for Trustee Ascertain Signature

Current Situation

²⁰ Sections 721.855(4)(c) and 721.856(4)(c), F.S.

²¹ See: ss. 721.855(5)(a), 721.855(5)(a)4., 721.855(5)(b)1., 721.856(5)(a), 721.856(5)(a)4., and 721.856(5)(b)1., F.S.

In foreclosure proceedings, the trustee is required to notify the obligor of the proceeding by sending a written notice of default and intent to foreclose to the obligor's notice address.²² Notice is not perfected if the trustee cannot ascertain whether the obligor is the person who signed the receipt of notice.²³

A trustee who determines that the obligor signed the receipt, when he or she knows or should know that this determination is not correct, commits a third-degree felony.²⁴

Effect of Proposed Changes

The bill amends ss. 721.855(5)(a)5., 721.855(5)(b)1., 721.856(5)(a)5., and 721.856(5)(b)1., F.S., to provide a good faith standard in determining whether the obligor is the person who signed the receipt of notice. The bill also provides reasons for why the trustee may be unable to ascertain whether the obligor signed the receipt, including if all or a portion of the obligor's name is not on the signed receipt, or if the trustee cannot otherwise determine that the obligor signed the receipt.

Moreover, the bill amends ss. 721.855(14)(b) and 721.856(13)(b), F.S., to provide that if the trustee, in good faith, makes an incorrect determination as to the identity of the signature on the notice receipt, it will not be a violation of law.

Published Notice of Default

Current Situation

As previously discussed, the trustee is required to notify the obligor of the foreclosure proceeding by sending a written notice of default and intent to foreclose to the obligor's notice address.²⁵

Current law sets forth the information that is required to be included in the notice of default and intent to foreclose, including:

- The identity of the obligor;
- The notice address of the obligor;
- The legal description of the timeshare interest;
- The nature of the default;
- The amounts secured by the lien;
- A per diem amount to account for further accrual of the amounts secured by the lien; and
- The method by which the obligor may cure the default, including the period of time within which the obligor may cure the default.²⁶

Notice is perfected when the trustee receives the return receipt of notice bearing the signature of the obligor or junior interestholder within thirty calendar days after the notice was sent.²⁷ In some instances, notice by permitted delivery service is not perfected and notice by publication is appropriate.²⁸ Unlike with the "standard" notice of default procedure, the current statutory language does not delineate what information must be included in the publication notice. As a result, there is confusion in the industry as to how much and what information is to be included in the publication notice.

Effect of Proposed Changes

²² Sections 721.855(5)(a) and 721.856(5)(a), F.S.

²³ Sections 721.855(5)(a)5. and 721.856(5)(a)5., F.S.

²⁴ Sections 721.855(14)(b) and 721.856(13)(b), F.S.

²⁵ Sections 721.855(5)(a) and 721.856(5)(a), F.S..

²⁶ Sections 721.855(5)(a)1. and 721.856(5)(a)1., F.S.,

²⁷ Sections 721.855(5)(a)5. and 721.856(5)(a)5., F.S.

²⁸ See, generally: ss. 721.855(5)(c) and 721.856(5)(c), F.S.

The bill amends ss. 721.855(5)(c) and 721.856(5)(c), F.S., to delineate what information is to be included in the publication notice. Specifically, the notice of default and intent to foreclose by publication must identify:

- The obligor;
- The notice address of the obligor;
- The legal description of the timeshare interest;
- The nature of the action in short and simple terms;
- The name and contact information of the trustee; and
- The period of time within which the obligor may cure the default.

Affidavit of Publication Notice Typographical Error

Current Situation

Sections 721.855(5)(e) and 721.856(5)(e), F.S., list which information is to be included in the affidavit certifying perfected notice.

Specifically, the information to be included is:

- The nature of the notice;
- The dates on which the notice was mailed;
- The name and address on the envelopes containing the notice;
- The manner in which the notices were mailed;
- The fact that a signed receipt from the certified mail, registered mail, or permitted delivery service was timely received; and
- The name and address on the envelopes containing the notice.

The second use of “the name and address on the envelopes containing the notice” is redundant.

Effect of Proposed Changes

The bill amends ss. 721.855(5)(e) and 721.856(5)(e), F.S., to eliminate the redundancy.

Affidavit of Publication Notice

Current Situation

As previously discussed, in a timeshare interest foreclosure proceeding, the trustee is required to notify the obligor of the proceeding by sending a written notice of default and intent to foreclose to the obligor’s notice address.²⁹ Notice is perfected when the trustee receives the return receipt of notice bearing the signature of the obligor or junior interestholder within 30 calendar days after the notice was sent.³⁰

Notice is not perfected, and notice by publication is appropriate, when:

- Notice is returned as undeliverable within 30 calendar days after the trustee sent the notice;
- The trustee cannot ascertain who signed the receipt of notice; or
- The receipt of notice is returned or refused within 30 calendar days after the trustee sent the notice.³¹

²⁹ Sections 721.855(5)(a) and 721.856(5)(a), F.S.

³⁰ Sections 721.855(5)(a)5. and 721.856(5)(a)5., F.S.

