

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.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 932

INTRODUCER: Senator Stargel

SUBJECT: Timeshares

DATE: March 30, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2.	<u>Wiehle</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>FP</u>	_____

I. Summary:

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;
- Provides that only one annual fee is due from a managing entity;
- 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.

According to the department, the bill reduces the department's revenues by \$338,704 in FY 2015-16.

II. Present Situation:

Timeshares

A timeshare interest is a form of ownership of real and personal property.¹ According to a report prepared by the American Resort Development Association (ARDA), Florida had 23 percent of the estimated 1,540 timeshare resorts in the United States as of December 31, 2013.²

Part I of ch. 721, F.S., relates to vacation plans and timesharing. Part II of ch. 721, F.S., relates to multisite vacation and timeshare plans that are also known as vacation clubs.

In a timeshare, the real property is typically a condominium unit or a cooperative unit. A timeshare property is typically a resort in which multiple parties hold the right to use the property. Each owner of a timeshare interest is allotted a period of time (typically one 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.³ Chapter 721, F.S., applies to all 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.⁴

A timeshare unit is an accommodation of a timeshare plan which is divided into timeshare periods or a condominium unit in which timeshare estates have been created.⁵

A timeshare plan is any arrangement, plan, scheme, or similar device whereby a purchaser gives consideration for ownership rights in, or a right to use, any accommodations, and facilities for less than a full year during any given year, but not necessarily for consecutive years.⁶

Section 721.05(34), F.S., defines a "timeshare estate" as "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." The term also includes an interest in a condominium unit, a

¹ See s. 721.05(36), F.S.

² ARDA International Foundation, *Banner Year for Timeshare Industry*, a copy of the report is available at: <http://www.arda.org/news-information/default.aspx> (last visited March 9, 2015).

³ Section 721.02(2) and (3), F.S.

⁴ Section 721.03, F.S.

⁵ See ss. 721.05(41) and 718.103(26), F.S.

⁶ Section 721.05(39), F.S.

cooperative unit, or a trust. This 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.

Section 721.05(36), F.S., provides that a "timeshare interest" means a timeshare estate, a personal property timeshare interest, or a timeshare license.

Section 721.05(37), F.S., provides that a "timeshare license" is the "right to occupy a timeshare unit, which right is not a personal property timeshare interest or a timeshare estate."

A timeshare plan under s. 721.05(39), F.S., is any "arrangement, plan, scheme, or similar device, other than an exchange program" 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." The term includes both personal property timeshare and real property timeshare plans.⁷

Section 721.52(4), F.S., defines a "multisite timeshare plan" to mean:

any method, arrangement, or procedure with respect to which a purchaser obtains, by any means, a recurring right to use and occupy accommodations or facilities of more than one component site, only through use of a reservation system, whether or not the purchaser is able to elect to cease participating in the plan. However, the term "multisite timeshare plan" shall not include any method, arrangement, or procedure wherein:

- (a) The contractually specified maximum total financial obligation on the purchaser's part is \$3,000 or less, during the entire term of the plan; or
- (b) The term is for a period of 3 years or less, regardless of the purchaser's contractually specified maximum total financial obligation, if any. For purposes of determining the term of such use and occupancy rights, the period of any optional renewals which a purchaser, in his or her sole discretion, may elect to exercise, whether or not for additional consideration, shall not be included. For purposes of determining the term of such use and occupancy rights, the period of any automatic renewals shall be included unless a purchaser has the right to terminate the membership at any time and receive a pro rata refund or the purchaser receives a notice no less than 30 days and no more than 60 days prior to the date of renewal informing the purchaser of the right to terminate at any time prior to the date of automatic renewal.

Multisite timeshare plan does not mean an exchange program as defined in s. 721.05. Timeshare estates may only be offered in a multisite timeshare plan pursuant to s. 721.57.

⁷ A "personal property timeshare plan," which means 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," which means a timeshare plan in which the accommodations of the timeshare plan are comprised of or permanently affixed to real property.

