

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 Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/SB 496

INTRODUCER: Regulated Industries Committee and Senator McClain

SUBJECT: Timeshare Management Firms

DATE: April 14, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Betta</u>	<u>AEG</u>	<u>Favorable</u>
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 496 revises regulations related to timeshare plans and their management. It clarifies that timeshare plans are governed by ch. 721, F.S., rather than created under that chapter. The bill provides that community association managers (CAMs) and CAM firms who manage timeshare plans are subject to s. 721.13, F.S., relating to the managing entities of timeshare plans, rather than to part VIII of ch. 468, F.S., relating to the regulation of CAMs, including record-keeping requirements that are applicable to the managing entities of timeshare plans.

The bill also exempts CAMs and CAM firms managing timeshares from the conflict-of-interest provisions that are applicable to the CAMs and community associations, such as condominium and homeowners' associations. The bill provides that CAMs and CAM firms managing timeshares are subject to the related party transaction disclosure that the managing entity of timeshare plans must make in the annual budget. Under current law, CAMs managing a community association must disclose any activity or proposed service which may reasonably be construed by the association's board to be a conflict of interest, and associations are required to follow a process for addressing potential conflicts of interest, such as considering multiple bids for the activity or proposed service.

The bill provides that timeshare management firms and their licensed employees are subject to the regulations governing timeshare managing entities, including violations related to refusal to mail any material requested by the purchaser and any failure of the managing entity to faithfully discharge the fiduciary duty to purchasers. The bill also includes the timeshare management

firm, and any individual licensed as a CAM employed by the timeshare management firm, in the exemption from liability for monetary damages in s. 721.13(13)(a), F.S., as provided in s. 617.0834, F.S., unless the officer, director, agent, or firm does not qualify for an exemption.

Additionally, the bill requires timeshare boards to meet at least once annually, instead of at least once each quarter as required for the boards of condominium associations.

The bill provides that, if a management firm provides goods or services through arrangements with a parent, affiliate, or subsidiary of the timeshare management firm, the existence of such arrangements must be disclosed annually to the members of that owners' association pursuant to s. 721.13(13)(c)1., F.S., in the management contract, or by mail sent to each owner's notice address, in the notice of an annual or special meeting of the owners, by posting on the website of the applicable timeshare plan, or by any owner communication used by the managing entity.

The bill has an insignificant negative fiscal impact on state revenues and expenditures that can be absorbed within current resources. **See Section V., Fiscal Impact Statement.**

The bill takes effect on July 1, 2025.

II. Present Situation:

A timeshare interest is a form of ownership of real and personal property.¹ In a timeshare, multiple parties hold the right to use a condominium unit or a cooperative unit. Each owner of a timeshare interest is allotted a period of time (typically one week) during which the owner has the exclusive right to 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.² Chapter 721, F.S., applies to all timeshare plans consisting of more than seven timeshare periods over a period of at least three years when the accommodations and facilities are located or offered within this state.³ 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.

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) of the Department of Business and Professional Regulation (DBPR or department) administers ch. 721, F.S.

Condominiums

A condominium is a “form of ownership of real property created under ch. 718, F.S.”⁴ the “Condominium Act.” Condominium unit owners are in a unique legal position because they are exclusive owners of property within a community, joint owners of community common

¹ See s. 721.05(36), F.S.

² Section 721.02(2) and (3), F.S.

³ Section 721.03, F.S.

⁴ Section 718.103(11), F.S.

elements, and members of the condominium association.⁵ For unit owners, membership in the association is an unalienable right and required condition of unit ownership.⁶ The association that operates a condominium, including a timeshare condominium, must be a Florida corporation for profit or a Florida corporation not for profit.⁷

A condominium association is administered by a board of directors referred to as a “board of administration.”⁸ The board of administration is comprised of individual unit owners elected by the members of a community to manage community affairs and represent the interests of the association. Association board members must enforce a community's governing documents and are responsible for maintaining a condominium's common elements which are owned in undivided shares by unit owners.⁹

Section 718.112(2)(c), F.S., requires the board of administration for a condominium association of 10 or more units to meet at least once each quarter. At least four times per year, the meeting agenda must include an opportunity for members to ask questions. Members have the right to ask questions at meetings with respect to reports on the status of construction or repair projects, status of revenues and expenditures during the current fiscal year, and other issues affecting the condominium.

Definitions - Timeshares

The term “timeshare plan” means 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.¹⁰ The term includes both personal property timeshare and real property timeshare plans.¹¹

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.¹²

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.¹³ The term also includes an interest in a condominium unit, a cooperative unit, or a trust. Whether the

⁵ See s. 718.103, F.S., for the terms used in the Condominium Act.

⁶ *Id.*

⁷ Section 718.111(1)(a), F.S.

