

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 908

SPONSOR: Committee on Regulated Industries and Senator Webster

SUBJECT: Vacation and Timeshare Plans

DATE: April 14, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill:

- Provides that all owners of timeshare estates in a cooperative unit are jointly and severally liable to the cooperative association for assessments and other charges assessed against the cooperative unit, unless the cooperative documents provide otherwise.
- Includes in timeshare common expenses any past due and uncollected ad valorem taxes assessed against the timeshare development. This allows the unpaid taxes of an owner of a timeshare interest to be passed on as a common expense to the other timeshare owners.
- Redefines the term “developer” in a way that exempts a successor or concurrent developer from liability inuring to a predecessor or concurrent developer of the same timeshare plan, unless the transfer of the developer’s interest was a fraudulent transfer. This may negate existing case law.
- Redefines the term “developer” in a way that exempts from developer liability a person who has acquired or has the right to acquire more than seven timeshare interests from a developer or other interestholder in connection with a loan, securitization, conduit, or similar financing transaction and who subsequently arranges for all or a portion of the timeshare interests to be offered by one or more developers in the ordinary course of business on their own behalfs or on behalf of such person. This may negate existing case law.
- Amends the statutes on public offering statements to provide that if the developer makes changes in the public offering statement that materially alter or modify the offering in a manner adverse to the purchaser, the sales contract may be canceled. The developer is the party primarily responsible for determining if a change materially alters or modifies a public offering statement in a manner adverse to the purchaser.
- Provides procedures for an escrow agent to release unclaimed escrow funds that have been held for five years. The escrow agent must make at least one attempt to return the funds and is entitled to rely on the last known address. No search for the rightful owner is required. If unsuccessful, the escrow agent must publish a legal notice in the county in which the timeshare property is located. If the purchaser does not claim the funds within 30 days of

publication, the escrow agent may deliver such unclaimed funds to the division for deposit in the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund, at which point the purchaser will have no further claim on the funds and the escrow agent is relieved from further liability.

- Allows a developer to include in advertising materials facilities that have not been built, if the advertisement provides either the “estimated date that such facility will be made part of the timeshare plan” or the “date of promised completion,” as appropriate. These provisions are substantially similar to provisions contained in current law.
- Allows a timeshare managing entity in a floating reservation timeshare plan to deny the right to make a reservation of a timeshare period to any purchaser who is delinquent in the payment of assessments, and requires the managing entity to give notice to the purchaser of denial of use at least 30 days prior to the first day of the purchaser’s use period.
- Allows a timeshare board of administration of an owners’ association to make material alterations or substantial additions to the accommodations or facilities of a timeshare plan within a condominium or cooperative without a vote of the members of the condominium or cooperative association, provided that no such amendment may change the configuration or size of any accommodation in any material fashion, or change the proportion or percentage by which a timeshare owner shares the common expenses, unless all affected owners, together with the record owners of all liens on the affected timeshare interests, consent to the amendment, and further provided that, if the condominium or cooperative contains residential units that are not timeshare units, the record owners of all of those residential units, and the record owners of all liens against those units, also must agree to the amendment.
- Provides that a first mortgagee or its successor or assignee who acquires title to a timeshare unit as a result of foreclosure or a deed in lieu of foreclosure is exempt from liability for all unpaid assessments chargeable to the previous owner that came due prior to such acquisition of title by the first mortgagee.
- Eliminates the requirement that a timeshare solicitor obtain a timeshare occupational license and pay a licensing fee. Maintains the provision that a timeshare solicitor may be disciplined by the division, and adds a provision that makes a developer liable for actions of a timeshare solicitor under the direction or supervision of the developer. Authorizes county and municipal governments to adopt codes of conduct and regulations to govern solicitor conduct on public property, including providing for imposition of fines.
- Provides that the annual fee assessed against timeshare units only applies to timeshare units located within the state.

The bill substantially amends the following sections of the Florida Statutes: 719.103, 719, 719.107, 719.114, 719.3026, 719.401, 719.503, 719.504, 721.03, 721.05, 721.06, 721.065, 721.07, 721.075, 721.08, 721.09, 721.10, 721.11, 721.111, 721.12, 721.13, 721.14, 721.15, 721.16, 721.165, 721.17, 721.18, 721.19, 721.20, 721.21, 721.24, 721.26, 721.27, 721.51, 721.52, 721.53, 721.55, 721.551, 721.552, 721.56, 721.81, 721.82, 721.84, 721.85, 721.86, and 718.103. The bill also creates section 721.29 of the Florida Statutes, and repeals section 721.553 of the Florida Statutes.

II. Present Situation:

See Effect of Proposed Changes

III. Effect of Proposed Changes:

Section 1 amends s. 719.103, F.S., regarding definitions.

Present Situation: Section 719.103(21), F.S., defines “residential cooperative” to differentiate between a cooperative for residential use and a cooperative for commercial or industrial use.

Effect of Proposed Changes: Amends the definition of “residential cooperative” to provide that, in a timeshare cooperative, the timeshare instrument governs the intended use of each unit.

Present Situation: Currently, the cooperative statutes do not contain any definitions relating to timeshare.

Effect of Proposed Changes: The bill defines “timeshare estate” to mean “any interest in a unit under which the exclusive right of use, possession, or occupancy of the unit circulates among the various purchasers of a timeshare plan pursuant to chapter 721, F.S., on a recurring basis for a period of time.”

Section 2 amends s. 719.107, F.S., regarding common expenses and assessments.

Present Situation: Section 719.107, F.S., provides that an owner of a cooperative unit is liable to the cooperative association for assessments and other charges. If unpaid common expenses or assessments are extinguished by foreclosure of a superior lien or by deed in lieu of foreclosure, they become common expenses collectible from all the unit owners in the cooperative in which the unit is located. Common expenses are assessed against unit owners in the proportions or percentages of sharing common expenses provided in the cooperative documents.

Effect of Proposed Changes: Provides that all owners of timeshare estates in a cooperative unit are jointly and severally liable to the cooperative association for assessments and other charges assessed against the cooperative unit, unless the cooperative documents provide otherwise.

Section 3 amends s. 719.114, F.S., regarding ad valorem taxation of cooperative parcels.

Present Situation: In a cooperative, the cooperative association owns the land and the building or buildings. An owner of a cooperative unit does not own the unit as real property, but owns a share of the cooperative association together with the right to lease the cooperative unit. Under traditional ad valorem tax concepts, a cooperative association would be assessed ad valorem taxes on the land and building or buildings as a whole. Because taxing the land and the building as a whole makes administration of the homestead exemption difficult, s. 719.114, F.S., provides that ad valorem taxes and special assessments by taxing authorities are to be assessed against the cooperative parcels and not upon the cooperative property as a whole. Section 192.037, F.S., provides that all of the timeshare estates in a development are to be grouped together, and taxed as a single entry. A timeshare cooperative is governed by both s. 719.114, F.S., and s. 192.037, F.S., and these two sections are in conflict.

Effect of Proposed Changes: Provides that, if cooperative property is divided into timeshare estates, the provisions of s. 192.037, F.S., apply; accordingly the assessed value of each timeshare

development will be the value of the combined individual timeshare periods or timeshare estates contained therein.

Section 4 amends s. 719.3026, F.S., regarding contracts by a cooperative association.

Present Situation: Section 719.3026, F.S., provides that a contract by a cooperative association that is not to be fully performed within one year, or any contract for the provision of services, must be in writing. Additionally, the association must obtain competitive bids for any contract that requires payment by the association in an amount that in the aggregate exceeds 5 percent of the annual budget. Contracts with “employees of the association, and contracts for attorney, accountant, architect, engineering, and landscape architect services” are not subject to this section.

Effect of Proposed Changes: Adds community association manager and timeshare management firm to the list of entities whose contracts are not subject to the section’s requirements. Provides that contracts between a cooperative association and a community association manager or a timeshare management firm are not required to be in writing, and are not subject to competitive bidding requirements. A similar exemption in the condominium statutes applies to these two types of entities at s. 718.3026(2)(a)1., F.S.

Section 5 amends s. 719.401, F.S., regarding cooperative leases.

Present Situation: Section 719.401(1), F.S., provides that a cooperative may be created on lands held under lease, provided the unexpired term of the lease is for at least 50 years.

