

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2252

SPONSOR: Regulated Industries Committee and Senator Constantine

SUBJECT: Timeshares

DATE: February 26, 2002      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	RI	Favorable/CS
2.	_____	_____	JU	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The bill provides that when a timeshare managing entity rents units of delinquent purchasers, it may make a reasonable determination regarding the priority of rentals of timeshare periods to be rented and, in the event that the delinquent purchaser of a timeshare period so rented cannot be specifically determined due to the structure of the timeshare plan, may allocate such net rental proceeds by the managing entity in any reasonable manner. The bill also allows the managing entity to rent such units at a bulk rate that is below the rate described above but not less than \$200 per week, which amount may be prorated for daily rentals. Finally, the bill makes the delinquent purchaser liable for any costs of collection, including reasonable attorney's fees, but requires the written notice before the purchaser becomes liable for the collection agency fees.

This bill substantially amends sections 721.111, 721.13 and 721.15 of the Florida Statutes.

## II. Present Situation:

Section 721.111(2), F.S., prohibits use of game promotions such as contests of chance, gift enterprises, or sweepstakes in connection with offering or selling timeshare interests, except for drawings in which no more than 10 prizes are promoted and in which all promoted prizes are actually awarded.

Section 721.13, F.S., requires a timeshare developer to provide for a managing entity for each timeshare plan, which must be either the developer, a separate manager or management firm, or an owners' association. Section 721.13(6)(b), F.S., provides that one of the functions of the managing entity is to oversee the use of the accommodations and facilities of the timeshare plan, including the right to deny the use of the accommodations and facilities of the timeshare plan to a delinquent purchaser and to those claiming use rights under the purchaser. To do so, the

managing entity must, no less than 30 days after the date the assessment is due in accordance with the timeshare instrument, notify the purchaser in writing of the total amount of any delinquency which then exists, including any accrued interest and late charges permitted to be imposed under the terms of the timeshare plan or by law and including a per diem amount, if any, to account for further accrual of interest and late charges between the stated effective date of the notice and the first date of use. The notice must also clearly state that the purchaser will not be permitted to use his or her timeshare period, that the purchaser will not be permitted to make a reservation in the timeshare plan's reservation system, or that any confirmed reservation may be cancelled, as applicable, until the total amount of such delinquency is satisfied in full or until the purchaser produces satisfactory evidence that the delinquency does not exist. The notice must be mailed to the purchaser at his or her last known address as recorded in the books and records of the timeshare plan, and the notice will be effective to bar the use of the purchaser and those claiming use rights under the purchaser, including his or her guests, lessees, and third parties receiving use rights in the timeshare period in question through a nonaffiliated exchange program, until such time as the purchaser is no longer delinquent.

Provided that the managing entity has properly and timely given notice to a delinquent purchaser pursuant to these requirements, the managing entity may give further notice to the delinquent purchaser that it may rent the delinquent purchaser's timeshare period, or any use rights appurtenant thereto, and will apply the proceeds of such rental, net of any rental commissions, cleaning charges, travel agent commissions, or any other commercially reasonable charges reasonably and usually incurred by the managing entity in securing rentals, to the delinquent purchaser's account. Such further notice of intent to rent must be given at least 30 days prior to the first day of the purchaser's use period, and must be delivered to the purchaser in the manner set forth above.

Subparagraph 721.13(6)(f)3., F.S., provides that, in securing a rental, the managing entity is not required to obtain the highest nightly rental rate available, nor any particular rental rate, and the managing entity is not required to rent the entire timeshare period; however, the managing entity must use reasonable efforts to secure a rental that is commensurate with other rentals of similar timeshare periods or use rights generally secured at that time.

Subparagraph 721.13(6)(f)2.c., F.S., provides that the purchaser will remain liable for any difference between the amount of the delinquency and the net amount produced by the rental contract and applied against the delinquency.

Section 721.15(3), F.S., provides for delinquent assessments for common expenses, including a provision that, provided that a purchaser has been advised in writing at least 60 days prior to turning the matter over to a collection agency that the purchaser may be liable for the fees of the collection agency and that a lien may result, any costs of collection, including reasonable collection agency fees and reasonable attorney's fees, incurred in the collection of a delinquent assessment shall be paid by the purchaser and shall be secured by a lien in favor of the managing entity upon the timeshare interest with respect to which the delinquent assessment has been incurred.

**III. Effect of Proposed Changes:**

The bill amends s. 721.111(2), F.S., to allow drawings in connection with offering or selling timeshare interests in which no more than 26, as opposed to the current limitation of 10, prizes are promoted and in which all promoted prizes are actually awarded.

The bill amends s. 721.13(6)(f)1., F.S., on the managing entity renting units of delinquent purchasers, to provide that in doing so, the managing entity may make a reasonable determination regarding the priority of rentals of timeshare periods to be rented and, in the event that the delinquent purchaser of a timeshare period so rented cannot be specifically determined due to the structure of the timeshare plan, may allocate such net rental proceeds by the managing entity in any reasonable manner. The bill also amends s. 721.13(6)(f)3., F.S., on the rental rates and other restrictions, which requires that the managing entity must use reasonable efforts to secure a rental that is commensurate with other rentals of similar timeshare periods or use rights generally secured at that time. The bill provides that, alternatively, the managing entity may rent such units at a bulk rate that is below the rate described above but not less than \$200 per week, which amount may be prorated for daily rentals.

The bill amends s. 721.15(3), F.S. Currently the section requires at least 60 days' written notice prior to turning the matter over to a collection agency before the purchaser becomes liable for any costs of collection, including reasonable attorney's fees. The bill makes the delinquent purchaser liable for any costs of collection, including reasonable attorney's fees, but requires the written notice before the purchaser becomes liable for the collection agency fees.

The bill takes effect upon becoming a law.

**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:**

The bill will make it easier to rent timeshare units of delinquent purchasers, reducing the obligation for the owner and revenue shortfall for the managing entity.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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