

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/SB 932

INTRODUCER: Fiscal Policy Committee and Senator Stargel

SUBJECT: Timeshares

DATE: April 21, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<b>Favorable</b>
2.	<u>Wiehle</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Fav/CS</b>

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**I. Summary:**

CS/SB 932 relates to the Florida Vacation Plan and Timesharing Act (act), which establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers. The act is enforced by the Division of Florida Land Sales, Condominiums, and Mobile Homes (division) within the Department of Business and Professional Regulation (department). The bill:

- Provides that an ownership interest in a condominium or cooperative unit or a beneficial interest in a timeshare trust is required for such interests to qualify as timeshare estates;
- Revises the definitions for nonspecific and specific multisite timeshare plans to provide that the plans may include interests other than timeshare licenses or personal property timeshare interests;
- Revises the required disclosures for public offering statements in multisite timeshare plans;
- Revises the requirements for amendments to timeshare instruments in regards to component sites;
- Expands the limitation on liability for developers who, in good faith attempt to and substantially comply with, all the provisions of the act;
- Requires the disclosure of lease terms in timeshare trusts;
- Repeals the requirement for judicial approval of transactions involving timeshare trust property;
- Creates a procedure of the extension or termination of timeshare plans;
- Creates a procedure for the transfer of the reservation system and owner data when a managing entity is discharged;
- Requires all multisite timeshare plans to disclose the term of each component site plan and prominently disclose the term of component sites which are shorter than the term of the plan;
- Excludes component site common expenses and ad valorem expenses from the cap on annual increases in common expense assessments;

- Allows for substitute and replacement accommodations that are better than the existing accommodations; and
- Revises the limitations on substitute accommodations.

The bill has no fiscal impact

## II. Present Situation:

A timeshare interest is a form of ownership of real and personal property.<sup>1</sup> In a timeshare, the real property is typically a condominium unit or a cooperative unit in which multiple parties hold the right to use. Each owner of a timeshare interest is allotted a period of time (typically 1 week) in which he or she may use the property.

The Florida Vacation Plan and Timesharing Act, ch. 721, F.S., establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers and prospective purchasers.<sup>2</sup> Chapter 721, F.S., applies to all timeshare plans consisting of more than 7 timeshare periods over a period of at least 3 years in which the accommodations and facilities are located within this state or offered within this state.<sup>3</sup> Part I of ch. 721, F.S., relates to vacation plans and timesharing and Part II of ch. 721, F.S., relates to multisite vacation and timeshare plans that are also known as vacation clubs.

According to a report prepared by the American Resort Development Association (ARDA), 23 percent of the estimated 1,540 timeshare resorts in the United States were located in Florida as of December 31, 2013.<sup>4</sup>

### Definitions

A timeshare plan is any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, or right-to-use agreement or by any other means, where a purchaser, for consideration, receives ownership rights in or a right to use accommodations and facilities, if any, for a period of time less than a full year during any given year, but not necessarily for consecutive years.<sup>5</sup> The term includes both personal property timeshare and real property timeshare plans.<sup>6</sup>

Each timeshare plan, must have a managing entity, which must be the developer, a separate manager or management firm, or an owners' association. The managing entity operates or maintains the timeshare plan.<sup>7</sup>

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<sup>1</sup> See s. 721.05(36), F.S.

<sup>2</sup> Section 721.02(2) and (3), F.S.

<sup>3</sup> Section 721.03, F.S.

<sup>4</sup> ARDA International Foundation, *Banner Year for Timeshare Industry*, available at <http://www.arda.org/arda/news-information/default.aspx?id=4675&libID=4694> (last visited April 15, 2015).

<sup>5</sup> Section 721.05(39), F.S.

<sup>6</sup> A "personal property timeshare plan," is a timeshare plan in which the accommodations are comprised of personal property that is not permanently affixed to real property; and a "real property timeshare plan," is a timeshare plan in which the accommodations of the timeshare plan are comprised of or permanently affixed to real property.