Effect of Proposed Changes: Provides that if a cooperative is a timeshare development, the lease must have an unexpired term of at least 30 years. The condominium statutes have a similar provision at s. 718.401(1), F.S.

Section 6 amends s. 719.503, F.S., regarding disclosure prior to sale.

Present Situation: Section 719.503, F.S., requires the developer of a cooperative to disclose certain information to prospective purchasers prior to or at the time of sale.

Effect of Proposed Changes: Adds additional disclosure requirements for sales brochures and contracts for the sale or transfer of a cooperative unit when timeshare estates are or may be created in the cooperative development. More particularly, the contract must state that for the purpose of ad valorem taxes or special assessments levied against a timeshare estate, the managing entity is generally considered the taxpayer and that rights to challenge an assessment exist. Similar disclosures are required by condominium law at s. 718.503(1)(a)8., F.S.

Section 7 amends s. 719.504, F.S., regarding the prospectus or offering circular.

Present Situation: Section 719.504, F.S., requires a developer to prepare a prospectus or offering circular that discloses certain facts and information regarding a cooperative. The prospectus must be filed with the division and a copy provided to prospective purchasers.

Effect of Proposed Changes: Adds an additional requirement that if timeshare estates are or may be created within a cooperative, an additional disclosure must be made in the prospectus or offering circular disclosing this fact. A similar disclosure is required by condominium law at s. 718.504(5)(b), F.S.

Section 8 amends s. 721.03, F.S., regarding the scope of Chapter 721, F.S., the chapter on Vacation and Timeshare Plans.

Present Situation: A timeshare interest located in Florida offered for sale in Florida is subject to all of the provisions of chapter 721, F.S. A timeshare interest located in Florida, but offered for sale in another state, is subject to some, but not all, of the provisions of Chapter 721, F.S. It is not subject to s. 721.06, F.S. (contract requirements), ss. 721.08-721.12, F.S. (escrow, 10-day right to cancel, advertising restrictions, prize and gift promotions, and record keeping by developer), and s. 721.20, F.S. (licensing of salespersons and solicitors), to the extent that the sales activity is regulated in the state where the interest is being sold, but only after the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation (the division) has received and accepted satisfactory evidence that the timeshare plan has been filed and accepted by the appropriate agency in the other state. The division may require that certain disclosures be made to purchasers regarding the offer.

Effect of Proposed Changes: Provides that sales activities in another state regarding the sale of timeshare interests in Florida will not be regulated by Florida, but only by the state where the sales activity occurs. Eliminates the requirement that the division receive and accept evidence that the timeshare plan has been filed and accepted by another state.

Present Situation: Paragraph (b) of s. 721.03(1), F.S., provides that the offer and sale of a Florida timeshare that is offered for sale outside the United States is exempt from Chapter 721, F.S. All purchase contracts for such timeshare plans must contain a disclaimer that the offering of the timeshare plan is exempt from regulation by Florida, and must disclose any financial interest that the developer or salesperson has in the timeshare development. Subsection (4) of s. 721.07, F.S., provides a filing fee of \$2 per 7-day timeshare interest for each timeshare plan offering statement filed with the division for approval.

Effect of Proposed Changes: Provides that the offer or sale of a Florida timeshare outside the United States is exempt from regulation under Chapter 721, F.S., provided that the developer either files the timeshare plan with the division for approval (in which case, the developer would incur a fee calculated at \$2 per 7-day timeshare interest) or pays an exemption registration fee of \$100 for the entire development and files certain information. The required disclaimer for contracts used in such instances still must be given, but is changed from current law to remove disclosure of any financial interest that the developer or salesperson has in the timeshare.

Present Situation: Subsection (2) of s. 721.03, F.S., subjects a timeshare located outside of Florida that is offered for sale in Florida to the provisions of s. 721.07, F.S. (requirements of a public offering statement for a timeshare development), and s. 721.55, F.S. (requirements of a public offering statement for a multisite timeshare development).

Effect of Proposed Changes: Provides that the division may not require the developer of a timeshare located outside Florida that is offered for sale in Florida to comply with the provisions of s. 721.07, F.S., or s. 721.55, F.S., but may require the developer to disclose to a potential purchaser those provisions of the timeshare instrument that do not meet the requirements of s. 721.07, F.S., or s. 721.55, F.S. The division may not determine whether the developer of a non-Florida timeshare has complied with another state's law, but may require the developer to prove compliance with the other state's law. The division may enter into agreements with other states to facilitate processing of non-Florida timeshare developments. Offering an additional timeshare interest in a non-Florida timeshare to an existing purchaser is not subject to this chapter if the offer complies with s. 721.11(4), F.S. (certain provisions relating to misrepresentation in advertising).

Present Situation: Subsection (4) of s. 721.03, F.S., exempts timeshare plans that are subject to chapter 718 or chapter 719 from specified sections of those chapters if the plans are in full compliance with chapter 721.

Effect of Proposed Changes: Adds part VI of Chapter 718, F.S., and Part VI of Chapter 719, F.S., to the specified list of provisions from which a timeshare plan can be exempt. Both parts relate to conversions of existing improvements to a condominium or cooperative form of ownership. The exemption applies only if:

- the developer complies with the portions of part VI of those chapters regarding the rights of existing tenants and
- the developer brings any improvements more than 18 months old to new condition, funds reserves on a pro-rata basis from the proceeds of the sale of units as they are sold, and pays for shortfalls in the reserves during the sales period or provides each purchaser with a warranty of fitness and merchantability.

Present Situation: Subsection (7) of s. 721.03, F.S., provides that a timeshare plan in which a prospective purchaser's total financial obligation is \$1,500 or less is exempt from regulation under Chapter 721, F.S.

Effect of Proposed Changes: Increases the minimum from \$1,500 to \$3,000.

Present Situation: Current law is unclear as to whether usury laws apply to the sale of a timeshare license. Section 687.03, F.S., sets the maximum interest rate at the equivalent of 18 percent per annum simple interest for non-exempt contracts for less than \$500,000 in debt.

Effect of Proposed Changes: New s. 721.03(9) provides that the maximum rate of interest that may be charged for a timeshare license is governed by the usury laws at s. 687.03, F.S.

Present Situation: Subsection (4) of s. 721.06(4), F.S., prohibits a developer from offering any number of timeshare estates or timeshare licenses that would cause the total number of estates or licenses offered to exceed a one-to-one purchaser to accommodation ratio. Because of its location in the statutes, this prohibition applies only to single site timeshare plans.

Effect of Proposed Changes: The prohibition is moved to new s. 721.03(10), F.S., where it is applicable to all timeshare plans, whether single-site or multisite.

Section 9 amends s. 721.05, F.S., regarding definitions.

Present Situation: Subsection (4) of s. 721.05, F.S., defines “closing” to mean the conveyance of legal title to a timeshare period as evidenced by delivery of a deed for recording.

Effect of Proposed Changes: Adds to the definition of “closing” the conveyance of beneficial title to a timeshare interest.

Present Situation: Subsection (5) of s. 721.05, F.S., defines “common expenses.” Section 192.037, F.S., provides that ad valorem taxes are assessed against a timeshare development as a whole, and that the management entity is responsible for prorating the taxes among the owners of timeshare interests, collecting the taxes, and remitting the funds in one payment to the property tax collector. Current law does not address how the management entity is to address nonpayment of taxes by an owner of a timeshare interest.

In practice, a management company, when faced with an owner of a timeshare interest who is delinquent in paying taxes, advances the funds necessary to pay those taxes from the operating account of the timeshare development in order to prevent the property from being lost in a tax sale. Any payment made from the operating account of the timeshare association, if not reimbursed, becomes a common expense and thus charged against all owners of timeshare interests. Presumably, the association can add this advance to the assessment against a timeshare interest, and through collection practices up to and including foreclosure of the timeshare interest, can in most cases be reimbursed. This practice is not specifically authorized by law. The division will not file an administrative complaint against a management company that pays the property tax bill in this manner, however, because the effect of not paying the property tax is loss of the whole property, and allowing a loss of the whole property would be a breach of the fiduciary duty.

Effect of Proposed Changes: Includes in common expenses “any past due and uncollected ad valorem taxes assessed against the timeshare development pursuant to s. 192.037,” which clearly provides that the unpaid taxes of an owner of a timeshare interest can be passed on as a common expense to the other timeshare owners.

