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1 with, or obtained personal contact information
2 from, a developer, managing entity, or exchange
3 company; creating s. 721.121, F.S.; providing
4 recordkeeping requirements for resale service
5 providers and lead dealers; providing that the
6 failure to produce such records in any civil or
7 criminal action relating to the wrongful
8 possession or wrongful use of personal contact
9 information shall lead to a presumption that
10 the personal contact information was wrongfully
11 obtained; providing what constitutes wrongful
12 use of such personal contact information;
13 providing for recovery of certain damages and
14 attorney's fees and costs; amending s. 721.13,
15 F.S.; providing that failure to obtain and
16 maintain required insurance coverage
17 constitutes a breach of the managing entity's
18 fiduciary duty; authorizing funding of reserve
19 accounts to be waived or reduced; providing the
20 managing entity with certain rights and powers;
21 providing language to be included in public
22 offering statements; providing recordkeeping
23 requirements; requiring the managing entity to
24 make certain records available to the division
25 under certain circumstances; conforming
26 cross-references; amending s. 721.15, F.S.;
27 providing that amounts expended for any
28 insurance coverage required by law or by the
29 timeshare instrument to be maintained by the
30 owners' association shall be exempt from
31 assessment of common expenses; providing that

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1 any determination by a timeshare association of
 2 whether assessments exceed 115 percent of
 3 assessments for the prior fiscal year shall
 4 exclude anticipated expenses for required
 5 insurance coverage; amending s. 721.165, F.S.;
 6 revising provisions relating to insurance;
 7 requiring managing entities to use due
 8 diligence to obtain certain types of insurance;
 9 providing factors that a managing entity must
 10 take into account in determining whether the
 11 insurance obtained is adequate; providing that
 12 insurance coverage may be subject to certain
 13 requirements; authorizing the managing entity
 14 to apply any existing reserves for certain
 15 purposes; amending ss. 721.55 and 721.552,
 16 F.S.; conforming cross-references and
 17 terminology; amending s. 721.97, F.S.;
 18 authorizing the Governor to appoint
 19 commissioners of deeds to take acknowledgments,
 20 proofs of execution, or oaths in international
 21 waters; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Paragraph (b) of subsection (1), paragraph
 26 (e) of subsection (3), and subsection (10) of section 721.03,
 27 Florida Statutes, are amended, and subsection (11) is added to
 28 that section, to read:

29 721.03 Scope of chapter.--

30 (1) This chapter applies to all timeshare plans
 31 consisting of more than seven timeshare periods over a period

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1 of at least 3 years in which the accommodations and
2 facilities, if any, are located within this state or offered
3 within this state; provided that:

4 (b) With respect to a timeshare plan containing
5 accommodations or facilities located in this state which is
6 offered for sale outside the jurisdictional limits of the
7 United States, such offer or sale shall be exempt from the
8 requirements of this chapter, provided that the developer
9 shall either file the timeshare plan with the division for
10 approval pursuant to this chapter, or pay an exemption
11 registration fee of \$100 and file the following minimum
12 information pertaining to the timeshare plan with the division
13 for approval:

14 1. The name and address of the timeshare plan.

15 2. The name and address of the developer and seller,
16 if any.

17 3. The location and a brief description of the
18 accommodations and facilities, if any, that are located in
19 this state.

20 4. The number of timeshare interests and timeshare
21 periods to be offered.

22 5. The term of the timeshare plan.

23 6. A copy of the timeshare instrument relating to the
24 management and operation of accommodations and facilities, if
25 any, that are located in this state.

26 7. A copy of the budget required by s. 721.07(5)(~~t~~)(~~u~~)
27 or s. 721.55(4)(h)5., as applicable.

28 8. A copy of the management agreement and any other
29 contracts regarding management or operation of the
30 accommodations and facilities, if any, that are located in
31 this state, and which have terms in excess of 1 year.

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1 9. A copy of the provision of the purchase contract to
 2 be utilized in offering the timeshare plan containing the
 3 following disclosure in conspicuous type immediately above the
 4 space provided for the purchaser's signature:

5
 6 The offering of this timeshare plan outside the jurisdictional
 7 limits of the United States of America is exempt from
 8 regulation under Florida law, and any such purchase is not
 9 protected by the State of Florida. However, the management and
 10 operation of any accommodations or facilities located in
 11 Florida is subject to Florida law and may give rise to
 12 enforcement action regardless of the location of any offer.

13 (3) A timeshare plan which is subject to the
 14 provisions of chapter 718 or chapter 719, if fully in
 15 compliance with the provisions of this chapter, is exempt from
 16 the following:

17 (e) Part VI of chapter 718 and part VI of chapter 719,
 18 relating to conversion of existing improvements to the
 19 condominium or cooperative form of ownership, respectively,
 20 provided that a developer converting existing improvements to
 21 a timeshare condominium or timeshare cooperative must comply
 22 with ss. 718.606, 718.608, 718.61, and 718.62, or ss. 719.606,
 23 719.608, 719.61, and 719.62, if applicable, and, if the
 24 existing improvements received a certificate of occupancy more
 25 than 18 months before such conversion, one of the following:

26 1. The accommodations and facilities shall be
 27 renovated and improved to a condition such that the remaining
 28 useful life in years of the roof, plumbing, air-conditioning,
 29 and any component of the structure which has a useful life
 30 less than the useful life of the overall structure is equal to
 31 the useful life of accommodations or facilities that would

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1 exist if such accommodations and facilities were newly
2 constructed and not previously occupied.