³¹ *Id.*

If the notice is returned as undeliverable within 30 calendar days after the trustee sent the notice, the trustee is obligated to conduct a diligent search and inquiry to determine a different address for the obligor or junior interestholder.³² If the trustee's diligent search and inquiry produces an address different from the notice address, the trustee must attempt to perfect notice at the new address before attempting to perfect notice by publication.³³ However, the diligent search and inquiry is only required to be conducted the first time that the notice is returned as undeliverable; any subsequent time that the notice is returned as undeliverable, the trustee may proceed with notice by publication.

As with other forms of notice perfection, a trustee who perfects notice by publication is required to prepare an affidavit setting forth the manner in which notice was perfected.³⁴ Among other things, the affidavit must include a statement that a diligent search and inquiry was made for the current address for the person. This is potentially confusing, as a diligent search and inquiry may not always be required for notices perfected by publication.

Effect of Proposed Changes

The bill amends ss. 721.855(5)(f) and 721.856(5)(f), F.S., to provide that attestation that a diligent search and inquiry was done is only required if a diligent search and inquiry was specifically required to be conducted by the provisions in ch. 721, F.S.

The bill does not affect any requirements set forth by ss. 49.041 or 49.051, F.S., as applicable.

Perfection of Service at Same Address

Current Situation

Current statutory language does not provide trustees with the ability to perfect notice as to multiple obligors residing at the same address, with the same service of notice.³⁵ Instead, notice must be perfected as to each obligor separately, regardless of whether multiple obligors reside at the same address.

Effect of Proposed Changes

The bill creates ss. 721.855(5)(g) and 721.856(5)(g), F.S., to allow for notice to be perfected as to all obligors at the same address, so long as notice is perfected as to at least one obligor at that address.

Manner of Sale

Current Situation

Currently, the trustee must conduct the foreclosure sale of the timeshare interest, and must act as the auctioneer.³⁶ The current statutory language does not allow anyone other than the trustee to conduct the sale or act as the auctioneer.

Effect of Proposed Changes

The bill amends ss. 721.855(7)(b) and 721.856(7)(b), F.S., to allow the trustee to use a third party to conduct the sale on behalf of the trustee. However, the trustee remains liable for the conduct of the sale, including the actions of any third-party auctioneer.

³² Sections 721.855(5)(b) and 721.856(5)(b), F.S.

³³ Sections 721.855(5)(b)1. and 721.856(5)(b)1., F.S.

³⁴ See, generally: ss. 721.855(5)(f) and 721.856(5)(f), F.S.

³⁵ See, generally: ss. 721.855(5) and 721.856(5), F.S.

³⁶ Sections 721.855(7)(b) and 721.856(7)(b), F.S.

B. SECTION DIRECTORY:

Section 1: amends s. 718.112(2)(d)4., F.S., relating to bylaws.

Section 2: amends s. 721.05(34), F.S., relating to definitions.

Section 3: amends s. 721.07(5)(t)3.a.(XI)(A), F.S., relating to public offering statement.

Section 4: amends s. 721.15(7), F.S., relating to the use of estoppel letters in resale transfer transactions.

Section 5: amends s. 721.17, F.S., relating to timeshare resale transfer services.

Section 6: amends s. 721.82(9)(d), F.S., relating to definitions.

Section 7: amends s. 721.84(6), F.S., relating to appointment of a registered agent and duties.

Section 8: amends s. 721.855(2)(c)1., F.S., relating to procedure for the trustee foreclosure of assessment liens.

Section 9: amends s. 721.856(2)(b)1., F.S., relating to procedure for the trustee foreclosure of mortgage liens.

Section 10: provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference has not met to determine the impact of this bill on state prison beds, but the bill creates a new third degree unranked felony which may have an insignificant impact on prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill is expected to produce indeterminate, but likely insignificant, expenditures related to new and more severe criminal penalties.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate, nor reduce the percentage of sales tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

It appears that rule 61B-40.006, F.A.C., may need to be amended in order to address the changes to s. 721.07, F.S., relating to reserve calculations using the pooling accounting method.

Current law appears to provide sufficient rulemaking authority to the Department of Business and Professional Regulation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

At the March 22, 2013 meeting of the Regulatory Affairs Committee, three amendments and an amendment to amendment two were adopted. The bill was reported favorably as a Committee Substitute.

The first amendment provides definitions for the terms “resale transfer agreement” and “timeshare interest transfer services.”

The second amendment created a provision to regulate the timeshare resale transfer transactions. Specifically, the amendment:

- Requires a managing entity to provide an estoppel letter within 30 days, upon request, which closely follows estoppel provisions that currently exist for condominiums.
- Requires timeshare transfer service providers to deliver a written agreement to consumers that must include certain information.
- Requires any fees for timeshare resale transfer services to be held by a third party escrow agent until the services are completed.
- Sets standards for the release of escrowed funds, and provides an opportunity to dispute performance.
- Prohibits the transfer of a timeshare interest to someone a person “knows” does not have the ability, means, or intent to fulfill the financial obligations of ownership.
- Provides that a violation of the prohibited transfer provisions can be enforced by the timeshare managing entity in a private right of action.
- Provides that a violation of the contract requirement or escrow provisions shall be a violation of Ch. 721, F.S.
- Provides exemptions for resale advertisers, real estate brokers, and timeshare developers and managing entities from certain provisions of the subsection

The third amendment fixed a clerical error.

The analysis is drafted to the Committee Substitute.