⁸ Section 718.103(4), F.S.

⁹ Section 718.103(2), F.S.

¹⁰ Section 721.05(39), F.S.

¹¹ Section 721.05(39)(a), F.S., defines a “personal property timeshare plan,” as a timeshare plan in which the accommodations are comprised of personal property that is not permanently affixed to real property. Section 721.05(39)(b), F.S., defines a “real property timeshare plan,” as a timeshare plan in which the accommodations of the timeshare plan are comprised of or permanently affixed to real property.

¹² See ss. 721.05(41) and 718.103(26), F.S.

¹³ Section 721.05(34), F.S.

term includes both direct and indirect interests in trusts is not specified. An example of an indirect interest in a trust is the interest of 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.¹⁴ A "timeshare interest" is a timeshare estate, a personal property timeshare interest, or a timeshare license.¹⁵

Timeshare Managing Entity

Section 721.13(1), F.S., requires the developer to provide a managing entity for each timeshare plan. The managing entity operates or maintains the timeshare plan.¹⁶ Section 721.13, F.S., provides the duties of a managing entity. The managing entity may be the developer, a separate manager or management firm, or an owners' association.¹⁷

Section 721.13(1)(e), F.S., requires that any managing entity performing community association management must comply with part VIII of ch. 468, F.S. The managing entity must act in the capacity of a fiduciary to the purchasers of the timeshare plan.¹⁸

The managing entity must arrange for an annual audit of the financial statements of the timeshare plan by a certified public accountant licensed by the Board of Accountancy of the DBPR, in accordance with generally accepted auditing standards. The financial statements must be prepared on an accrual basis using fund accounting and presented in accordance with generally accepted accounting principles. A copy of the audited financial statements must be filed with the division for review and forwarded to the board and officers of the owners' association no later than five calendar months after the end of the timeshare plan's fiscal year.¹⁹

The annual budget must contain, as a footnote or otherwise, any related party transaction disclosures or notes which appear in the audited financial statements of the managing entity for the previous budget year. A copy of the final budget must be filed with the division for review within 30 days after the beginning of each fiscal year.²⁰

As a nonprofit corporation, timeshare associations are subject to the provisions of ch. 617, F.S., which provide that a conflict-of-interest transaction is not void or voidable if:²¹

- The fact of such relationship or interest is disclosed or known to the board which authorizes the contract by a vote sufficient for the purpose without counting the votes of such interested directors;
- The fact of such relationship or interest is disclosed to the members entitled to vote on such contract, if any, and they authorize it by vote or written consent; or

¹⁴ Section 721.05(37), F.S.

¹⁵ Section 721.05(36), F.S.

¹⁶ See s. 721.05(22), F.S., defining the term "managing entity."

¹⁷ Section 721.13(1)(a), F.S.

¹⁸ Section 721.13(2)(a), F.S.

¹⁹ Section 721.13(3)(e), F.S.

²⁰ Section 721.13(3)(c)1., F.S.

²¹ Section 617.0832, F.S.

- The contract or transaction is fair and reasonable as to the corporation at the time it is authorized by the board, a committee, or the members.

Community Association Managers

Community association managers (CAMs) are licensed and regulated by the DBPR pursuant to part VIII of ch. 468, F.S. A license is required to practice community association management.²²

The term “community association” means:²³

residential homeowners' association in which membership is a condition of ownership of a unit in a planned unit development, or of a lot for a home or a mobile home, or of a townhouse, villa, condominium, cooperative, or other residential unit which is part of a residential development scheme and which is authorized to impose a fee which may become a lien on the parcel.

Section 468.431(2), F.S., defines “community association management” to mean:

any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration and when the association or associations served contain more than 10 units or have an annual budget or budgets in excess of \$100,000: controlling or disbursing funds of a community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, and coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association.

A license is not required for persons who perform clerical or ministerial functions under the direct supervision and control of a licensed manager or who only perform the maintenance of a community and do not assist in any of the management services.²⁴

Community association managers are regulated by the seven-member Regulatory Council of Community Association Managers. Five of the members must be licensed CAMs, one of whom must be a CAM for a timeshare. The other two must not be CAMs. Members are appointed to four-year terms by the Governor and confirmed by the Senate.²⁵

To become licensed as a CAM, a person must apply to the DBPR to take the licensure examination and submit to a background check. Upon determination that the applicant is of good moral character, the applicant must attend a department-approved in-person training prior to taking the examination.²⁶ Community association managers must successfully complete an exam

²² Section 468.432(1), F.S.

²³ Section 468.431(1), F.S.

²⁴ Section 468.431(2), F.S.

²⁵ Section 468.4315(1), F.S.