Present Situation: Subsection (6) of s. 721.05, F.S., defines “completion of construction.” The definition requires, in part, that all accommodations and facilities of the timeshare plan be complete and available for use in accordance with the original advertising and public offering statements. The section provides exceptions to this requirement, including that a single site timeshare may portray possible future accommodations and facilities if the portrayal does not violate s. 721.11(4), F.S. (false and misleading advertising). A single site timeshare may portray the general geographic location of possible accommodations or facilities with no obligation to construct them if the portrayal does not constitute advertising material pursuant to s. 721.11(3)(e), F.S. A multisite timeshare may portray possible component sites if permitted by s. 721.553, F.S. (restrictions on portrayal of possible component sites).

Effect of Proposed Changes: Deletes from the definition of “completion of construction” the above-described exceptions to the requirement that all accommodations and facilities be complete at the time of disclosure. However, the bill adds similar provisions to s. 721.11, F.S., at subsections (7), (8), and (9).

Present Situation: Subsection (7) of s. 721.05, F.S., defines “conspicuous type” as two point sizes larger than the largest nonconspicuous type, exclusive of headings, on the page on which it appears, but in no case smaller than 10 point. When the use of 10 point type is impractical or impossible with respect to a particular piece of written advertising, the division may approve an alternative type if the print remains conspicuous under the circumstances.

Effect of Proposed Changes: Allows the use of smaller than 10 point type without approval by the division when the use of 10 point type is impractical or impossible.

Present Situation: Subsection (9) of s. 721.05, F.S., defines “developer” and provides exceptions to the definition. A developer is any person who creates the timeshare plan (creating developer), a person who succeeds to the interest of a developer by sale, lease, assignment, mortgage, or other transfer and who offers timeshare periods in the ordinary course of business (successor developer), and any person acting concurrently with a developer for the purpose of offering timeshare periods in the ordinary course of business (concurrent developer).

The term “developer” does not include an owner of a timeshare period who acquires the timeshare period for personal use and later offers it for resale. A person who acquires more than seven timeshare periods is presumed to have acquired them for other than personal use. A person who acquires more than seven units and sells those units to a single purchaser in a single transaction, however, will not by that action be deemed a developer.

The term “developer” does not include a management entity of a timeshare plan who is not otherwise a developer who offers timeshare interests it owns to existing purchasers in the timeshare plan or sells timeshare interests in compliance with s. 721.065, F.S. (resale contracts). Subsection 721.065(1), F.S., provides that a management entity that offers fewer than 20 timeshare periods for sale in a year to persons who are not existing purchasers may also use a resale purchaser agreement that complies with s. 721.065, F.S.

Throughout Chapter 721, F.S., the activities of a developer are regulated. A developer must:

- supervise, manage, and control all aspects of a timeshare plan (s. 721.056, F.S.);
- use the contract and sale provisions in s. 721.06, F.S. (sales contracts by developers), rather than the less restrictive provisions of s. 721.065, F.S.;
- write, file, and provide to purchasers a public offering statement (s. 721.07, F.S.);
- disclose the terms and conditions of incidental benefits offered and make them available for a specified period of time (s. 721.075, F.S.);
- place deposits by purchasers into an authorized escrow account (s. 721.08, F.S.);
- honor a purchaser’s 10-day right of rescission (s. 721.10, F.S.);
- file advertising for review prior to use and comply with advertising restrictions (s. 721.11, F.S.);
- honor prize and gift offers (s. 721.111, F.S.);
- create or provide for a management entity (s. 721.13, F.S.);

- pay all common expenses until a management entity is formed and, after a managing entity is formed, pay either the assessments on all owned timeshare periods or the actual common expenses of the development in excess of the amount collected from purchasers when the developer has guaranteed that assessments will not exceed a specified amount (s. 721.15, F.S.); and,
- include in any agreement transferring the developer's interest in the development, that the transferee will honor the use and occupancy rights of timeshare purchasers and honor the timeshare instrument (s. 721.17, F.S.).

Additionally, under s. 721.21, F.S., any purchaser or group of purchasers may bring an action for damages against a developer for a violation of chapter 721, F.S.

Section 721.17, F.S., prohibits a developer or owner of the underlying fee from transferring ownership interest in the accommodations or facilities of a timeshare plan except by a contract that meets specified requirements, among them that the transferee will fully honor the rights of purchasers to occupy and use the accommodations and facilities as provided in their original contracts and the timeshare instruments. The First District Court of Appeals has held that this section applies to a person who loans money to a developer and receives as collateral an assignment of unsold timeshare unit weeks. Smith v. Department of Business Regulation, Division of Land Sales, Condominiums and Mobile Homes, 504 So.2d 1285 (Fla. 1st DCA 1987), review denied, 513 So.2d 1063 (Fla. 1987). In that particular case, when the developer went out of business, the owners of other timeshare periods were unable to use their accommodations and the division brought an action against the lender. The court found that the lender met the definition of "seller" and thus was required under s. 721.17, F.S., to honor the rights of timeshare purchasers to cancel their contracts and receive appropriate refunds. The court ordered the lender to assume the developer's other obligations to timeshare purchasers, including the right to occupy and use timeshare periods pursuant to the contract.

In another case, the Second District Court of Appeals reversed a summary judgment against purchasers of a timeshare period who sued a managing entity for failure to honor alleged oral representations made by a prior developer. Bell v. R.D.I. Resort Services Corp., 637 So.2d 960 (Fla. 2nd DCA 1994).

Effect of Proposed Changes: Amends the definition of "developer" as follows:

- A successor or concurrent developer is exempt from any liability inuring to a predecessor or concurrent developer of the same timeshare plan, except as provided in s. 721.15(7), F.S., which requires payment of assessments of common expenses, unless the transfer of the developer's interest was a fraudulent transfer. The bill defines fraudulent transfer. The exemption does not apply to responsibilities, duties, or liabilities that accrue after the date the person became a successor or concurrent developer. Additionally, the successor or concurrent developer must comply with the provisions of any applicable timeshare instrument. This may negate any potential liability for verbal statements of a prior developer like those at issue in the Bell case.
- A person is not a developer who has acquired or has the right to acquire more than seven timeshare interests from a developer or other interestholder in connection with a loan, securitization, conduit, or similar financing transaction and who subsequently arranges for all

or a portion of the timeshare interests to be offered by one or more developers in the ordinary course of business on their own behalves or on behalf of such person. This may negate the liability of a person in the same position as the lender in the Smith case.

- The current provision on ownership and resale of more than seven timeshare interests is amended to provide that a single transaction may occur in stages.
- The current provisions regarding whether a managing entity is a developer are amended to provide that a managing entity who offers timeshare interests in a timeshare plan that it manages will not be deemed a developer, provided that the managing entity complies with s. 721.065, F.S. (simplified procedures for resale of a timeshare interest). A managing entity also may engage a third party to offer the timeshare interests.

Present Situation: Subsection (13) of s. 721.05, F.S., defines “escrow agent” and requires an escrow agent who is an attorney, real estate broker, or title insurance agent, to post a \$50,000 surety bond before being permitted to act as an escrow agent.

Effect of Proposed Changes: Deletes the bond requirement and allows title insurers to act as escrow agents.

Present Situation: Subsection (24) of s. 721.05, F.S., defines the “owner of the underlying fee” as any person having an interest in the real property underlying the accommodations or facilities of the timeshare plan, and any person who purchases 15 or more timeshare periods for resale in the ordinary course of business. An owner of the underlying fee is also considered an “interestholder” as defined at s. 721.05(19), F.S. Any owner of the underlying fee must be disclosed to any purchaser of a timeshare period in the contract for purchase (s. 721.06(1)(b), F.S.); a public offering statement must disclose any judgment or pending suit against an owner of the underlying fee that is material to the timeshare plan (s. 721.07(5)(l), F.S.); an owner of the underlying fee must be treated by a management company equally with all other timeshare owners and the developer (s. 721.13(6)(g), F.S.); and an owner of the underlying fee cannot sell the underlying fee except by recorded instrument that must include certain disclosures and assurances (s. 721.17, F.S.).

Effect of Proposed Changes: Removes any person who purchases 15 or more timeshare periods for resale in the ordinary course of business from the definition of “owner of the underlying fee.”