3 2. The developer shall fund reserve accounts for
4 capital expenditures and deferred maintenance for the roof,
5 plumbing, air-conditioning, and any component of the structure
6 the useful life of which is less than the useful life of the
7 overall structure. The reserve accounts shall be funded for
8 each component in an amount equal to the product of the
9 estimated current replacement cost of such component as of the
10 date of such conversion (as disclosed and substantiated by a
11 certificate under the seal of an architect or engineer
12 authorized to practice in this state) multiplied by a
13 fraction, the numerator of which shall be the ~~age remaining~~
14 ~~life~~ of the component in years (as disclosed and substantiated
15 by a certificate under the seal of an architect or engineer
16 authorized to practice in this state) and the denominator of
17 which shall be the total useful life of the component in years
18 (as disclosed and substantiated by a certificate under the
19 seal of an architect or engineer authorized to practice in
20 this state). Alternatively, the reserve accounts may be funded
21 for each component in an amount equal to the amount that,
22 except for the application of this subsection, would be
23 required to be maintained pursuant to s. 718.618(1) or s.
24 719.618(1). The developer shall fund the reserve accounts
25 contemplated in this subparagraph out of the proceeds of each
26 sale of a timeshare interest, on a pro rata basis, in an
27 amount not less than a percentage of the total amount to be
28 deposited in the reserve account equal to the percentage of
29 ownership allocable to the timeshare interest sold. When an
30 owners' association makes an expenditure of reserve account
31 funds before the developer has initially sold all timeshare

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1 interests, the developer shall make a deposit in the reserve
2 account if the reserve account is insufficient to pay the
3 expenditure. Such deposit shall be at least equal to that
4 portion of the expenditure which would be charged against the
5 reserve account deposit that would have been made for any such
6 timeshare interest had the timeshare interest been initially
7 sold. When a developer deposits amounts in excess of the
8 minimum reserve account funding, later deposits may be reduced
9 to the extent of the excess funding.

10 3. The developer shall provide each purchaser with a
11 warranty of fitness and merchantability pursuant to s.
12 718.618(6) or s. 719.618(6).

13 (10) A developer or seller may not offer any number of
14 timeshare interests that would cause the total number of
15 timeshare interests offered to exceed a one-to-one use right
16 ~~purchaser to use night requirement accommodation~~ ratio.

17 (11)(a) A seller may offer timeshare interests in a
18 real property timeshare plan located outside of this state
19 without filing a public offering statement for such
20 out-of-state real property timeshare plan pursuant to s.
21 721.07 or s. 721.55, provided all of the following criteria
22 have been satisfied:

23 1. The seller shall provide a disclosure statement to
24 each prospective purchaser of such out-of-state timeshare
25 plan. The disclosure statement for a single-site timeshare
26 plan shall contain information otherwise required under s.
27 721.07(5)(e)-(cc) and the exhibits required by s.
28 721.07(5)(ff)1., 2., 3., 4., 5., 7., 8., and 20. The
29 disclosure statement for a multisite timeshare plan shall
30 contain information otherwise required under s. 721.55(4) and
31 (5) and the exhibits required under s. 721.55(7). If a

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1 developer has, in good faith, attempted to comply with the
2 requirements of this subsection and if the developer has
3 substantially complied with the disclosure requirements of
4 this subsection, nonmaterial errors or omissions shall not be
5 actionable. With respect to any offer for an out-of-state
6 timeshare plan made pursuant to this subsection, the delivery
7 by the seller to a prospective purchaser of the disclosure
8 statement required by this subparagraph shall be deemed to
9 satisfy any requirement of this chapter regarding a public
10 offering statement.

11 2. The seller shall utilize and furnish to each
12 purchaser of an out-of-state timeshare plan offered under this
13 subsection a fully completed and executed copy of a purchase
14 contract that contains the statement set forth in s.
15 721.065(2)(c) in conspicuous type located immediately prior to
16 the space in the contract reserved for the purchaser's
17 signature. The purchase contract shall also contain the
18 initial purchase price and any additional charges to which the
19 purchaser may be subject in connection with the purchase of
20 the timeshare plan, such as financing, or that will be
21 collected from the purchaser on or before closing, such as the
22 current year's annual assessment for common expenses.

23 3. All purchase contracts for out-of-state timeshare
24 plans offered under this subsection must also contain the
25 following statements in conspicuous type:

26
27 This timeshare plan has not been reviewed or
28 approved by the State of Florida.

29
30 The timeshare interest you are purchasing
31 requires certain procedures to be followed in

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1 order for you to use your interest. These
2 procedures may be different from those followed
3 in other timeshare plans. You should read and
4 understand these procedures prior to
5 purchasing.

6
7 4.a. An out-of-state timeshare plan may only be
8 offered pursuant to this subsection by the seller on behalf
9 of:

10 (I) The developer of a timeshare plan that has been
11 approved by the division within the preceding 7 years pursuant
12 to s. 721.07 or s. 721.55, or concerning which an amendment by
13 the developer has been approved by the division within the
14 preceding 7 years, which timeshare plan has been neither
15 terminated nor withdrawn; or

16 (II) A developer under common ownership or control
17 with a developer described in sub-sub-subparagraph (I),
18 provided that any common ownership shall constitute at least a
19 50-percent ownership interest.

20 b. An out-of-state timeshare plan may only be offered
21 pursuant to this subsection to a person who already owns a
22 timeshare interest in a timeshare plan filed by a developer
23 described in sub-subparagraph a.

24 5. Any seller of an out-of-state timeshare plan
25 offered pursuant to this subsection shall be required to
26 provide notice of such plan to the division on a form
27 prescribed by the division, along with payment of a one-time
28 fee not to exceed \$1,000 per filing.

29 (b) Timeshare plans offered pursuant to this
30 subsection shall be exempt from the requirements of ss.
31 721.06, 721.065, 721.07, 721.27, 721.55, and 721.58 in

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1 addition to the exemptions otherwise applicable to
2 accommodations and facilities located outside of the state
3 pursuant to subparagraph (1)(c)1.

4 (c) Any escrow account required to be established by
5 s. 721.08 for any out-of-state timeshare plan offered under
6 this subsection may be maintained in the situs jurisdiction
7 provided the escrow agent submits to personal jurisdiction in
8 this state in a form satisfactory to the division.