<sup>7</sup> Section 721.13(1)(a), F.S. The duties of a managing entity are detailed in s. 721.13(3), F.S.

A timeshare unit is an accommodation<sup>8</sup> of a timeshare plan which is divided into timeshare periods or a condominium unit in which timeshare estates have been created.<sup>9</sup>

A “timeshare estate” is a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof.<sup>10</sup> The term also includes an interest in a condominium unit, a cooperative unit, or a trust. The definition does not specify whether the term 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.

A “timeshare license” is the right to occupy a timeshare unit, which right is not a personal property timeshare interest or a timeshare estate.<sup>11</sup> A “timeshare interest” is a timeshare estate, a personal property timeshare interest, or a timeshare license.<sup>12</sup>

### **Multisite Timeshare Plans**

A “multisite timeshare plan” is any method, arrangement, or procedure with respect to which a purchaser obtains a recurring right to use and occupy accommodations or facilities of more than one component site through use of a reservation system.<sup>13</sup> The reservations system requires purchasers to compete with other purchases in the same multisite timeshare plan.<sup>14</sup> There are two different types of multisite timeshare plans, nonspecific and specific.

A “nonspecific multisite timeshare plan” is a multisite timeshare plan *containing timeshare licenses or personal property timeshare interests*, which a purchaser receives a right to use all of the accommodations and facilities, if any, of the multisite timeshare plan through the reservation system, but no specific right to use any particular accommodations and facilities for the remaining term of the multisite timeshare plan in the event that the reservation system is terminated for any reason prior to the expiration of the term of the multisite timeshare plan.<sup>15</sup>

Whereas, a “specific multisite timeshare plan” is a multisite timeshare plan *containing timeshare licenses or personal property timeshare interests*, which a purchaser receives a specific right to use accommodations and facilities, if any, at one component site of a multisite timeshare plan, together with use rights in the other accommodations and facilities of the multisite timeshare plan created by or acquired through the reservation system.<sup>16</sup>

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<sup>8</sup> “Accommodation” means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, campground, cruise ship cabin, houseboat or other vessel, recreational or other motor vehicle, or any private or commercial structure which is real or personal property and designed for overnight occupancy by one or more individuals. s. 721.05, F.S.

<sup>9</sup> See ss. 721.05(41) and 718.103(26), F.S.

<sup>10</sup> Section 721.05(34), F.S.

<sup>11</sup> Section 721.05(37), F.S.

<sup>12</sup> Section 721.05(36), F.S.

<sup>13</sup> Section 721.52(4), F.S. The purchaser may or may not be able to elect to stop participating in the multisite timeshare plan.

<sup>14</sup> Section 721.52(6), F.S.

<sup>15</sup> Section 721.52(5), F.S.

<sup>16</sup> Section 721.52(7), F.S.

## **Public Offering Statement**

Prior to offering any timeshare plan, the developer of a timeshare plan must file a public offering statement, which must include certain information and disclosures, with the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation.<sup>17</sup>

The 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.<sup>18</sup> A common expense to be paid to the managing entity is a reserve for deferred maintenance and capital expenditures. Any amendment to an approved offering statement must be filed with the division for approval before it may become effective.<sup>19</sup>

Public offering statements and amendments to timeshare instruments for component sites located in Florida are not required to be provided to purchasers who do not receive a timeshare estate or an interest in a specific multisite timeshare plan in that component site.<sup>20</sup>

A developer who, in good faith, attempts to comply with the requirements for public offering statements and if, in fact, he or she has substantially complied with the disclosure requirements, nonmaterial errors or omissions will not be actionable.<sup>21</sup>

## **Leasehold Accommodations in a Timeshare Trust**

Sections 721.08(2)(c) and 721.53(1)(e), F.S., which regulate timeshare trusts, do not specify whether leasehold accommodations may be included in a timeshare trust and how they should be disclosed in a public offering statement or to interestholders.