Present Situation: The terms “public offering statement,” “purchaser public offering statement,” and “registered public offering statement” are not defined.

Effect of Proposed Changes: Defines “public offering statement” as the written materials describing a single-site timeshare plan or a multisite timeshare plan, including text and any exhibits attached thereto as required by s. 721.07, F.S. (regarding public offering statements for single-site timeshare plans), or by ss. 721.55 and 721.551, F.S. (regarding public offering statements for multisite timeshare plans). The term “public offering statement” refers to both a registered public offering statement and a purchaser public offering statement.

Defines “purchaser public offering statement” as that portion of the registered public offering statement that must be delivered to purchasers pursuant to s. 721.07(6), F.S. (regarding public

offering statements for single-site timeshare plans), or s. 721.551, F.S. (regarding public offering statements for multisite timeshare plans).

Defines “registered public offering statement” as a public offering statement that has been filed with the division pursuant to s. 721.07(5), F.S. (regarding public offering statements for single-site timeshare plans), or s. 721.55, F.S. (regarding public offering statements for multisite timeshare plans).

Present Situation: Subsection (28) of s. 721.05, F.S., defines “seller” to mean any developer or any other person, or any agent or employee thereof, who offers timeshare periods in the ordinary course of business. The activities of a seller are regulated throughout Chapter 721, F.S. “Seller” does not include a person who purchases a timeshare for personal use and later re-sells it, except that a person who has acquired more than seven timeshare periods is presumed not to have acquired them for personal use. “Seller” also does not include a managing entity selling timeshare periods in a timeshare development that it manages, nor does it include a person owning more than seven timeshare periods who sells all of such periods to a single purchaser.

Effect of Proposed Changes: Amends the provisions relating to a managing entity to allow it to engage a third party to make sales. The bill also exempts from the definition of “seller” a person who acquires or has the right to acquire more than seven timeshare interests in connection with a loan, securitization, conduit, or other similar financing arrangement, and then arranges for the timeshare interests to be sold through a developer.

Present Situation: Subsection (29) of s. 721.05, F.S., defines “timeshare estate” to mean a right to occupy a time share 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 means an interest in a condominium unit.

Effect of Proposed Changes: Amends the definition of “timeshare estate” to include an interest in a cooperative, or in a trust that complies with s. 721.08(2)(c)3., F.S. See Section 14 of this analysis for a description of trusts that comply with s. 721.08(2)(c)3., F.S.

Present Situation: “Timeshare interest” is not defined.

Effect of Proposed Changes: Defines “timeshare interest” as a timeshare estate or timeshare license.

Present Situation: Section 721.05(34), F.S., defines “timeshare property” to mean “one or more timeshare units subject to the same timeshare instrument, together with any other property or rights to property appurtenant to those units.”

Effect of Proposed Changes: Amends the definition of “timeshare property” to provide that personal property, contractual rights, affiliation agreements of component sites of vacation clubs, exchange companies, or reservation systems, or any other agreements or personal property, may be common elements or limited common elements of a timeshare condominium or cooperative if the timeshare instrument for the timeshare condominium or cooperative so provides.

Present Situation: Section 721.05(35), F.S., defines “timeshare unit” to mean an accommodation of a timeshare plan that is divided into timeshare periods.

Effect of Proposed Changes: Adds to the definition of “timeshare unit” a provision that “any timeshare unit in which a door or doors connecting two or more separate rooms are capable of being locked to create two or more private dwellings shall only constitute one timeshare unit for purposes of this chapter, unless the timeshare instrument provides that timeshare interests may be separately conveyed in such locked-off portions.”

Section 10 amends s. 721.06, F.S., regarding contracts for the purchase of timeshares.

Present Situation: Section 721.06(1), F.S., provides that a seller must disclose a number of facts to a buyer in a contract for purchase and sale of a timeshare, including: the name and address of any owner of the underlying fee; the total financial obligation of the purchaser; a caveat regarding cancellation of the contract, if the sale is of a timeshare license; the actual interest of the developer in the accommodations or facilities; and, if the accommodations or facilities are subject to a lease, a disclosure of the fact.

Effect of Proposed Changes: Eliminates the requirement of disclosing the name and address of the owner of the underlying fee; modifies disclosure of the financial obligation to provide that the seller must disclose the total amount of the initial payment, any annually recurring use charge, and next year’s estimated assessment for common expenses and ad valorem taxes; eliminates the caveat for timeshare licenses; permits a cross-reference to the portion of the public offering statement that discloses the interest of the developer in the accommodations or facilities in lieu of disclosure in the contract; eliminates the disclosure requirement if the accommodations or facilities are subject to a lease; and adds a requirement that the seller disclose any rights reserved by the developer to alter or modify the offering prior to closing.

Section 11 amends s. 721.065, F.S., regarding resale purchase agreements other than those used by regulated developers or sellers.

Present Situation: Section 721.065, F.S., provides that a person who purchases a timeshare period for personal use and later sells it, must provide certain disclosures in the contract for sale but does not have to comply with the more extensive requirements of s. 721.06, F.S. (contracts to be used by developers). A managing entity that sells fewer than 20 of its own timeshare periods also may use this section rather than s. 721.06, F.S. Subparagraph 2 of s. 721.05(9)(d), F.S., provides that a management entity who is not otherwise a developer of a timeshare plan and who offers for sale timeshare periods for its own account in a timeshare plan that it manages to existing purchasers of that timeshare plan is not a “developer.” Therefore, as it relates to s. 721.065(1), F.S., such a managing entity may sell units under the same disclosure requirements as a person selling his or her own unit.

Effect of Proposed Changes: Increases from “fewer than 20” to “50 or fewer” the number of timeshare interests that a management entity may resell without having to register as a subsequent or concurrent developer. Also provides that a sale by a management entity of another timeshare interest to an existing timeshare owner of that development is subject to the requirements of s. 721.065, F.S., rather than the more extensive disclosure requirements of a sale by a developer.

Section 12 amends s. 721.07, F.S., regarding public offering statements.

Present Situation: Section 721.07, F.S., requires that, prior to offering any timeshare plan, a developer must file a proposed public offering statement with the division. Until the public offering statement is approved, any sale to a purchaser is voidable by the purchaser.

Effect of Proposed Changes: Public offering statements are separated into two types: “purchaser public offering statement” defined at s. 721.03(28), F.S., as amended, and “registered public offering statement” defined at s. 721.03(29), F.S., as amended. If a developer sells timeshare units prior to receiving approval of the public offering statement, the sale is voidable only under certain circumstances.

As amended, s. 721.07(2)(d), F.S., provides for sales prior to division approval of the public offering statement, prescribes disclosure notices for distribution to buyers in such cases, and requires that a developer provide a prospective purchaser with a copy of the proposed public offering statement filed with but not yet approved by the division. Paragraph (d) of subsection (2) further provides that a sales contract may be canceled within 10 days after notice that the developer has made changes in the public offering statement that materially alter or modify the offering in a manner that, in the opinion of the developer, is adverse to the purchaser.

Present Situation: Subsection (4) of s. 721.07, F.S., requires a developer to pay a filing fee of \$2 per 7 days of annual use availability for filing an offering statement, and allows the division, by rule, to increase the fee to \$3. The division has not used this section to raise the fee above \$2.

Effect of Proposed Changes: Deletes the provision allowing the division to increase the filing fee, thereby fixing the fee at \$2 per 7 days of annual use availability.

Present Situation: Subsection (5) of s. 721.07, F.S., requires a developer of a timeshare plan that is not a multisite timeshare plan to include in the offering statement a cross-reference to the exhibit where relevant documents are attached.

Effect of Proposed Changes: Deletes the cross-reference requirement. The developer still is required, however, to attach a copy of the relevant documents as exhibits, pursuant to s. 721.07(5)(ff), F.S., as amended.

Present Situation: A developer must disclose in the offering statement for a timeshare plan that is not a multisite timeshare plan a detailed list of information as to the recreational and other commonly used facilities that will be available for use by timeshare owners. s. 721.07(5)(g), F.S.

Effect of Proposed Changes: Deletes the detailed description required in the offering statement regarding the facility including recreational and other commonly used facilities, thereby allowing generalized descriptions of the facilities.