9 Section 2. Subsection (25) of section 721.05, Florida
10 Statutes, is amended, and subsections (42), (43), and (44) are
11 added to that section, to read:

12 721.05 Definitions.--As used in this chapter, the
13 term:

14 (25) "One-to-one use right ~~purchaser~~ to use night
15 requirement ~~accommodation~~ ratio" means that the sum of the
16 nights that owners are entitled to use in a given 12-month
17 period shall not exceed the number of nights available for use
18 by those owners during the same 12-month period. No individual
19 timeshare unit may be counted as providing more than 365 use
20 nights per 12-month period or more than 366 use nights per
21 12-month period that includes February 29. The use rights of
22 each owner shall be counted without regard to whether the
23 owner's use rights have been suspended for failure to pay
24 assessments or otherwise ~~the ratio of the number of purchasers~~
25 ~~eligible to use the accommodations of a timeshare plan on a~~
26 ~~given day to the number of accommodations available for use~~
27 ~~within the plan on that day, such that the total number of~~
28 ~~purchasers eligible to use the accommodations of the timeshare~~
29 ~~plan during a given calendar year never exceeds the total~~
30 ~~number of accommodations available for use in the timeshare~~
31 ~~plan during that year. For purposes of calculation under this~~

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1 ~~subsection, each purchaser must be counted at least once, and~~
 2 ~~no individual timeshare unit may be counted more than 365~~
 3 ~~times per calendar year (or more than 366 times per leap~~
 4 ~~year). A purchaser who is delinquent in the payment of~~
 5 ~~timeshare plan assessments shall continue to be considered~~
 6 ~~eligible to use the accommodations of the timeshare plan for~~
 7 ~~purposes of this subsection notwithstanding any application of~~
 8 ~~s. 721.13(6).~~

9 (42) "Lead dealer" means any person who sells or
 10 otherwise provides a resale service provider or any other
 11 person with personal contact information for five or more
 12 owners of timeshare interests. In the event a lead dealer is
 13 not a natural person, the term shall also include the natural
 14 person providing personal contact information to a resale
 15 service provider or other person on behalf of the lead dealer
 16 entity. The term does not include developers, managing
 17 entities, or exchange companies to the extent they provide
 18 others with personal contact information about owners of
 19 timeshare interests in their own timeshare plans or members of
 20 their own exchange programs.

21 (43) "Personal contact information" means any
 22 information that can be used to contact the owner of a
 23 specific timeshare interest, including, but not limited to,
 24 the owner's name, address, telephone number, and e-mail
 25 address.

26 (44) "Resale service provider" means any person who
 27 uses unsolicited telemarketing, direct mail, or e-mail in
 28 connection with the offering of resale brokerage or resale
 29 advertising services to owners of timeshare interests. The
 30 term does not include developers, managing entities, or
 31 exchange companies to the extent they offer resale brokerage

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1 or resale advertising services to owners of timeshare
2 interests in their own timeshare plans or members of their own
3 exchange programs.

4 Section 3. Paragraphs (n) through (v) of subsection
5 (5) of section 721.07, Florida Statutes, are redesignated as
6 paragraphs (m) through (u), present paragraphs (m) and (v) of
7 that subsection are amended, and subsection (7) is added to
8 that section, to read:

9 721.07 Public offering statement.--Prior to offering
10 any timeshare plan, the developer must submit a filed public
11 offering statement to the division for approval as prescribed
12 by s. 721.03, s. 721.55, or this section. Until the division
13 approves such filing, any contract regarding the sale of that
14 timeshare plan is subject to cancellation by the purchaser
15 pursuant to s. 721.10.

16 (5) Every filed public offering statement for a
17 timeshare plan which is not a multisite timeshare plan shall
18 contain the information required by this subsection. The
19 division is authorized to provide by rule the method by which
20 a developer must provide such information to the division.

21 ~~(m) A description of any financing to be offered to~~
22 ~~purchasers by the developer or any person or entity in which~~
23 ~~the developer has a financial interest, together with a~~
24 ~~disclosure that the description of such financing may be~~
25 ~~changed by the developer and that any change in the financing~~
26 ~~offered to prospective purchasers will not be deemed to be a~~
27 ~~material change.~~

28 (u)(v) For any timeshare plan for which the purchase
29 or closing of timeshare interests is not subject to the
30 requirements of the Real Estate Settlement Procedures Act, 12
31 U.S.C. s. 2601 et seq., a schedule of estimated closing

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1 expenses to be paid by a purchaser or lessee of a timeshare
2 interest.

3 (v) ~~and~~ A statement as to whether a title opinion or
4 title insurance policy is available to the purchaser and, if
5 so, at whose expense.

6 (ff) Copies of the following documents and plans, to
7 the extent they are applicable, shall be included as exhibits
8 to the filed public offering statement provided, if the
9 timeshare plan has not been declared or created at the time of
10 the filing, the developer shall provide proposed documents:

- 11 1. The declaration of condominium.
- 12 2. The cooperative documents.
- 13 3. The declaration of covenants and restrictions.
- 14 4. The articles of incorporation creating the owners'
- 15 association.
- 16 5. The bylaws of the owners' association.
- 17 6. Any ground lease or other underlying lease of the
- 18 real property associated with the timeshare plan. In the case
- 19 of a personal property timeshare plan, any lease of the
- 20 personal property associated with the personal property
- 21 timeshare plan.
- 22 7. The management agreement and all maintenance and
- 23 other contracts regarding the management and operation of the
- 24 timeshare property which have terms in excess of 1 year.
- 25 8. The estimated operating budget for the timeshare
- 26 plan and the required schedule of purchasers' expenses.
- 27 9. The floor plan of each type of accommodation and
- 28 the plot plan showing the location of all accommodations and
- 29 facilities declared as part of the timeshare plan and filed
- 30 with the division.
- 31 10. The lease for any facilities.

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1 11. A declaration of servitude of properties serving
2 the accommodations and facilities, but not owned by purchasers
3 or leased to them or the owners' association.

4 12. Any documents required by s. 721.03(3)(e) as the
5 result of the inclusion of a timeshare plan in the conversion
6 of the building to condominium or cooperative ownership.

7 13. The form of agreement for sale or lease of
8 timeshare interests.

9 14. The executed agreement for escrow of payments made
10 to the developer prior to closing and the form of any
11 agreement for escrow of ad valorem tax escrow payments, if
12 any, to be made into an ad valorem tax escrow account pursuant
13 to s. 192.037(6).

14 15. The documents containing any restrictions on use
15 of the property required by paragraph(r) ~~(s)~~.

16 16. A letter from the escrow agent or filing attorney
17 confirming that the escrow agent and its officers, directors,
18 or other partners are independent pursuant to the requirements
19 of this chapter.