## **Disposition of Timeshare Trust Property**

Any transfer or encumbrance of timeshare trust property must be approved by the voting interests of the timeshare plan and approved by a court.<sup>22</sup> In non-multisite timeshare plans the division has standing to advise the court on its interpretation of the statute as it relates to the petition to transfer.<sup>23</sup>

## **Transfer of a Reservation System Following the Discharge of the Managing Entity**

Section 721.14, F.S., provides for the discharge of the management entity for a timeshare plan after it has been purchased but does not provide for the disposition of the reservation system and the data in that system in the event the managing entity is discharged.

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<sup>17</sup> Sections 721.07 and 721.55, F.S.

<sup>18</sup> Section 721.07(5)(t)3., F.S.

<sup>19</sup> Section 721.07(3)(a)1., F.S.

<sup>20</sup> Sections 721.07(3) and 721.551(2), F.S.

<sup>21</sup> Sections 721.07(5) and 721.55(5), F.S.

<sup>22</sup> Sections 721.08(2)(c) and 721.53(1)(e), F.S.

<sup>23</sup> Section 721.08(2)(c), F.S.

The reservation system of a nonspecific multisite timeshare plan is considered a facility of the timeshare plan. However, the reservation system is not a facility of any specific multisite timeshare plan, nor is it a facility of any multisite timeshare plan in which timeshare estates are offered.<sup>24</sup>

Section 721.56(5)(a), F.S., permits the manager or management firm and the purchasers or owners' association to agree that the manager or management firm own the reservation system and will continue to own the system in the event of a discharge of the management entity. In regards to the data in the reservation system, s. 721.56(5)(b), F.S., provides the procedure and criteria for establishing a trust for the reservation system of a nonspecific multisite timeshare plan in the event the plan's managing entity is terminated.

### **Term of Nonspecific Multisite Timeshare Plans and other Required Disclosures**

A person cannot represent to a purchaser of a nonspecific multisite timeshare plan that the term of the plan for that purchaser is longer than the shortest term of availability of any of the accommodations included in the plan at the time of purchase.<sup>25</sup> However, for other specific multisite timeshare plans, the term of each component site within the timeshare plan must be disclosed in the multisite timeshare plan public offering statement.<sup>26</sup>

A public offering statement for a multisite timeshare plan must include a description of the purchaser's liability for common expenses which must include certain information specified in s. 721.55(4)(h), F.S.

### **Substitutions and Deletions for Multisite Timeshare Plans**

Section 721.552(2), F.S., permits substitutions of accommodations and facilities for nonspecific multisite timeshare plans that are "substantially similar" to the existing accommodations and facilities. Substitutions are limited to no more than 25 percent of the available accommodations at a given component site per year. Before a substitution occurs, notice must be provided to all the purchasers of the timeshare plan. However, under limited circumstances, a managing entity may substitute all accommodations in a given year if a written plan of substitution has been provided to each purchaser of the timeshare plan and approved by a majority of purchasers and a majority of the board of administration.<sup>27</sup>

## **III. Effect of Proposed Changes:**

### **Definitions (Section 1)**

The bill amends s. 721.05(34), F.S., to revise the definition of the term "timeshare estate" to provide that an ownership interest in a condominium or cooperative unit or a beneficial interest in a timeshare trust *coupled* with a right to occupy a timeshare unit is required for such interest to

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<sup>24</sup> Section 721.56(5), F.S.

<sup>25</sup> Section 721.54, F.S.

<sup>26</sup> Section 721.55(4)(a), F.S.

<sup>27</sup> Section 721.552(2), F.S.

qualify as a timeshare estate. The bill also provides that a beneficial trust in a qualifying multisite timeshare trust is also a timeshare estate.

### **Public Offering Statement (Sections 2 and 9)**

The bill amends s. 721.07(3), F.S., to provide that public offering amendments to timeshare instruments for component sites located in this state are only required to be delivered to purchasers who receive a specific interest in that component site.