Present Situation: A public offering statement for a timeshare plan that is not a multisite timeshare plan must include a statement as to whether the plan of the developer includes a program of leasing units or leasing timeshare periods in addition to selling of timeshare interests. s. 721.07(5)(p), F.S.

Effect of Proposed Changes: Deletes the requirement to disclose leasing plans.

Present Situation: A public offering statement for a timeshare plan that is not a multisite timeshare plan must include a description of the manner in which utility and other services are supplied to the timeshare development, together with the name of the person or entity providing the utilities or other services. s. 721.07(5)(w), F.S.

Effect of Proposed Changes: Deletes the requirement to disclose utility and other services.

Present Situation: A public offering statement for a timeshare plan that is not a multisite timeshare plan must include an estimated operating budget, and provides requirements for preparation and presentation of the budget. s. 721.07(5)(x), F.S.

Effect of Proposed Changes: Provides that the capital improvement reserve account requirements apply only to timeshare plans located in the state. Provides that reserve account calculations for a timeshare development located out of Florida are to be calculated according to the requirements of the state where the timeshare development is located. Adds a provision requiring that the budget be based on either the actual number of timeshare interests at the beginning of the year or the estimated number of timeshare interests for the year, and in all cases the budget must identify the number of timeshare interests covered by the budget and the number of timeshare interests estimated to be declared for the year. Adds specific disclosures regarding phased timeshare plans.

Present Situation: An offering statement for a timeshare plan that is not a multisite timeshare plan must include a statement of any service, maintenance, or recreation contracts or leases that may be canceled by the timeshare purchasers. s. 721.07(5)(aa), F.S.

Effect of Proposed Changes: Deletes requirement that an offering statement include a statement of any service, maintenance, or recreation contracts or leases that may be canceled by the timeshare purchasers.

Present Situation: Subsection (5) of 721.07, F.S., lists the information and documents that must be included in a public offering statement for a timeshare plan that is not a multisite timeshare plan. In a traditional timeshare plan, a timeshare purchaser buys the right to use the timeshare during a specific week of the year in a specific unit of a timeshare development. In practice, many timeshare purchasers utilize an exchange program whereby they trade weeks and locations with other timeshare owners. A reservation plan is a flexible form of timeshare plan, modeled after the exchange concept, in which a timeshare purchaser is not assigned a specific unit nor a specific time during the year, but is given the right to make a reservation to use a timeshare unit for a specified length of time under the conditions of the plan.

Effect of Proposed Changes: Adds paragraphs (cc) and (dd), which require a public offering statement to include disclosure of rules and regulations regarding reservations and to include disclosure language regarding reservations. Also adds authority for the division to approve a new timeshare filing that includes an existing timeshare instrument that was in compliance with the law in effect at the time the timeshare was created but does not conform with current law if the developer is unable to amend the timeshare instrument and requires certain disclosure language including the nature of any conflict between current law and the timeshare instrument.

Present Situation: A developer must attach certain documents to a public offering statement. s. 721.07(5)(hh), F.S.

Effect of Proposed Changes: Moves paragraph (hh) to paragraph (ff) and provides that if the timeshare plan is not approved at the time of dissemination of the public offering statement, the developer must attach proposed documents.

Present Situation: Section 721.07(7), F.S., requires that descriptions in an offering statement must include “locations, areas, capacities, numbers, volumes, or sizes and may be stated as approximations or minimums.”

Effect of Proposed Changes: Deletes the requirement that descriptions in an offering statement list specific locations, areas, capacities, numbers, volumes, or sizes.

Section 13 amends s. 721.075, F.S., regarding incidental benefits.

Present Situation: An incidental benefit is a product that is offered in connection with a timeshare interest but not included as part of the timeshare plan. An incidental benefit must be available to a purchaser for at least 6 months, but no more than 3 years. The developer is not required to make the incidental benefit available for longer than 18 months after the date of purchase.

Effect of Proposed Changes: Removes the 6-month minimum time requirement within which an incidental benefit must be made available. Removes a statement that a developer is not required to make an incidental benefit available for longer than 18 months.

Section 14 amends s. 721.08, F.S., regarding escrow agreements, nondisturbance agreements, and alternate security arrangements.

Present Situation: A developer selling a timeshare must place a purchaser’s deposit into an escrow account until such time as the developer is entitled to the funds. Section 721.08(2)(c), F.S., provides conditions under which an escrow agent is allowed to distribute escrowed funds.

Effect of Proposed Changes: Adds additional conditions under which an escrow agent may distribute funds from escrow. An escrow agent of a timeshare plan in which timeshare licenses are to be sold may release the escrowed funds or property upon presentation of a notice delivered for recording that notifies all persons of the identity of an independent escrow agent or trustee who must maintain records of accommodations subject to the plan and regarding each purchaser of a timeshare license. The bill also creates similar escrow release provisions for a timeshare plan in which timeshare estates are to be sold as interests in a trust.

Present Situation: There currently is no provision allowing an escrow agent to dispense unclaimed funds in an escrow account. According to bill proponents, escrow agents are currently holding a number of escrow deposits owed to purchasers, the typical deposit is between \$800 and \$1,200, which is held by an escrow agent for approximately 10 years.

Effect of Proposed Changes: Adds new s. 721.08(8), which provides procedures for an escrow agent regarding unclaimed escrow funds that are more than five years old. The escrow agent must

make at least one attempt to return the funds and is entitled to rely on the last known address. No search for the rightful owner is required. If unsuccessful, the escrow agent must publish a legal notice in the county in which the timeshare property is located. If the purchaser does not claim the funds within 30 days of publication, the escrow agent may deliver such unclaimed funds to the division for deposit in the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund, at which point the purchaser will have no further claim on the funds and the escrow agent is relieved from further liability.

Present Situation: There is no specific requirement that a purchaser be given an instrument of conveyance.

Effect of Proposed Changes: Requires a developer to deliver an instrument evidencing conveyance of legal title to a timeshare estate either to the purchaser or to the clerk of the court for recording.

Section 15 amends s. 721.09, F.S., regarding reservation agreements.

Present Situation: Paragraph (b) of s. 721.09(1), F.S., provides that, prior to filing a public offering statement with the division, a developer may take reservations for the purchase of a timeshare unit under certain conditions. The developer must own the property on which the timeshare is to be created, and funds received must be placed in escrow pending approval of the development by the division. This section further provides that the timeshare plan must be filed with the division within 90 days after the date the division approves the reservation agreement filing; if the plan is not timely filed, all reservations for the purchase of a timeshare unit must be canceled.

Effect of Proposed Changes: Allows a developer to establish a reservation plan regarding property upon which the developer holds an option to purchase or lease. Also extends from 90 to 180 days after the date the division approves the reservation agreement filing within which a developer must file a timeshare plan.

Section 16 amends s. 721.10, F.S., regarding purchaser cancellation of a contract to purchase a timeshare.

Present Situation: A purchaser may cancel a timeshare purchase agreement within 10 calendar days after the later of signing the contract or receiving all documents required to be given to the purchaser. s. 721.10(1), F.S.

Effect of Proposed Changes: Provides that the “documents required to be given to the purchaser” include, where applicable, the notice the developer sends the purchaser that the public offering statement has been approved by the division.

Present Situation: Subsection (3) of s. 721.10, F.S., provides that, should a purchaser timely cancel a contract for purchase of a timeshare, the developer must “refund to the purchaser all payments made by the purchaser which exceed the proportionate amount of benefits made available under the plan, using the number of years of the plan as portrayed in the timeshare instrument as the base for plans of specific and limited duration, or using the fair market rental

value of such benefits for plans without specific or limited duration.” This section is worded differently from s. 721.06(1)(i), F.S., which appears to have the same intent.

Effect of Proposed Changes: Changes the refund formula to match the formula provided in current law at s. 721.06(1)(i), F.S., which requires the developer to refund “all payments made by the purchaser under the contract, reduced by the proportion of any contract benefits the purchaser has actually received under the contract prior to the effective date of the cancellation.”

Section 17 amends s. 721.11, F.S., regarding advertising and oral statements.

Present Situation: Subsection (1) of s. 721.11, F.S., requires all advertising to be filed with and approved by the division before dissemination. However, s. 721.03(1)(a), F.S., provides that the division need not review an advertisement utilized outside of Florida that is filed with and approved by another state. The division may require a developer to correct any deficiency in the advertising. The division may accept alternative assurance (such as a bond) that a developer will comply with the advertising restrictions, in which case prior review is not required. All advertising is subject to review, whether disseminated in or out of Florida.