20 17. Any nondisturbance and notice to creditors
21 instrument required by s. 721.08.

22 18. In the case of any personal property timeshare
23 plan in which the accommodations and facilities are located on
24 or in a documented vessel or foreign vessel as provided in s.
25 721.08(2)(c)3.e., a copy of the certificate of ownership of
26 such vessel and either a copy of the certificate of
27 documentation or certificate of registry of such vessel.

28 19. An executed affidavit given under oath by an
29 attorney licensed to practice law in any jurisdiction in the
30 United States stating that the attorney has researched the
31 applicable laws of the jurisdiction in which governing law has

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1 been established and the laws of the jurisdiction in which the
 2 vessel is registered, and has found that the timeshare
 3 instrument complies with the provisions of s.
 4 721.08(2)(c)3.e.(II)(C) and (III).

5 20. Any other documents or instruments creating the
 6 timeshare plan.

7 (7) The division may accept an alternate form of
 8 timeshare disclosure statement under an agreement with another
 9 state. At a minimum, the alternate form of timeshare
 10 disclosure statement must have provisions substantially
 11 similar to this section. The division may adopt rules pursuant
 12 to ss. 120.536(1) and 120.54 to implement this subsection.

13 Section 4. Paragraph (d) of subsection (1) of section
 14 721.075, Florida Statutes, is amended to read:

15 721.075 Incidental benefits.--Incidental benefits
 16 shall be offered only as provided in this section.

17 (1) Accommodations, facilities, products, services,
 18 discounts, or other benefits which satisfy the requirements of
 19 this subsection shall be subject to the provisions of this
 20 section and exempt from the other provisions of this chapter
 21 which would otherwise apply to such accommodations or
 22 facilities if and only if:

23 (d) The continued availability to purchasers of
 24 timeshare plan accommodations on no greater than a one-to-one
 25 use right purchaser to use night requirement accommodation
 26 ratio is not dependent upon continued availability of the
 27 incidental benefit.

28 Section 5. Subsection (4) of section 721.11, Florida
 29 Statutes, is amended to read:

30 721.11 Advertising materials; oral statements.--

31 (4) No advertising or oral statement made by any

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1 seller or resale service provider shall:

2 (a) Misrepresent a fact or create a false or
3 misleading impression regarding the timeshare plan or
4 promotion thereof.

5 (b) Make a prediction of specific or immediate
6 increases in the price or value of timeshare interests.

7 (c) Contain a statement concerning future price
8 increases by a seller which are nonspecific or not bona fide.

9 (d) Contain any asterisk or other reference symbol as
10 a means of contradicting or substantially changing any
11 previously made statement or as a means of obscuring a
12 material fact.

13 (e) Describe any facility that is not required to be
14 built or that is uncompleted unless the improvement is
15 conspicuously labeled as "NEED NOT BE BUILT," "PROPOSED," or
16 "UNDER CONSTRUCTION." If the facility is labeled "NEED NOT BE
17 BUILT" or "PROPOSED," the seller may indicate the estimated
18 date that such facility will be made part of the timeshare
19 plan. If the facility is labeled "UNDER CONSTRUCTION," the
20 estimated date of completion must be included.

21 (f) Misrepresent the size, nature, extent, qualities,
22 or characteristics of the offered accommodations or
23 facilities.

24 (g) Misrepresent the amount or period of time during
25 which the accommodations or facilities will be available to
26 any purchaser.

27 (h) Misrepresent the nature or extent of any
28 incidental benefit.

29 (i) Make any misleading or deceptive representation
30 with respect to the contents of the public offering statement
31 and the contract or the rights, privileges, benefits, or

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1 obligations of the purchaser under the contract or this
2 chapter.

3 (j) Misrepresent the conditions under which a
4 purchaser may exchange the right to use accommodations or
5 facilities in one location for the right to use accommodations
6 or facilities in another location.

7 (k) Misrepresent the availability of a resale or
8 rental program or resale or rental opportunity ~~offered by or~~
9 ~~on behalf of the developer.~~

10 (l) Contain an offer or inducement to purchase which
11 purports to be limited as to quantity or restricted as to time
12 unless the numerical quantity or time limit applicable to the
13 offer or inducement is clearly stated.

14 (m) Imply that a facility is available for the
15 exclusive use of purchasers if the facility will actually be
16 shared by others or by the general public.

17 (n) Purport to have resulted from a referral unless
18 the name of the person making the referral can be produced
19 upon demand of the division.

20 (o) Misrepresent the source of the advertising or
21 statement by leading a prospective purchaser to believe that
22 the advertising material is mailed by a governmental or
23 official agency, credit bureau, bank, or attorney, if that is
24 not the case.

25 (p) Misrepresent the value of any prize, gift, or
26 other item to be awarded in connection with any prize and gift
27 promotional offer, as described in s. 721.111, or any
28 incidental benefit.

29 (q) Misrepresent or falsely imply that the resale
30 service provider is affiliated with, or obtained personal
31 contact information from, a developer, managing entity, or

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1 exchange company.

2 Section 6. Section 721.121, Florida Statutes, is
3 created to read:

4 721.121 Recordkeeping by resale service providers and
5 lead dealers.--

6 (1) Resale service providers and lead dealers shall
7 maintain the following records for a period of 5 years from
8 the date each piece of personal contact information is
9 obtained:

10 (a) The name, home address, work address, home
11 telephone number, work telephone number, and cellular
12 telephone number of the lead dealer from which the personal
13 contact information was obtained.

14 (b) A copy of a current government-issued photographic
15 identification for the lead dealer from which the personal
16 contact information was obtained, such as a driver's license,
17 passport, or military identification card.

18 (c) The date, time, and place of the transaction at
19 which the personal contact information was obtained, along
20 with the amount of consideration paid and a signed receipt
21 from the lead dealer or copy of a canceled check.

22 (d) A copy of all pieces of personal contact
23 information obtained in the exact form and media in which they
24 were received.