The bill amends s. 721.07(5), F.S., to expand the limitation on liability for developers who have in good faith attempted to and substantially complied with all the provisions of ch. 721, F.S. The bill specifies that developer has the burden of proof with regards to proving compliance. Current law limits the good faith limitation on liability to violations of the disclosure requirements. The bill provides that any nonmaterial errors, omissions, or violations of ch. 721, F.S., for which a developer has limited liability under this section, are not considered violations of ch. 721, F.S., and do not give rise to any purchaser cancellation rights. The bill provides a comparable amendment to s. 721.55(5)(b), F.S., relating to multisite timeshare plans.

### **Leasehold Accommodations in a Timeshare Trust (Sections 3 and 7)**

The bill amends s. 721.08(2)(c)4.a., F.S., to provide that if the accommodations or facilities of a single-site timeshare trust plan are subject to a lease, the unexpired term of the lease must be disclosed as the term of the timeshare plan. The bill provides a comparable amendment to s. 721.53(1)(e), F.S., relating to multisite timeshare plans.

### **Disposition of Timeshare Trust Property (Sections 3 and 7)**

The bill amends ss. 721.08(2)(c)4.b. and 721.53(1)(e), F.S., to provide that, subject to the statutory provisions regulating changes to component site accommodations or facilities in s. 721.552, F.S., a vote of the voting interests of the timeshare plan is not required for substitution or automatic deletion of accommodations or facilities in timeshare trusts.

The bill also amends ss. 721.08(2)(c) and 721.53(1)(e), F.S., to repeal the requirement for judicial approval of any transfer or encumbrance of timeshare trust property after approval by the voting interests of the timeshare plan. The bill also amends s. 721.08(2)(c), F.S., to repeal the provision granting the division standing to advise the court in a transfer related to non-multisite timeshare plans.

### **Extension or Termination of Timeshare Plans (Section 4)**

The bill creates s. 721.125, F.S., to provide a process for timeshare instruments that have been in existence for at least 25 years and are silent as to how the plan terminates or is extended. The bill requires an affirmative vote or written consent from 60 percent of all the voting interests in the timeshare plan to extend or terminate the term of a timeshare plan.

If the term of a timeshare plan is extended, all rights, privileges, duties, and obligations created under applicable law or the timeshare instrument continue in full force. If a timeshare plan is

terminated, the termination has immediate effect pursuant to applicable law and the timeshare instrument. A termination or extension vote or consent proposed for a component site of a multisite timeshare plan located in this state is effective only if the person authorized to make additions or substitutions approves.

### **Transfer of a Reservation System Following the Discharge of the Managing Entity (Sections 5 and 12)**

The bill creates s. 721.14(4)(a), F.S., to permit the owners' association and the manager or management firm to enter into a written agreement for the transition procedures and related time periods in the event the manager or management firm is discharged.

Section 721.14(4)(b), F.S., provides a procedure to be followed in the event there is no written agreement for the transfer of relevant owner data and reservation system information. It requires that the managing entity transfer all of the relevant data to the owners' association within 90 days after receiving notice of the termination vote. The bill specifies certain information that must be included in the transfer. Within 10 days after the completed transfer of the data, the timeshare plan must reimburse the managing entity for all reasonable costs incurred in effecting the transfer of information.

The bill repeals the provisions in s. 721.56(5), F.S., related to the transfer of the reservation system and owner data for multisite timeshare plans. The procedure in s. 721.14(4), F.S., applies to terminations of managing entities of single site or multisite timeshare plans.

### **Definitions – Multisite Timeshare Plans (Section 6)**

The bill amends s. 721.52, F.S., to amend the definitions of the terms “nonspecific multisite timeshare plan” and “specific multisite timeshare plan” to repeal the condition that such plans contain timeshare licenses or personal property timeshare interests.

### **Term of Nonspecific Multisite Timeshare Plans and other Required Disclosures (Sections 8 and 9)**

The bill amends ss. 721.54 and 721.55(4)(a), F.S., to repeal the distinction between specific and nonspecific multisite timeshare plans in regards to the duty to disclose the term of each component site within the timeshare plans. The bill requires that both specific and nonspecific multisite timeshare plans disclose the term of each component site within the timeshare plan. The term of each component site, which is shorter than the term of the multisite timeshare plan, must be disclosed in a conspicuous type.