Effect of Proposed Changes: Eliminates the formal review by the division of developer advertising unless specifically requested by the developer. Advertising still must be filed with the division prior to use. If a developer requests review and the advertising material is approved, the developer will not be liable for any violation of s. 721.11, F.S. (general advertising regulations) or s. 721.111, F.S. (regulation of prize and gift offers), with respect to those advertising materials. If the developer does not request prior review and there is a problem with the advertising, the division may file administrative charges or seek an injunction, in addition to requiring the developer to correct the deficiency.

Eliminates the alternative assurance provisions. Advertising materials do not include advertising disseminated to a non-resident of Florida, except that such advertising still is subject to the regulations prohibiting false or misleading advertising. Clarifies that materials delivered to a purchaser after a purchase contract are not advertising unless those materials are for soliciting a sale of a different timeshare development. Materials “exclusively shown, displayed, or presented in a sales center or during a sales presentation” are not advertising regulated by s. 721.11, F.S., except that any such material that shows a facility not currently complete must be conspicuously labeled.

Present Situation: Subsection (4) of s. 721.11, F.S., lists certain types of statements that are prohibited in any advertising or oral statement made by a seller, including false or misleading statements. One such prohibited statement is for a seller to describe an improvement that is not required to be built or that is uncompleted, unless the improvement is conspicuously labeled as “need not be built,” “proposed,” or “under construction,” with the “date of promised completion.”

Effect of Proposed Changes: If the facility is categorized as “need not be built” or “proposed,” the “date of promised completion” is changed to the “estimated date that such facility will be made part of the timeshare plan.” If the facility is “under construction,” the “date of promised completion” is changed to the “estimated date of completion.” These changes are referenced in the new s. 721.11(7), F.S.

New s. 721.11(7) allows a seller to portray possible accommodations or facilities in advertising so long as the portrayal complies with s. 721.11(4), F.S., as amended, which section relates to false and misleading advertising, and specifically with disclosures that must be made regarding possible accommodations or facilities (see above for changes to that section relating to proposed facilities). The portrayal may be made notwithstanding s. 721.05(6)(b), F.S., which is a definition of the term “completion of construction.” These provisions are substantially similar to provisions contained in current law under the definition of “completion of construction” at s. 721.05(6)(c), F.S.

New s. 721.11(8) allows a developer to make oral or written statements to a prospective purchaser regarding possible accommodations or facilities, with no obligation to actually construct such accommodations or facilities, provided the statements are in broadcast or print media and provided the dissemination does not fall within the definition of advertising at s. 721.11(3)(e), F.S.

New s. 721.11(9)(a), F.S., allows a seller of a multisite timeshare plan to portray a possible component site to a prospective purchaser with no obligation to actually add such component site, provided the statements fall within the exception to the definition of advertising at s. 721.11(3)(e), F.S. (which section is amended by this bill).

New s. 721.11(9)(b), F.S., allows a seller of a multisite timeshare plan to portray possible accommodations or facilities of a possible component site in a public offering statement, provided that the portrayal complies with restrictions against misleading advertising in s. 721.11(4), F.S., and provided that the seller provide a conspicuous disclosure described in new s. 721.11(9)(c), F.S.

New s. 721.11(9)(d), F.S., allows a developer or managing entity to communicate with existing purchasers regarding possible component sites without restriction, provided the communication complies with s. 721.11(4), F.S., as amended, which section relates to false and misleading advertising, and specifically with disclosures that must be made regarding possible accommodations or facilities.

Any violation of these subsections may be prosecuted by the division, and is deemed to grant any purchaser who has not closed with a new 10-day voidability period. These provisions are substantially similar to provisions contained in current law at s. 721.553, F.S.

Present Situation: Subsection (5) of 721.11, F.S., requires that all written advertising contain a legend stating that the advertising material is being used for the purpose of soliciting sales of a timeshare or a vacation membership, and allows alternative disclosures that comply with the requirements of another jurisdiction.

Effect of Proposed Changes: Allows the division to approve an alternative disclosure, allows the disclosure to be on only one piece of a set of advertising materials distributed to a prospective purchaser, and removes provisions relating to advertising materials approved by another jurisdiction.

Section 18 amends s. 721.111, F.S., regarding prize and gift promotional offers.

Present Situation: Subsection (1) of s. 721.111, F.S., defines a prize or gift promotional offer as any advertising material wherein a prospective purchaser may receive goods or services other than the timeshare plan itself, either free or at a discount, including, but not limited to, the use of any prize, gift, award, premium, or lodging or vacation certificate. Subsection (4) requires all prize or gift promotional offers to be filed with the division. Subsection (5) requires the filing with the division to provide, among other things, the information upon which the developer relies in determining the retail value of the prize or gift promotion and the number of anticipated recipients of each item of advertising related to the offer. Subsection (6) provides a \$100 filing fee, which is increased to \$500 if the offer includes a game of chance. Subsection (7) requires the developer to disclose certain facts regarding a prize or promotional offer in advertising regarding the prize or promotional offer, including a description of the prize, gift, or other item that the person will receive, which description must include the suggested retail price, or, if there is none, the verifiable retail value. Subsection (8) requires a developer to annually file with the division a statement of the total number of each prize, gift, or other item actually awarded and the name and address of each person who actually received a prize, gift, or other item worth over \$200, other than recipients of lodging or vacation certificates.

Effect of Proposed Changes: Provides that the information used to determine the value of the prize or gift need be provided in the developer disclosure to the division only if the prize or item is worth more than \$50. The listing of the number of anticipated recipients is deleted. The division may require an affidavit, certification, or other reasonable assurance that a lodging certificate program can be met. If the value of the gift, prize, or other item, is less than \$50, the developer need not disclose the actual value, but must state that the value is \$50 or less. The requirement that a developer file an annual statement of the total number of prizes or gifts awarded, and the name and address of certain recipients, is deleted. The \$100 filing fee is moved to s. 721.111(4), F.S., as amended. The additional \$400 fee for games of chance is eliminated.

Section 19 amends s. 721.12, F.S., regarding record keeping by a seller, making technical changes.

Section 20 amends s. 721.13, F.S., regarding management of a timeshare.

Present Situation: A developer must create or provide for a managing entity prior to the first sale of a timeshare period. s. 721.13(1)(a), F.S.

Effect of Proposed Changes: Requires a developer to create any owners' association prior to recording the documents creating the timeshare development. Also provides that a timeshare managing entity in a condominium or cooperative is not governed by Chapter 718, F.S., or Chapter 719, F.S., unless the timeshare management entity manages the entire condominium or cooperative.

Present Situation: A managing entity must file a copy of the annual budget with the division within 30 days after its adoption. s. 721.13(3)(c)1., F.S.

Effect of Proposed Changes: Requires a managing entity to file a copy of the annual budget within 30 days after the beginning of each fiscal year.

Present Situation: The statute does not address transfer of funds from the operating account to reserve accounts.

Effect of Proposed Changes: As amended s. 721.13(3)(c)2., F.S., provides that the board of directors of a timeshare development is entitled to transfer excess funds in any operating account to any deferred maintenance or reserve account without approval of the owners.

Present Situation: Section 721.13(3), F.S., lists the duties of the managing entity. Section 192.037, F.S., requires a timeshare managing entity to establish an escrow account from which the ad valorem taxes for the timeshare property are to be paid, ss. 192.037(6)(e), and 721.13(3)(i), F.S., require every timeshare managing entity to provide an annual statement to the division of receipts and disbursements from the ad valorem tax escrow account.

Effect of Proposed Changes: Authorizes a managing entity to enter into an ad valorem tax escrow agreement prior to the receipt of any ad valorem tax escrow payments with an independent escrow agent.

Present Situation: A management company must keep a list of current owners of timeshare interests, and may not publish the list nor provide it to any purchaser or third party. s. 721.13(4), F.S. The managing entity must initiate a mailing to the persons on the owner's list on request if the purpose of the mailing is to advance legitimate association business, such as proxy solicitation, recall of board members, or discharge of the management firm. The board of administration must determine if a proposed mailing complies with these restrictions. The purchaser requesting the mailing must pay the actual cost of the mailing.