25 (e) If personal contact information was directly
26 researched and assembled by the resale service provider or
27 lead dealer and not obtained from another lead dealer, a
28 complete written description of the sources from which
29 personal contact information was obtained, the methodologies
30 used for researching and assembling it, the items set forth in
31 paragraphs (a) and (b) for the individuals who performed the

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1 work, and the date such work was done.

2 (2) In any civil or criminal action relating to the
3 wrongful possession or wrongful use of personal contact
4 information by a resale service provider or lead dealer, any
5 failure by a resale service provider or lead dealer to produce
6 the records required by subsection (1) shall lead to a
7 presumption that the personal contact information was
8 wrongfully obtained.

9 (3) Any use by a resale service provider or lead
10 dealer of personal contact information that is wrongfully
11 obtained pursuant to this section shall be considered wrongful
12 use of such personal contact information by the resale service
13 provider or lead dealer, as applicable. Any party who
14 establishes that a resale service provider or lead dealer
15 wrongfully obtained or wrongfully used personal contact
16 information with respect to owners of a timeshare plan or
17 members of an exchange program shall, in addition to any other
18 remedies that may be available in law or equity, be entitled
19 to recover from such resale service provider or lead dealer an
20 amount equal to \$1,000 for each owner about whom personal
21 contact information was wrongfully obtained or used. Upon
22 prevailing, the plaintiff in any such action shall also be
23 entitled to recover reasonable attorney's fees and costs.

24 Section 7. Paragraph (c) is added to subsection (2) of
25 section 721.13, Florida Statutes, paragraph (c) of subsection
26 (3) of that section is amended, and subsection (12) is added
27 to that section, to read:

28 721.13 Management.--

29 (2)

30 (c) Failure by a managing entity to obtain and
31 maintain insurance coverage as required under s. 721.165

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1 during any period of developer control of the managing entity
 2 shall constitute a breach of the managing entity's fiduciary
 3 duty.

4 (3) The duties of the managing entity include, but are
 5 not limited to:

6 (c)1. Providing each year to all purchasers an
 7 itemized annual budget which shall include all estimated
 8 revenues and expenses. The budget shall be in the form
 9 required by s. 721.07(5)(t)(~~u~~). The budget shall be the final
 10 budget adopted by the managing entity for the current fiscal
 11 year. The final adopted budget is not required to be delivered
 12 if the managing entity has previously delivered a proposed
 13 annual budget for the current fiscal year to purchasers in
 14 accordance with chapter 718 or chapter 719 and the managing
 15 entity includes a description of any changes in the adopted
 16 budget with the assessment notice and a disclosure regarding
 17 the purchasers' right to receive a copy of the adopted budget,
 18 if desired. The budget shall contain, as a footnote or
 19 otherwise, any related party transaction disclosures or notes
 20 which appear in the audited financial statements of the
 21 managing entity for the previous budget year as required by
 22 paragraph (e). A copy of the final budget shall be filed with
 23 the division for review within 30 days after the beginning of
 24 each fiscal year together with a statement of the number of
 25 periods of 7-day annual use availability that exist within the
 26 timeshare plan, including those periods filed for sale by the
 27 developer but not yet committed to the timeshare plan, for
 28 which annual fees are required to be paid to the division
 29 under s. 721.27.

30 2. Notwithstanding anything contained in chapter 718
 31 or chapter 719 to the contrary, the board of administration of

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1 an owners' association which serves as the managing entity may
 2 from time to time reallocate reserves for deferred maintenance
 3 and capital expenditures required by s.
 4 721.07(5)(~~t~~)(~~u~~)3.a.(XI) from any deferred maintenance or
 5 capital expenditure reserve account to any other deferred
 6 maintenance or capital expenditure reserve account or accounts
 7 in its discretion without the consent of purchasers of the
 8 timeshare plan. Funds in any deferred maintenance or capital
 9 expenditure reserve account may not be transferred to any
 10 operating account without the consent of a majority of the
 11 purchasers of the timeshare plan. The managing entity may from
 12 time to time transfer excess funds in any operating account to
 13 any deferred maintenance or capital expenditure reserve
 14 account without the vote or approval of purchasers of the
 15 timeshare plan. In the event any amount of reserves for
 16 accommodations and facilities of a timeshare plan containing
 17 timeshare licenses or personal property timeshare interests
 18 exists at the end of the term of the timeshare plan, such
 19 reserves shall be refunded to purchasers on a pro rata basis.

20 3. With respect to any timeshare plan that has a
 21 managing entity that is an owners' association, reserves may
 22 be waived or reduced by a majority vote of those voting
 23 interests that are present, in person or by proxy, at a duly
 24 called meeting of the owners' association. If a meeting of the
 25 purchasers has been called to determine whether to waive or
 26 reduce the funding of reserves and no such result is achieved
 27 or a quorum is not attained, the reserves as included in the
 28 budget shall go into effect.

29 (12)(a) In addition to any other rights granted by the
 30 rules and regulations of the timeshare plan, the managing
 31 entity of a timeshare plan is authorized to manage the

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1 reservation and use of accommodations using those processes,
2 analyses, procedures, and methods that are in the best
3 interests of the owners as a whole to efficiently manage the
4 timeshare plan and encourage the maximum use and enjoyment of
5 the accommodations and other benefits made available through
6 the timeshare plan. The managing entity shall have the right
7 to forecast anticipated reservation and use of the
8 accommodations, including the right to take into account
9 current and previous reservation and use of the
10 accommodations, information about events that are scheduled to
11 occur, seasonal use patterns, and other pertinent factors that
12 affect the reservation or use of the accommodations. In
13 furtherance of the provisions of this subsection, the managing
14 entity is authorized to reserve accommodations, in the best
15 interests of the owners as a whole, for the purposes of
16 depositing such reserved use with an affiliated exchange
17 program or renting such reserved accommodations in order to
18 facilitate the use or future use of the accommodations or
19 other benefits made available through the timeshare plan.

20 (b) A statement in conspicuous type, in substantially
21 the following form, shall appear in the public offering
22 statement as provided in s. 721.07:

23
24 The managing entity shall have the right to
25 forecast anticipated reservation and use of the
26 accommodations of the timeshare plan and is
27 authorized to reasonably reserve, deposit, or
28 rent the accommodations for the purpose of
29 facilitating the use or future use of the
30 accommodations or other benefits made available
31 through the timeshare plan.