²⁶ Section 468.433, F.S.

and pay a fee to become licensed. They must also complete continuing education hours as approved by the council to maintain their licenses.²⁷

CAM Practice Standards and Conflicts of Interest

Section 468.4334, F.S., delineates the professional practice standards for CAMs and CAM firms, including the duty to “discharge the duties performed on behalf of the association as authorized by [ch. 468, F.S.], loyally, skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging unreasonable or excessive fees.”

Section 468.4334(4), F.S., requires CAMs and CAM firms to return all community association records in their possession within 20 business days of termination of a services agreement or a written request, whichever occurs first, with license suspension and civil penalties per day for up to 10 business days for noncompliance. These requirements do not apply to timeshare plans created under ch. 721, F.S. Instead, the applicable time periods for timeshare plans are provided in s. 721.14(4)(b), F.S., relating to the discharge of a managing entity, which provides a 90-day period for the manager or management firm to transfer records after the termination of a managing entity. Section 721.14(2)(a), F.S., provides that an owners' association and a manager or management firm may, in the management contract or other written document, agree to the transition procedures and related time periods to be followed in the event the manager or management firm is discharged, i.e., termination of the management contract.

Section 468.4335, F.S., provides conflict of interest disclosure requirements for CAMs and CAM firms and a process for associations to approve contracts with a CAM or CAM firm, or a relative of such persons,²⁸ that may present a conflict of interest.

A CAM or CAM firm, including the directors, officers, persons with a financial interest in the CAM firm and any relatives of such persons, must disclose to the board of a community association any activity which may reasonably be construed by the board to be a conflict of interest. There is a rebuttable presumption of an existing conflict of interest if a CAM or CAM firm, including directors, officers, persons with a financial interest in a CAM firm, or the relative of such persons:²⁹

- Enters into a contract for goods or services with the association, other than community association management services; and
- Holds an interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.

If a community association receives and considers a bid to provide a good or service that exceeds \$2,500, other than community association management services, from a CAM or CAM firm, including directors, officers, persons with a financial interest in a CAM firm, or a relative of such

²⁷ Sections 468.4336 and 468.4337, F.S.

²⁸ Section 568.4335(6), F.S., provides that the term “relative” means a relative within the third degree of consanguinity by blood or marriage.

²⁹ Section 568.4335(1), F.S.

persons, the association must also solicit multiple bids from other third-party providers of such good or service.³⁰

The proposed activity that may be a conflict of interest must be listed on, and all contracts and transactional documents related to the proposed activity must be attached to the board's meeting agenda and entered into the written minutes of the meeting. The board must approve the contracts with a potential conflict of interest, and all management contracts, by an affirmative vote of two-thirds of all directors present.³¹

If the contract is canceled because the board finds that the CAM or CAM firm has violated the disclosure requirements, the association is liable only for the reasonable value of the management services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other form of penalty for such cancellation.³²

If the activity has not been properly disclosed as a conflict of interest or potential conflict of interest, the contract is voidable and terminates upon the association filing a written notice terminating the contract with the consent of at least 20 percent of the voting interests of the association for the written notice terminating the management services contract.³³

Section 468.436(2)(a), F.S., provides grounds to discipline licensed CAMs and CAM firms for failure to disclose a conflict of interest as required under s. 468.4335, F.S.³⁴

Section 468.438, F.S., requires a CAM firm acting as managing entity of a timeshare plan pursuant to ch. 721, F.S., can only be required to employ at least one individual licensed under part VIII of ch. 468, F.S., at each noncontiguous geographic location at which the management firm provides community association management. No other person providing community association management on behalf of such management firms can be required to hold a license pursuant to this part, provided that any community association management provided is performed under the direct supervision and control of a licensed CAM. A licensed CAM employed by a timeshare management firm assumes responsibility for all community association management performed by unlicensed persons employed by the timeshare management firm.

III. Effect of Proposed Changes:

The bill amends s. 468.4334(4), F.S., to provide that timeshare plans are governed by ch. 721, F.S., instead of created under ch. 721, F.S. It also specifies that s. 721.14(4), F.S., applies for the return of records requirements in s. 468.4334(4), F.S.

The bill creates s. 468.4335(7), F.S., to provide that the conflict-of-interest provisions in s. 468.4335, F.S., for community association managers (CAMs) and CAM firms do not apply to community association management firms that manage a timeshare plan governed by ch. 721, F.S., and that must provide the disclosure under s. 721.13(13)(c)1., F.S.

³⁰ Section 568.4335(2), F.S.

³¹ Section 568.4335(3), F.S.

³² Section 568.4335(4), F.S.,

³³ Section 568.4335(5), F.S.,

³⁴ Section 568.436(2)b.7., F.S.,

The bill creates s. 468.438(3), F.S., to provide that a timeshare management firm and any individual licensed under part VIII of ch. 468, F.S., who is employed by a timeshare management firm are governed by ch. 721, F.S., and not by s. 468.4335, F.S.