Section 721.52(5), F.S., defines a “nonspecific multisite timeshare plan” to mean:

“a multisite timeshare plan *containing timeshare licenses or personal property timeshare interests*, with respect to 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.” [Emphasis added.]

Section 721.52(7), F.S., defines a “specific multisite timeshare plan” to mean:

“a multisite timeshare plan *containing timeshare licenses or personal property timeshare interests*, with respect to 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.” [Emphasis added.]

According to the American Resort Development Association (ARDA),⁸ which represents the vacation ownership and resort development industries (timeshares), there has been a recent development in nonspecific timeshare *estate* plans in which the purchaser receives a timeshare estate in a trust and one in a specific component site and such may not be clearly consistent with definitions for specific and nonspecific multisite timeshare plans.

A timeshare plan developer must file a public offering statement and the required exhibits with the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation, prior to offering the timeshare plan to the public.⁹

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.¹⁰ 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.¹¹ A common expense to be paid to the managing entity is a reserve for deferred maintenance and capital expenditures.

A timeshare unit is an accommodation of a timeshare plan which is divided into timeshare periods¹² or a condominium unit in which timeshare estates have been created.¹³ A timeshare plan is any arrangement, plan, or similar device in which a purchaser gives consideration for

⁸ For more information about ARDA, see <http://www.arda.org/who-we-are/default.aspx> (last visited March 5, 2015).

⁹ Section 721.07, F.S.

¹⁰ Section 721.13(1)(a), F.S. The duties of a managing entity are detailed in s. 721.13(3), F.S.

¹¹ Section 721.07(5)(t)3., F.S.

¹² Section 721.05(41), F.S.

¹³ Section 718.103(26), F.S.

ownership rights in, or a right to use, any accommodations and facilities for less than a full year during any given year, but not necessarily for consecutive years.¹⁴

Public Offering Statement

Prior to offering any timeshare plan, a developer must submit a public offering statement, which must include certain information and disclosures, to the division for approval.¹⁵ Any amendment to an approved offering statement must be filed with the division for approval before it may become effective.¹⁶

Sections 721.07(3) and 721.551(2), F.S., provide that public offering statements and amendments to timeshare instruments for component sites located in this state 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.

Sections 721.07(5) and 721.55(5), F.S., limit liability for nonmaterial errors or omissions for any developer who, in good faith, attempts to comply with the requirements of ss. 721.07 or 721.55, F.S., related to public offering statements, if, in fact, he or she has substantially complied with the disclosure requirements of ch. 721, F.S.

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

Sections 721.08(2)(c) and 721.53(1)(e), F.S., require that any transfer or encumbrance of timeshare trust property approved by the voting interests of the timeshare plan must be approved by a court. Section 721.08(2)(c), F.S., relating to non-multisite timeshare plans, also provides that the division has standing to advise the court on its decision.

Transfer of Reservation System Following the Discharge of the Managing Entity

Section 721.14, F.S., provides for the discharge of management entity for a timeshare plan after it has been purchased. Section 714.14, F.S., does not provide for the disposition of the reservation system and the data in that system in the event the managing entity is discharged.

Section 721.56(5), F.S., provides that 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 pursuant to s. 721.57, F.S., relating to the offering of timeshare estates in multisite timeshare plans.

¹⁴ Section 721.05(39), F.S.

¹⁵ Sections 721.07 and 721.55, F.S.

¹⁶ Section 721.07(3)(a)1., F.S.

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 pursuant to s. 721.14, F.S. 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.

Annual Managing Entity Fee

Section 721.27, F.S., requires each managing entity of a timeshare plan located in this state to pay an annual fee of \$2 for each 7 days of annual use availability that exists within the timeshare plan at that time. Section 721.27, F.S., limits the maximum amount of such filing fee to \$25,000 or the total filing fee due with respect to the timeshare units in the multisite timeshare plan that are located in this state pursuant to s. 721.07(4)(a), F.S.,¹⁷ whichever is greater.