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(c) The managing entity shall maintain copies of all records, data, and information supporting the processes, analyses, procedures, and methods utilized by the managing entity in its determination to reserve accommodations of the timeshare plan pursuant to this subsection for a period of 5 years from the date of such determination. In the event of an investigation by the division for failure of a managing entity to comply with this subsection, the managing entity shall make all such records, data, and information available to the division for inspection, provided that if the managing entity complies with the provisions of s. 721.071, any such records, data, and information provided to the division shall constitute a trade secret pursuant to that section.

Section 8. Paragraph (c) of subsection (2) of section 721.15, Florida Statutes, is amended, and subsection (11) is added to that section, to read:

721.15 Assessments for common expenses.--

(2)

(c) For the purpose of calculating the obligation of a developer under a guarantee pursuant to paragraph (b), amounts expended for any insurance coverage required by law or by the timeshare instrument to be maintained by the owners' association and depreciation expenses related to real property shall be excluded from common expenses incurred during the guarantee period, except that for real property that is used for the production of fees, revenues, or other income, depreciation expenses shall be excluded only to the extent that they exceed the net income from the production of such fees, revenues, or other income. Any special assessment imposed for amounts excluded from the developer guarantee

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1 pursuant to this paragraph shall be paid proportionately by
2 all owners of timeshare interests, including the developer
3 with respect to the timeshare interests owned by the
4 developer, in accordance with the timeshare instrument.

5 (11) Notwithstanding any provision of chapter 718 or
6 chapter 719 to the contrary, any determination by a timeshare
7 association of whether assessments exceed 115 percent of
8 assessments for the prior fiscal year shall exclude
9 anticipated expenses for insurance coverage required by law or
10 by the timeshare instrument to be maintained by the
11 association.

12 Section 9. Section 721.165, Florida Statutes, is
13 amended to read:

14 721.165 Insurance.--

15 (1) Notwithstanding any provision contained in the
16 timeshare instrument or in this chapter, chapter 718, or
17 chapter 719 to the contrary, the ~~seller, initially, and~~
18 ~~thereafter the~~ managing entity, shall use due diligence to
19 obtain adequate casualty ~~be responsible for obtaining~~
20 insurance as a common expense of the timeshare plan to protect
21 the timeshare property against all reasonably foreseeable
22 perils, in such covered amounts and subject to such reasonable
23 exclusions and reasonable deductibles as are consistent with
24 the provisions of this section ~~accommodations and facilities~~
25 ~~of the timeshare plan in an amount equal to the replacement~~
26 ~~cost of such accommodations and facilities. Failure to obtain~~
27 ~~and maintain the insurance required by this subsection during~~
28 ~~any period of developer control of the managing entity shall~~
29 ~~constitute a breach of s. 721.13(2)(a) by the managing entity,~~
30 ~~unless the managing entity can show that, despite such~~
31 ~~failure, it exercised due diligence to obtain and maintain the~~

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1 ~~insurance required by this subsection.~~

2 (2) In making the determination as to whether the
3 insurance obtained pursuant to subsection (1) is adequate, the
4 managing entity shall take into account the following factors,
5 among others as may be applicable:

6 (a) Available insurance coverages and related premiums
7 in the marketplace.

8 (b) Amounts of any related deductibles, types of
9 exclusions, and coverage limitations, provided that for
10 purposes of this paragraph a deductible of 5percent or less
11 shall be deemed to be reasonable per se.

12 (c) The probable maximum loss relating to the insured
13 timeshare property during the policy term.

14 (d) The extent to which a given peril is insurable
15 under commercially reasonable terms.

16 (e) Amounts of any deferred maintenance or replacement
17 reserves on hand.

18 (f) Geography and any special risks associated with
19 the location of the timeshare property.

20 (g) The age and type of construction of the timeshare
21 property.

22 (3) Notwithstanding any provision contained in this
23 section or in the timeshare instrument to the contrary,
24 insurance shall be procured and maintained by the managing
25 entity for the timeshare property as a common expense of the
26 timeshare plan against such perils, in such coverages, and
27 subject to such reasonable deductions or reasonable exclusions
28 as may be required by:

29 (a) An institutional lender to a developer, for so
30 long as such lender holds a mortgage encumbering any interest
31 in or lien against a portion of the timeshare property; or

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1 (b) Any holder or pledgee of, or any institutional
2 lender having a security interest in, a pool of promissory
3 notes secured by mortgages or other security interests
4 relating to the timeshare plan, executed by purchasers in
5 connection with such purchasers' acquisition of timeshare
6 interests in such timeshare property, or any agent,
7 underwriter, placement agent, trustee, servicer, custodian, or
8 other portfolio manager acting on behalf of such holder,
9 pledgee, or institutional lender, for so long as any such
10 notes and mortgages or other security interests remain
11 outstanding.

12 (4) Notwithstanding any provision contained in the
13 timeshare instrument or in this chapter, chapter 718, or
14 chapter 719 to the contrary, the managing entity is authorized
15 to apply any existing reserves for deferred maintenance and
16 capital expenditures toward payment of insurance deductibles
17 or the repair or replacement of the timeshare property after a
18 casualty without regard to the purposes for which such
19 reserves were originally established.

20 (5)(2) A copy of each policy of insurance in effect
21 shall be made available for reasonable inspection by
22 purchasers and their authorized agents.

23 Section 10. Paragraphs (f) and (h) of subsection (4)
24 and paragraph (1) of subsection (7) of section 721.55, Florida
25 Statutes, are amended to read:

26 721.55 Multisite timeshare plan public offering
27 statement.--Each filed public offering statement for a
28 multisite timeshare plan shall contain the information
29 required by this section and shall comply with the provisions
30 of s. 721.07, except as otherwise provided therein. The
31 division is authorized to provide by rule the method by which

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1 a developer must provide such information to the division.

2 Each multisite timeshare plan filed public offering statement
3 shall contain the following information and disclosures:

4 (4) A text, which shall include, where applicable, the
5 information and disclosures set forth in paragraphs (a)-(1).