The bill deletes s. 721.13(1)(e), F.S., requiring that any managing entity performing community association management must comply with part VIII of ch. 468, F.S.

The bill amends s. 721.13(4), F.S., to provide that it is a violation of ch. 721, F.S., for the board of administration or the manager or management firm to refuse to mail any material requested by the purchaser to be mailed, provided the sole purpose of the materials is to advance legitimate owners' association business. The bill deletes the provision that any failure of managing entity to faithfully discharge the fiduciary duty to purchasers imposed by s. 721.13, F.S., or otherwise comply with that section is a violation of part VIII of ch. 468, F.S.

The bill amends s. 721.13(10), F.S., to provide that any failure of the managing entity to faithfully discharge the fiduciary duty to purchasers imposed by s. 721.13, F.S., or to otherwise comply with the provisions of that section is a violation of ch. 721, F.S., and deletes the provision that such failure is also a violation of part VIII of ch. 468, F.S.

The bill amends s. 721.13(13)(a), F.S., which requires an officer, director, or agent of an owners' association to discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, to include as subject to this requirement a timeshare management firm and any individual licensed under part VIII of ch. 468, F.S., employed by the timeshare management firm.

The bill also includes the management firm and any individual licensed under part VIII of ch. 68, F.S., employed by the timeshare management firm, in the exemption from liability for monetary damages in s. 721.13(13)(a), F.S., as provided in s. 617.0834, F.S., unless the officer, director, agent, or firm does not qualify for exemption for the reasons specified in this paragraph and in s. 617.0834, F.S.³⁵

The bill creates s. 721.13(13)(b), F.S., to provide that the board of administration of a timeshare condominium is required to meet only once each year, unless additional board meetings are called pursuant to a timeshare instrument.

The bill creates s. 721.13(13)(c)1., F.S., to provide that, if a management firm provides goods or services through arrangements with a parent, affiliate, or subsidiary of the timeshare management firm, the existence of such arrangements must be disclosed annually to the members of that owners' association pursuant to s. 721.13(13)(c)1., F.S., in the management contract, or by mail sent to each owner's notice address, in the notice of an annual or special

³⁵ Sections 721.13(13)(a) and 617.0834, F.S., provide that the exemption from liability for monetary damages does not apply if breach or failure duties constitutes a violation of criminal law; constitutes a transaction from which the officer or director derived an improper personal benefit, either directly or indirectly; or constitutes recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

meeting of the owners, by posting on the website of the applicable timeshare plan, or by any owner communication used by the managing entity.

The bill amends s. 721.13(13)(c)2., F.S., to provide that a timeshare management firm and any individual licensed under part VIII of ch. 468, F.S., employed by the timeshare management firm are governed by ss. 721.13 and 468.438, F.S.

Section 721.1(2), F.S., relating to the discharge of a managing entity, is reenacted by the bill to incorporate the amendment made to s. 721.13, F.S.

The bill takes effect July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has an insignificant negative fiscal impact on the Department of Business and Professional Regulation (DBPR); however, the bill is not expected to affect state government revenues and expenditures. According to the DBPR, updates to the DBPR's

licensing computer systems, Versa Regulation, Versa Online, and the QLIK Reporting System to make required configuration changes due to the bill will be made with existing DBPR resources.³⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 468.4334, 468.4335, 468.438, and 721.13.

The bill reenacts section 721.14 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on April 1, 2025:

The committee substitute:

- Amends s. 468.4335(7), F.S., to provide that community association managers (CAMs) and CAM firms that manage a timeshare plan governed by ch. 721, F.S., must provide the disclosure under s. 721.13(13)(c)1., F.S., which requires the managing entities of timeshare plans to provide a related party transaction disclosure in the annual budget;
- Amends s. 468.438(3), F.S., to provide that timeshare management firms are not subject to the conflict-of-interest provisions in s. 468.4335, F.S., for CAMs and CAM firms; and
- Amends s. 721.13(13)(c)1., F.S., to provide that the disclosure in an explanatory note to the annual budget of the fact that goods or services are being provided by a related party of the timeshare management firm or owners' association may be made as an explanatory note to the annual budget pursuant to s. 721.13(13)(c)1., F.S., in the management contract, or by mail sent to each owner's notice address, in the notice of an annual or special meeting of the owners, by posting on the website of the applicable timeshare plan, or by any owner communication used by the managing entity.

- B. **Amendments:**

None.

³⁶ See Department of Business and Professional Regulation, *2025 Agency Legislative Bill Analysis for SB 496* at 6 (Feb. 10, 2025) (on file with the Senate Appropriations Committee on Agriculture, Environment, and General Government).

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