Effect of Proposed Changes: Provides that a mailing regarding recall of a board member must refer to a board member elected by the timeshare owners; requires that a requested mailing must occur within 30 days after receipt by the association of the request for the mailing; provides that it is a violation of the timeshare laws to refuse to mail any material requested to be mailed, provided that the sole purpose of the materials is to advance legitimate association business; provides that if the purpose of the mailing is a proxy solicitation to recall one or more board members elected by timeshare owners, or if the purpose is discharge the manager or management firm, and the managing entity does not timely mail the materials, a circuit court may summarily order a mailing; provides that a court must dispose of an application to require a mailing "on an expedited basis"; and provides that a managing entity that is compelled by a court to perform a mailing will be liable to the complaining timeshare owner unless the managing entity can prove that it refused the mailing in good faith because of a reasonable basis for doubt about the legitimacy of the mailing.

Present Situation: Subsection (6) of s. 721.13, F.S., allows a managing entity in a floating reservation timeshare plan to deny use of the accommodations and facilities to any purchaser who is delinquent in the payment of assessments and requires the managing entity to give notice to the purchaser of denial of use at least 30 days prior to the first day of the purchaser's use period.

Effect of Proposed Changes: Additionally allows the managing entity to deny the right to make a reservation of a timeshare period for any purchaser who is delinquent in the payment of assessments, allows the managing entity to cancel a confirmed reservation for any purchaser who is delinquent in the payment of assessments, and changes the time for issuing a notice of

delinquency to 30 days after the date the assessment is due. The notice of delinquency must state that the purchaser will not be able to make a reservation and that any confirmed reservation may be canceled.

Present Situation: Some timeshare properties also are governed by Chapter 718, F.S., (condominiums) or Chapter 719, F.S. (cooperatives). Those chapters restrict the power of a managing association to make a material alteration or substantial addition to common areas. Thus, a timeshare that also is governed by these chapters cannot make a material alteration or substantial addition to the accommodations or facilities of the timeshare plan without a supermajority vote of the members (in some cases, a unanimous vote).

Effect of Proposed Changes: Adds new s. 721.13(8), F.S., which allows a board of administration of an owners' association to make material alterations or substantial additions to the accommodations or facilities of a timeshare plan without a vote of the members of the association. No such amendment may change the configuration or size of any accommodation in any material fashion, however, or change the proportion of percentage by which a timeshare owner shares the common expenses, unless all affected owners, together with the record owners of all liens on the affected timeshare interests, consent to the amendment. Further provides that, if the condominium or cooperative contains residential units that are not timeshare units, the record owners of all of those residential units, and the record owners of all liens against those units, also must agree to the amendment.

Section 21 amends s. 721.14, F.S., regarding discharge of a managing entity, making grammatical changes.

Section 22 amends s. 721.15, F.S., regarding assessments for common expenses.

Present Situation: An owner of a timeshare period may not be excused from payment of the owner's share of common expenses. A developer, however, may be excused from paying the developer's share during any time period in which the developer has assured purchasers that assessments would not exceed a stated amount and the developer pays all common expenses of the association in excess of the total revenues of the association (known as the "guarantee period").

Effect of Proposed Changes: Provides that if the developer, through the association, complies with the insurance requirements in s. 721.165, F.S., then any common expense not covered by insurance incurred during the guarantee period as the result of a natural disaster or an act of God is to be allocated among all owners, notwithstanding the developer assurance that assessments would not exceed a stated amount. Section 721.165, F.S., as amended, provides that failure to maintain insurance is a breach of the fiduciary duty owed by the management entity to owners of timeshare interests, unless the management entity can show that, despite such failure, it exercised due diligence in trying to obtain and maintain the insurance.

Present Situation: Subsection (7) of s. 721.15, F.S., provides that a purchaser of a timeshare unit assumes all outstanding liabilities for outstanding assessments and common expenses owed by the former owner for the timeshare purchased. The section provides that it is not to be construed to impair the operation of s. 718.116, F.S., which provides for liability for condominium

assessments, including a limitation on the liability of a first mortgagee or its successors or assignees.

Effect of Proposed Changes: Deletes the reference to s. 718.116, F.S., for timeshare condominiums. Provides that a first mortgagee or its successor or assignee who acquires title as a result of foreclosure or a deed in lieu of foreclosure is exempt from liability for all unpaid assessments chargeable to the previous owner which came due prior to such acquisition of title by the first mortgagee.

Section 23 amends s. 721.16, F.S., regarding liens for overdue assessments, labor, and materials.

Present Situation: It is unclear whether a managing entity may impose a lien against a timeshare interest for intentional damage or destruction occasioned by a timeshare owner or guest.

Effect of Proposed Changes: Amends s. 721.16(1), F.S., to provide that a managing entity may impose a lien on a timeshare interest for the cost of any maintenance, repairs, or replacement resulting from an act of an owner or an owner's guest that results in damage to the timeshare property or facilities made available to the timeshare owner.

Present Situation: The managing entity may foreclose a lien for assessments in the manner a mortgage of real property is foreclosed, may bring an action for money damages for unpaid assessments without waiving a claim of lien, and, in a timeshare plan where no real property interest is conveyed, may bring an action under the Uniform Commercial Code. s. 721.16(2), F.S.

Effect of Proposed Changes: Deletes reference to the Uniform Commercial Code.

Section 24 amends s. 721.165, F.S., regarding insurance.

Present Situation: The seller, initially, and thereafter the managing entity, is responsible for obtaining hazard insurance on the property.

Effect of Proposed Changes: Provides that failure to obtain and maintain hazard insurance during any period of developer control of the managing entity is a breach of the fiduciary duties owed by the managing entity to owners of timeshare interests, unless the managing entity can show that it exercised due diligence to obtain and maintain the required insurance.

Section 25 amends s. 721.17, F.S., regarding transfer of interest in a timeshare development.

Present Situation: Section 721.17, F.S., provides that no developer or owner of the underlying fee may sell, lease, assign, mortgage, or otherwise transfer his or her interest in the accommodations or facilities of the timeshare plan except by recorded instrument, signed by both transferrer and transferee, which states that the provisions of the instrument are intended to protect the rights of all purchasers of the timeshare plan, that the terms of the timeshare plan may be enforced by any prior or subsequent timeshare purchaser not in default, that the transferee will fully honor the rights of purchasers to occupy and use the accommodations and facilities, that the transferee will fully honor all rights of timeshare purchasers to cancel contracts and receive appropriate refunds, and that the obligations of the transferee under such instrument will continue

to exist despite any cancellation or rejection of the contracts between the developer and purchaser arising out of any bankruptcy proceedings. These terms are presumed even if not specifically stated in the instrument. Notice of the transfer must be mailed to each purchaser of record.

Effect of Proposed Changes: Provides that the notice of the transfer of ownership of the underlying fee is not required to be provided to a purchaser if the transfer does not affect the purchaser's rights in or use of the timeshare plan.

Section 26 amends s. 721.18, F.S., regarding exchange programs, making grammatical changes.

Section 27 amends s. 721.19, F.S., making grammatical changes.

Section 28 amends s. 721.20, F.S., regarding licensing requirements.

Present Situation: A timeshare solicitor must purchase an occupational license from the division. The license fee is \$100, and the license is effective for two years. A timeshare solicitor is exempt from the real estate sales licensing requirements of Chapter 475, F.S. A timeshare solicitor is subject to discipline by the division. s. 721.20(1) and (2), F.S.

Effect of Proposed Changes: Eliminates the requirement that a timeshare solicitor obtain a timeshare occupational license and pay a licensing fee. Maintains the provision that a timeshare solicitor may be disciplined by the division, and adds a provision that makes a developer liable for actions of a timeshare solicitor under the direction or supervision of the developer. Authorizes county and municipal governments to adopt codes of conduct and regulations to govern solicitor conduct on public property, including providing for imposition of fines.

Section 29 amends s. 721.21, F.S., making grammatical changes.

Section 30 amends s. 721.24, F.S., regarding fire safety.

Present Situation: Certain timeshares, including timeshare condominiums, are subject to specified fire safety regulations.

Effect of Proposed Changes: Provides that timeshare cooperatives meeting the same criteria are also subject to the same fire safety regulations.

Section 31 amends s. 721.26, F.S., regarding regulation by the division.