6 (f) If the provisions of s. 721.552 and the timeshare
7 instrument permit additions, substitutions, or deletions of
8 accommodations or facilities, the public offering statement
9 must include substantially the following information:

10 1. Additions.--

11 a. A description of the basis upon which new
12 accommodations and facilities may be added to the multisite
13 timeshare plan; by whom additions may be made; and the
14 anticipated effect of the addition of new accommodations and
15 facilities upon the reservation system, its priorities, its
16 rules and regulations, and the availability of existing
17 accommodations and facilities.

18 b. The developer must disclose the existence of any
19 cap on annual increases in common expenses of the multisite
20 timeshare plan that would apply in the event that additional
21 accommodations and facilities are made a part of the plan.

22 c. The developer shall also disclose any extent to
23 which the purchasers of the multisite timeshare plan will have
24 the right to consent to any proposed additions; if the
25 purchasers do not have the right to consent, the developer
26 must include the following disclosure in conspicuous type:

27
28 Accommodations and facilities may be added to this
29 multisite timeshare plan (or multisite vacation ownership plan
30 or multisite vacation plan or vacation club) without the
31 consent of the purchasers. The addition of accommodations and

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1 facilities to the plan may result in the addition of new
 2 purchasers who will compete with existing purchasers in making
 3 reservations for the use of available accommodations and
 4 facilities within the plan, and may also result in an increase
 5 in the annual assessment against purchasers for common
 6 expenses.

7

8 2. Substitutions.--

9 a. A description of the basis upon which new
 10 accommodations and facilities may be substituted for existing
 11 accommodations and facilities of the multisite timeshare plan;
 12 by whom substitutions may be made; the basis upon which the
 13 determination may be made to cause such substitutions to
 14 occur; and any limitations upon the ability to cause
 15 substitutions to occur.

16 b. The developer shall also disclose any extent to
 17 which purchasers will have the right to consent to any
 18 proposed substitutions; if the purchasers do not have the
 19 right to consent, the developer must include the following
 20 disclosure in conspicuous type:

21

22 New accommodations and facilities may be substituted
 23 for existing accommodations and facilities of this multisite
 24 timeshare plan (or multisite vacation ownership plan or
 25 multisite vacation plan or vacation club) without the consent
 26 of the purchasers. The replacement accommodations and
 27 facilities may be located at a different place or may be of a
 28 different type or quality than the replaced accommodations and
 29 facilities. The substitution of accommodations and facilities
 30 may also result in an increase in the annual assessment
 31 against purchasers for common expenses.

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3. Deletions.--A description of any provision of the timeshare instrument governing deletion of accommodations or facilities from the multisite timeshare plan. If the timeshare instrument does not provide for business interruption insurance in the event of a casualty, or if it is unavailable, or if the instrument permits the developer, the managing entity, or the purchasers to elect not to reconstruct after casualty under certain circumstances or to secure replacement accommodations or facilities in lieu of reconstruction, the public offering statement must contain a disclosure that during the reconstruction, replacement, or acquisition period, or as a result of a decision not to reconstruct, purchasers of the plan may temporarily compete for available accommodations on a greater than one-to-one use right purchaser to use night requirement accommodation ratio.

(h) A description of the purchaser's liability for common expenses of the multisite timeshare plan, including the following:

1. A description of the common expenses of the plan, including the method of allocation and assessment of such common expenses, whether component site common expenses and real estate taxes are included within the total common expense assessment of the multisite timeshare plan, and, if not, the manner in which timely payment of component site common expenses and real estate taxes shall be accomplished.

2. A description of any cap imposed upon the level of common expenses payable by the purchaser. In no event shall the total common expense assessment for the multisite timeshare plan in a given calendar year exceed 125 percent of the total common expense assessment for the plan in the

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1 previous calendar year.

2 3. A description of the entity responsible for the
3 determination of the common expenses of the multisite
4 timeshare plan, as well as any entity which may increase the
5 level of common expenses assessed against the purchaser at the
6 multisite timeshare plan level.

7 4. A description of the method used to collect common
8 expenses, including the entity responsible for such
9 collections, and the lien rights of any entity for nonpayment
10 of common expenses. If the common expenses of any component
11 site are collected by the managing entity of the multisite
12 timeshare plan, a statement to that effect together with the
13 identity and address of the escrow agent required by s.
14 721.56(3).

15 5. If the purchaser will receive an interest in a
16 nonspecific multisite timeshare plan, a statement that a
17 multisite timeshare plan budget is attached to the public
18 offering statement as an exhibit pursuant to paragraph (7)(c).
19 The multisite timeshare plan budget shall comply with the
20 provisions of s. 721.07(5)(t)(~~u~~).

21 6. If the developer intends to guarantee the level of
22 assessments for the multisite timeshare plan, such guarantee
23 must be based upon a good faith estimate of the revenues and
24 expenses of the multisite timeshare plan. The guarantee must
25 include a description of the following:

26 a. The specific time period, measured in one or more
27 calendar or fiscal years, during which the guarantee will be
28 in effect.

29 b. A statement that the developer will pay all common
30 expenses incurred in excess of the total revenues of the
31 multisite timeshare plan, if the developer is to be excused

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1 from the payment of assessments during the guarantee period.

2 c. The level, expressed in total dollars, at which the
3 developer guarantees the assessments. If the developer has
4 reserved the right to extend or increase the guarantee level,
5 a disclosure must be included to that effect.

6 7. If required under applicable law, the developer
7 shall also disclose the following matters for each component
8 site:

9 a. Any limitation upon annual increases in common
10 expenses;

11 b. The existence of any bad debt or working capital
12 reserve; and

13 c. The existence of any replacement or deferred
14 maintenance reserve.

15 (7) The following documents shall be included as
16 exhibits to the filed public offering statement, if
17 applicable:

18 (1)1. If the multisite timeshare plan contains any
19 component sites located in this state, the information
20 required by s. 721.07(5) pertaining to each such component
21 site unless exempt pursuant to s. 721.03.