The bill also amends s. 721.55(4)(h), F.S., to specify that the component site common expenses and ad valorem taxes may not be included in calculating the total common expense assessment, which must be included in the multisite timeshare public offering statement, for the multisite plan in any given year.

**Multisite Timeshare Estates (Sections 9, 10, 11, and 13)**

The bill amends s. 721.55(5)(7), F.S., relating to the required disclosures in the public offering statement, s. 721.551(2), F.S., relating to the delivery of the public offering statement, and s. 721.552(2), F.S., relating to amendments to multisite timeshare plans, to repeal references to plans offering a timeshare estate pursuant to s. 721.57, F.S.

The bill also amends s. 721.57(2), F.S., to repeal the reference to a timeshare trust in the context of a specific multisite timeshare plan.

**Substitutions and Deletions for Multisite Timeshare Plans (Section 11)**

The bill amends s. 721.552(2), F.S., to provide for the substitution of accommodations. It modifies the notice required before a substitution will occur to include a statement that purchasers have the right to object to the proposed substitution. The 25 percent limitation on substitutions is repealed and replaced with the following provisions:

- If the developer is authorized to make substitutions, the developer is annually limited to substitution of 10 percent of the annual use availability in the multisite timeshare plan calculated in 7-day increments;
- If the managing entity is authorized to make substitutions, and the managing entity is under common ownership or control with the developer, the managing entity is annually limited to substitution of 10 percent of the annual use availability in the multisite timeshare plan calculated in 7-day increments;
- If the managing entity is authorized to make substitutions, and the managing entity is not under common ownership or control with the developer, the managing entity is annually limited to substitution of 25 percent of the annual use availability in the multisite timeshare plan calculated in 7-day increments; and
- If at least 10 percent of purchasers in the timeshare plan object to a proposed substitution within 21 days after the notice of the substitution, a meeting of the purchasers must be held within 30 days after the end of the 21 period. Unless the proposed substitution is rejected by a majority of purchasers voting and at least 25 percent of the purchasers cast votes, it is deemed approved.

The above requirements do not apply if the timeshare instrument provides that the purchasers have no right to consent to a proposed substitution and if the proposed substitution has been approved pursuant to s. 721.552(2)(f), F.S.

The bill repeals the provision in s. 721.552(2)(f), F.S., which permits a managing entity to substitute all accommodations pursuant to a plan approved by a majority of purchasers and a majority of the board. The bill amends this provision to permit substitutions by purchasers without limit if the proposed substitution is approved in advance by a majority of voting purchasers, provided at least 25 percent of the total number of purchasers cast votes.

The bill creates s. 721.552(2)(g), F.S., to provide that the trustee of a timeshare trust may convey title to any accommodation and facility that has been designated or approved for substitution when directed by the authorized person without any further vote or other authorization from the purchasers of the multisite timeshare plan.



Currently, s. 721.552(3), F.S., allows for the automatic deletion of component sites only if a sufficient number of purchasers of the plan will also be deleted to maintain a one-to-one right to use ratio. The bill amends this provision to also allow for automatic deletions if replacement accommodations that are substantially similar to or better than the deleted accommodations are provided.

**Effective Date (Section 14)**

The bill is effective on July 1, 2015.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 721.05, 721.07, 721.08, 721.125, 721.14, 721.52, 721.53, 721.54, 721.55, 721.551, 721.552, 721.56, and 721.57.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Fiscal Policy on April 20, 2015:**

The committee substitute:

- Under the bill, developers must provide public offering statements and has limited liability for nonmaterial errors or omissions. The CS provides that the developer has the burden of proof when showing that he or she complied with the requirements of the public offering statement.
- Removes the amendment to s. 721.27, F.S., which clarified that only one annual managing entity fee was required.
- Removes s. 721.58, F.S., which repealed the annual fee for multistate timeshare plans.

**B. Amendments:**

None.