Present Situation: Subparagraph 1 of s. 721.26(5)(a), F.S., lists the persons or entities whose conduct may be regulated by the division.

Effect of Proposed Changes: Adds "manager" to the list of persons or entities whose conduct may be regulated by the division.

Present Situation: The division may bring an action in circuit court to place a timeshare plan into receivership. s. 721.26(5)(d)2., F.S. If the events giving rise to the receivership cannot be reasonably and timely corrected in a cost-effective manner, the court is given broad power to

amend or modify the timeshare plan in order to resume effective operation, or the power to order sale of the timeshare property.

Effect of Proposed Changes: Allows the court to order the disposition and sale of timeshare property and provides that, in the event of a court-ordered sale of a timeshare property, all rights, title and interest held by the association or any purchaser shall be extinguished and shall vest in the person who purchases the timeshare property at the court-ordered sale.

Section 32 amends s. 721.27, F.S., regarding fees to the division.

Present Situation: The managing entity of a timeshare plan must pay the division a fee of \$2 per 7-day use availability that exists within the timeshare plan, by January 1 of every year. There is a 10 percent late fee (\$250 minimum) after March 1.

Effect of Proposed Changes: Provides that the annual fee assessed against timeshare units only applies to timeshare units located within the state, and provides that the annual fee restriction of s. 721.58, F.S., may be applicable. Deletes the mandatory penalty for late payment, but allows the division to assess a civil penalty as with any other violation of Chapter 721, F.S.

Section 33 creates s. 721.29, F.S., regarding recording of timeshare documents.

Present Situation: Several provisions of Chapter 721, F.S., require recording of documents in the official records. It is unclear how this requirement is to be applied to a timeshare in a jurisdiction that does not have a recording system or that will not accept a particular document for recording.

Effect of Proposed Changes: Provides that, if any timeshare plan accommodations or facilities are located in any jurisdiction that does not have recording laws or will not record a document or instrument required to be recorded pursuant to Chapter 721, F.S., the division may accept an alternative method of protecting purchasers' rights that will be effective under the laws of the other jurisdiction.

Section 34 amends s. 721.51, F.S., regarding the legislative purpose and scope of Part II of Chapter 721, F.S., on vacation clubs.

Present Situation: Section 721.51, F.S., sets forth the scope of Part II of Chapter 721, F.S. A multisite timeshare plan that includes accommodations located in Florida but which is offered exclusively outside of the United States is exempt from all other requirements of Chapter 721, F.S., provided the plan meets certain criteria. s. 721.51(3), F.S.; *see also* s. 721.03(1)(b), F.S.

Effect of Proposed Changes: Deletes the exemption in s. 721.51(3), F.S., only. The similar exemption in s. 721.03(1)(b), F.S., however, still applies.

Section 35 amends s. 721.52, F.S., regarding definitions.

Present Situation: Multisite timeshare plans are regulated under Part II of Chapter 721, F.S., and defined in s. 721.52(4), F.S., to exclude a plan where the maximum total financial obligation of the purchaser is \$1,500 or less.

Effect of Proposed Changes: Amends s. 72152(4), F.S., to increase the maximum total financial obligation of a purchaser from \$1,500 to \$3,000 to qualify a timeshare plan to be exempt from regulation under Part II of Chapter 721, F.S. The same change from \$1,500 to \$3,000 is made in Section 8 of this bill regarding single-site timeshare plans.

Section 36 amends s. 721.53, F.S., regarding subordination agreements or alternative security arrangements.

Present Situation: A developer of a multisite timeshare plan must provide the division with satisfactory evidence that some form of subordination agreement or alternative security is in place. s. 721.53(1), F.S. A subordination agreement or alternative security agreement assures purchasers that their interests in the timeshare plan will be superior to claims of creditors of the developer or the managing entity. Four types of assurance are set forth.

Effect of Proposed Changes: Provides an additional form of alternate security arrangement, where the interestholder transfers the interest in the subject accommodation or facility, or all use rights therein, to a trust that meets specific guidelines.

Section 37 amends s. 721.55, F.S., regarding multisite timeshare plan public offering statements.

Present Situation: The public offering statement must cross-reference the location of each exhibit and disclose the average level of occupancy and the capacity of facilities available for use by a purchaser at each component site. s. 721.55(4), F.S.

Effect of Proposed Changes: Removes the requirement to cross-reference exhibits in the public offering statement text and deletes the requirements to disclose the average level of occupancy and the capacity of each component facility (in terms of the number of people who can use it at any one time) and whether a swimming pool is heated or not.

Section 38 amends s. 721.551, F.S., making grammatical changes.

Section 39 amends s. 721.552, F.S., making grammatical changes.

Section 40 repeals s. 721.553, F.S., regarding portrayal of proposed component sites. Similar provisions are added at s. 721.11(9), F.S., although the new provisions do not contain the requirement currently in s. 721.553, F.S., that a seller of a multisite timeshare plan not make representations in advertisements and in a public offering statement regarding possible accommodations and facilities of a possible component site until after the developer has entered into a contract to purchase the real property underlying the possible component site, under which contract all contingencies pertaining to zoning, development, and any necessary consents and permits have been either satisfied or waived.

Section 41 amends s. 721.56, F.S., regarding management of multisite timeshare plans.

Present Situation: Subsection (1) of s. 721.56, F.S., requires a developer to file with the division an affidavit from a component site managing entity containing a statement that all assessments on inventory are fully paid as required by applicable law; the amount of delinquent assessments

existing at the component site, if any; the latest annual audit of the component site showing, if required, that reserves are adequately maintained with respect to each component site; and a specific acknowledgment by the component site managing entity regarding the existence of the multisite timeshare plan relating to the use of the accommodations and facilities of the component site by purchasers of the plan. Subsection (2) of 721.56, F.S., requires the affidavit to be renewed annually.

Effect of Proposed Changes: Eliminates the annual filing requirement.

Section 42 amends s. 721.81, F.S., making grammatical change.

Section 43 amends s. 721.82, F.S., adding a cross-reference to Chapter 719, F.S. (cooperatives) to match the existing cross-reference to Chapter 718, F.S. (condominiums).

Section 44 amends s. 721.84, F.S., making a grammatical change.

Section 45 amends s. 721.85, F.S., making a grammatical change.

Section 46 amends s. 721.86, F.S., adding a cross-reference to ch. 719, F.S. (cooperatives) to match the existing cross-reference to Chapter 718, F.S. (condominiums).

Section 47 amends s. 718.103, F.S., correcting a cross-reference.

Section 48 provides that, if any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 49 provides that this bill will take effect upon becoming law, however, all documents filed and approved prior to the effective date of the act, or any amendments thereto made after the date of this bill but in compliance with Chapter 721, F.S., prior to the effective date of this bill, will be deemed to be in compliance with the filing requirements of Chapter 721, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Section 721.20(2), F.S., currently requires all those who solicit prospective timeshare purchasers to have a 2-year occupational license for a fee of \$100. The bill eliminates this licensing requirement.

C. Government Sector Impact:

Section 721.20(2), F.S., currently requires all those who solicit prospective timeshare purchasers to have a 2-year occupational license for a fee of \$100. The bill eliminates this licensing requirement. The division states that the loss of this licensing fee will be an annual loss of \$190,000 in revenue to the Bureau of Timeshare of the Division of Florida Land Sales, Condominiums, and Mobile Homes.

Any unclaimed timeshare purchase deposits in escrow for five years that cannot be returned to the purchaser under the procedures in the bill will be deposited in the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Newly created s. 721.08(8), F.S., provides that if an escrow agent holds timeshare deposit escrow funds unclaimed for five years, the agent is to make at least one attempt to return the funds and is entitled to rely on the purchaser's last known address. No additional search for the rightful owner is required. If unsuccessful, the escrow agent must publish a legal notice in the county in which the timeshare property is located. If the purchaser does not claim the funds within 30 days of publication, the escrow agent may deliver such unclaimed funds to the division for deposit in the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund, at which point the purchaser will have no further claim on the funds and the escrow agent is relieved from further

liability. Generally, unclaimed funds are controlled by ch. 717, F.S. (paid over to the Department of Banking and Finance, published statewide and on the Internet for owners to perhaps claim the funds, and if not claimed then transferred to the General Revenue Fund).

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