Section 21.58, F.S., also provides that managing entities of multisite timeshare plans must pay the annual fee required by s. 721.27, F.S. According to ARDA, these provisions operate to require managing entities to pay annual fees twice if they have timeshare estates in both a single site plan and a multisite plan.

Term of Nonspecific Multisite Timeshare Plans and other Required Disclosures

Section 721.54, F.S., prohibits a person from representing 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. However, for other specific multisite timeshare plans, s. 721.55(4)(a), F.S., requires that the term of each component site within the timeshare plan be disclosed in the multisite timeshare plan public offering statement.

Section 721.55(4)(h), F.S., provides the disclosures that must be included in a multisite timeshare plan public offering statement. It requires that the offering statement must also include a description of the purchaser's liability for common expenses and specifies the information that must be included in that description.

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

¹⁷ Section 721.07 (4)(a), F.S., provides a fee upon the filing of a filed public offering statement. The required filing fee is \$2 for each 7 days of annual use availability in each timeshare unit that may be offered as a part of the proposed timeshare plan pursuant to the filing.

provided to each purchaser of the timeshare plan and approved by a majority of purchasers and a majority of the board of administration.

III. Effect of Proposed Changes:

Definitions

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 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

The bill amends ss. 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 provides a comparable amendment to s. 721.55(5)(b), F.S., relating to multisite vacation and timeshare plans. The bill amends ss. 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. 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 these 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

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

The bill amends ss. ss. 721.08(2)(c) 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. ss. 721.08(2)(c) and 721.53(1)(e), F.S., to delete 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 delete 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

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 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 Reservation System Following the Discharge of the Managing Entity

The bill creates s. 721.14(4), 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 the information to the owners' association within 90 days after receiving notice of the termination vote. 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 deletes the provisions in s. 721.56(5), F.S., related to the transfer of reservation system and owner data for multisite timeshare plans. The procedure in s. 721.14(4), F.S., apply to terminations of managing entities of single site or multisite timeshare plans.

Annual Managing Entity Fee

The bill amends s. 721.27, F.S., to provide that only one annual fee is due and payable for any 7 days of annual use availability that is included within both a single site and multisite timeshare plan.

The bill also amends s. 721.58, F.S., to delete the annual fee requirement for multisite timeshare plans.

Definitions – Multisite Timeshare Plans

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 delete the condition that such plans contain timeshare licenses or personal property timeshare interests.

Term of Nonspecific Multisite Timeshare Plans and other Required Disclosures

The bill amends ss. 721.54, F.S., and 721.55(4)(a), F.S., to delete 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 and disclose, in conspicuous type, the term of each component site that is shorter than the term of the timeshare plan.

Current law, s. 721.55(4)(h), F.S., caps the annual increase in common expense assessments for multisite timeshare plans in a given year at 125 percent of the previous year. There are currently no exceptions to the cap.

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

Multisite Timeshare Estates

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 delete references to plans offering timeshare estate pursuant to s. 721.57, F.S.

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

Substitutions and Deletions for Multisite Timeshare Plans

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;
- 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;
- 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; and
- If at least 10 percent of purchasers in the timeshare plan object to a proposed substitution, a meeting of the purchasers must be held. Unless the substitution is rejected by a majority of purchasers voting, it is deemed approved.

The bill deletes the provision in s. 721.552(2), 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

The bill provides an effective date of 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:

The bill eliminates duplicate payment of managing entity annual fees by managing entities that manage both single site and multisite timeshare plans. According to the department, the amount of savings to these managing entities for FY 2015-16 is estimated to be \$338,704.

C. Government Sector Impact:

The bill eliminates duplicate payment of managing entity annual fees by managing entities that manage both single site and multisite timeshare plans. The department

estimates that this will reduce revenue by \$338,704 for FY 2015-16, \$370,000 for FY 2016-17, and \$400,000) for FY 2017-18.

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, 721.27, 721.52, 721.53, 721.54, 721.55, 721.551, 721.552, 721.56, 721.57, and 721.58.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.