22 2. If the purchaser will receive a timeshare estate
23 pursuant to s. 721.57, or an interest in a specific multisite
24 timeshare plan, in a component site located outside of this
25 state but which is offered in this state, the information
26 required by s. 721.07(5) pertaining to that component site,
27 provided, however, that the provisions of s. 721.07(5)(~~t~~)(~~u~~)
28 shall only require disclosure of information related to the
29 estimated budget for the timeshare plan and purchaser's
30 expenses as required by the jurisdiction in which the
31 component site is located.

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1 Section 11. Paragraph (b) of subsection (1), paragraph
 2 (g) of subsection (2), and subsection (3) of section 721.552,
 3 Florida Statutes, are amended to read:

4 721.552 Additions, substitutions, or deletions of
 5 component site accommodations or facilities; purchaser
 6 remedies for violations.--Additions, substitutions, or
 7 deletions of component site accommodations or facilities may
 8 be made only in accordance with the following:

9 (1) ADDITIONS.--

10 (b) Any person who is authorized by the timeshare
 11 instrument to make additions to the multisite timeshare plan
 12 pursuant to this subsection shall act as a fiduciary in such
 13 capacity in the best interests of the purchasers of the plan
 14 as a whole and shall adhere to the demand balancing standard
 15 set forth in s. 721.56(6) in connection with such additions.
 16 Additions that are otherwise permitted may be made only so
 17 long as a one-to-one use right ~~purchaser~~ to use night
 18 requirement ~~accommodation~~ ratio is maintained at all times.

19 (2) SUBSTITUTIONS.--

20 (g) The person who is authorized by the timeshare
 21 instrument to make substitutions to the multisite timeshare
 22 plan pursuant to this subsection shall act as a fiduciary in
 23 such capacity in the best interests of the purchasers of the
 24 plan as a whole and shall adhere to the demand balancing
 25 standard set forth in s. 721.56(6) in connection with such
 26 substitutions. Substitutions that are otherwise permitted may
 27 be made only so long as a one-to-one use right ~~purchaser~~ to
 28 use night requirement ~~accommodation~~ ratio is maintained at all
 29 times.

30 (3) DELETIONS.--

31 (a) Deletion by casualty.--

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1 1. Pursuant to s. 721.165, the timeshare instrument
 2 creating the multisite timeshare plan must provide for
 3 casualty insurance for the accommodations and facilities of
 4 the multisite timeshare plan in an amount equal to the
 5 replacement cost of such accommodations or facilities. The
 6 timeshare instrument must also provide that in the event of a
 7 casualty that results in accommodations or facilities being
 8 unavailable for use by purchasers, the managing entity shall
 9 notify all affected purchasers of such unavailability of use
 10 within 30 days after the event of casualty.

11 2. The timeshare instrument must also provide for the
 12 application of any insurance proceeds arising from a casualty
 13 to either the replacement or acquisition of additional similar
 14 accommodations or facilities or to the removal of purchasers
 15 from the multisite timeshare plan so that purchasers will not
 16 be competing for available accommodations on a greater than
 17 one-to-one use right purchaser to use night requirement
 18 ~~accommodation~~ ratio.

19 3. If the timeshare instrument does not provide for
 20 business interruption insurance, or if it is unavailable, or
 21 if the instrument permits the developer, the managing entity,
 22 or the purchasers to elect not to reconstruct after casualty
 23 under certain circumstances or to secure replacement
 24 accommodations or facilities in lieu of reconstruction,
 25 purchasers of the plan may temporarily compete for available
 26 accommodations on a greater than one-to-one use right
 27 ~~purchaser to use night requirement accommodation~~ ratio. The
 28 decision whether or not to reconstruct shall be made as
 29 promptly as possible under the circumstances.

30 4. Any replacement of accommodations or facilities
 31 pursuant to this paragraph shall be made upon the same basis

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1 as required for substitution as set forth in subparagraph
2 (2)(b)2.

3 (b) Deletion by eminent domain.--

4 1. The timeshare instrument creating the multisite
5 timeshare plan must also provide for the application of any
6 proceeds arising from a taking under eminent domain
7 proceedings to either the replacement or acquisition of
8 additional similar accommodations or facilities or to the
9 removal of purchasers from the multisite timeshare plan so
10 that purchasers will not be competing for available
11 accommodations on a greater than one-to-one use right
12 ~~purchaser to use night requirement accommodation~~ ratio.

13 2. Any replacement of accommodations or facilities
14 pursuant to this paragraph shall be made upon the same basis
15 as required for substitution set forth in subparagraph
16 (2)(b)2.

17 (c) Automatic deletion.--The timeshare instrument may
18 provide that a component site will be automatically deleted
19 upon the expiration of its term in a timeshare plan other than
20 a nonspecific multisite timeshare plan or as otherwise
21 provided in the timeshare instrument. However, the timeshare
22 instrument must also provide that in the event a component
23 site is deleted from the plan in this manner, a sufficient
24 number of purchasers of the plan will also be deleted so as to
25 maintain no greater than a one-to-one use right ~~purchaser to~~
26 use night requirement accommodation ratio.

27 Section 12. Subsection (1) of section 721.97, Florida
28 Statutes, is amended to read:

29 721.97 Timeshare commissioner of deeds.--

30 (1) The Governor may appoint commissioners of deeds to
31 take acknowledgments, proofs of execution, or oaths in any

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1 foreign country, in international waters, or in any
2 possession, territory, or commonwealth of the United States
3 outside the 50 states. The term of office is 4 years.
4 Commissioners of deeds shall have authority to take
5 acknowledgments, proofs of execution, and oaths in connection
6 with the execution of any deed, mortgage, deed of trust,
7 contract, power of attorney, or any other writing to be used
8 or recorded in connection with a timeshare estate, personal
9 property timeshare interest, timeshare license, any property
10 subject to a timeshare plan, or the operation of a timeshare
11 plan located within this state; provided such instrument or
12 writing is executed outside the United States. Such
13 acknowledgments, proofs of execution, and oaths must be taken
14 or made in the manner directed by the laws of this state,
15 including but not limited to s. 117.05(4), (5)(a), and (6),
16 Florida Statutes 1997, and certified by a commissioner of
17 deeds. The certification must be endorsed on or annexed to the
18 instrument or writing aforesaid and has the same effect as if
19 made or taken by a notary public licensed in this state.

20 Section 13. This act shall take effect July 1, 2007.

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