

1                                   A bill to be entitled  
 2           An act relating to charitable contributions; amending  
 3           s. 726.102, F.S.; defining the terms "charitable  
 4           contribution" and "qualified religious or charitable  
 5           entity or organization"; amending s. 726.109, F.S.;  
 6           providing that a transfer of a charitable contribution  
 7           that is received in good faith by a qualified  
 8           religious or charitable entity or organization is not  
 9           a fraudulent transfer; providing exceptions; amending  
 10          ss. 213.758, 718.704, and 721.05, F.S.; conforming  
 11          cross-references; providing an effective date.

12  
 13 Be It Enacted by the Legislature of the State of Florida:

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 15           Section 1. Subsections (3), (4), (5), (6), (7), (8), (9),  
 16           (10), (11), (12), and (13) of section 726.102, Florida Statutes,  
 17           are renumbered as subsections (4), (5), (6), (7), (8), (9),  
 18           (10), (11), (13), (14), and (15), respectively, and new  
 19           subsections (3) and (12) are added to that section to read:

20           726.102 Definitions.—As used in ss. 726.101-726.112:

21           (3) "Charitable contribution" means a charitable  
 22           contribution as that term is defined in s. 170(c) of the  
 23           Internal Revenue Code of 1986, if that contribution consists of:

24           (a) A financial instrument as defined in s. 731(c)(2)(C)  
 25           of the Internal Revenue Code of 1986; or

26           (b) Cash.

27           (12) "Qualified religious or charitable entity or  
 28           organization" means:

29 (a) An entity described in s. 170(c)(1) of the Internal  
 30 Revenue Code of 1986; or

31 (b) An entity or organization described in s. 170(c)(2) of  
 32 the Internal Revenue Code of 1986.

33 Section 2. Subsection (7) is added to section 726.109,  
 34 Florida Statutes, to read:

35 726.109 Defenses, liability, and protection of  
 36 transferee.—

37 (7) (a) The transfer of a charitable contribution that is  
 38 received in good faith by a qualified religious or charitable  
 39 entity or organization is not a fraudulent transfer under this  
 40 chapter.

41 (b) However, a charitable contribution from a natural  
 42 person is a fraudulent transfer if the transfer was received on,  
 43 or within 2 years before, the earlier of the date of  
 44 commencement of an action under this chapter, the filing of a  
 45 petition under the federal Bankruptcy Code, or the commencement  
 46 of insolvency proceedings by or against the transferor under any  
 47 state or federal law, including the filing of an assignment for  
 48 the benefit of creditors or the appointment of a receiver,  
 49 unless:

50 1. The transfer was consistent with the practices of the  
 51 transferor in making the charitable contribution; or

52 2. The transfer was received in good faith and the amount  
 53 of the charitable contribution did not exceed 15 percent of the  
 54 gross annual income of the transferor for the year in which the  
 55 transfer of the charitable contribution was made.

56 Section 3. Paragraph (c) of subsection (1) of section

57 | 213.758, Florida Statutes, is amended to read:

58 |       213.758 Transfer of tax liabilities.—

59 |       (1) As used in this section, the term:

60 |       (c) "Insider" means:

61 |           1. Any person included within the meaning of insider as  
62 | used in s. 726.102~~(7)~~; or

63 |           2. A manager of, a managing member of, or a person who  
64 | controls a transferor that is a limited liability company, or a  
65 | relative as defined in s. 726.102~~(11)~~ of any such persons.

66 |       Section 4. Subsection (4) of section 718.704, Florida  
67 | Statutes, is amended to read:

68 |       718.704 Assignment and assumption of developer rights by  
69 | bulk assignee; bulk buyer.—

70 |       (4) An acquirer of condominium parcels is not a bulk  
71 | assignee or a bulk buyer if the transfer to such acquirer was  
72 | made:

73 |       (a) Before the effective date of this part;

74 |       (b) With the intent to hinder, delay, or defraud any  
75 | purchaser, unit owner, or the association; or

76 |       (c) By a person who would be considered an insider under  
77 | s. 726.102~~(7)~~.

78 |       Section 5. Subsection (10) of section 721.05, Florida  
79 | Statutes, is amended to read:

80 |       721.05 Definitions.—As used in this chapter, the term:

81 |       (10) "Developer" includes:

82 |       (a)1. A "creating developer," which means any person who  
83 | creates the timeshare plan;

84 |       2.~~(b)~~ A "successor developer," which means any person who

85 | succeeds to the interest of the persons in this subsection by  
 86 | sale, lease, assignment, mortgage, or other transfer, but the  
 87 | term includes only those persons who offer timeshare interests  
 88 | in the ordinary course of business; and

89 |     ~~3.(e)~~ A "concurrent developer," which means any person  
 90 | acting concurrently with the persons in this subsection with the  
 91 | purpose of offering timeshare interests in the ordinary course  
 92 | of business.

93 |     ~~(b)(d)~~ The term "developer" does not include:

94 |         1. An owner of a timeshare interest who has acquired the  
 95 | timeshare interest for his or her own use and occupancy and who  
 96 | later offers it for resale; provided that a rebuttable  
 97 | presumption exists ~~shall exist~~ that an owner who has acquired  
 98 | more than seven timeshare interests did not acquire them for his  
 99 | or her own use and occupancy;

100 |         2. A managing entity, not otherwise a developer, that  
 101 | offers, or engages a third party to offer on its behalf,  
 102 | timeshare interests in a timeshare plan which it manages,  
 103 | provided that such offer complies with the provisions of s.  
 104 | 721.065;

105 |         3. A person who owns or is conveyed, assigned, or  
 106 | transferred more than seven timeshare interests and who  
 107 | subsequently conveys, assigns, or transfers all acquired  
 108 | timeshare interests to a single purchaser in a single  
 109 | transaction, which transaction may occur in stages; or

110 |         4. A person who acquires ~~has acquired~~ or has the right to  
 111 | acquire more than seven timeshare interests from a developer or  
 112 | other interestholder in connection with a loan, securitization,

113 conduit, or similar financing arrangement transaction and who  
 114 subsequently arranges for all or a portion of the timeshare  
 115 interests to be offered by a developer ~~one or more developers~~ in  
 116 the ordinary course of business on its ~~their~~ own behalf ~~behalfs~~  
 117 or on behalf of such person.

118 ~~(c)(e)~~ A successor or concurrent developer is ~~shall be~~  
 119 exempt from any liability inuring to a predecessor or concurrent  
 120 developer of the same timeshare plan, except as provided in s.  
 121 721.15(7) ~~., provided that~~ This exemption does ~~shall~~ not apply to  
 122 any of the successor or concurrent developer's responsibilities,  
 123 duties, or liabilities with respect to the timeshare plan which  
 124 ~~that~~ accrue after the date the successor or concurrent developer  
 125 became a successor or concurrent developer, and ~~provided that~~  
 126 such transfer does not constitute a fraudulent transfer. ~~In~~  
 127 ~~addition to other provisions of law,~~ A transfer by a predecessor  
 128 developer to a successor or concurrent developer shall be deemed  
 129 fraudulent if the predecessor developer made the transfer:

- 130 1. With actual intent to hinder, delay, or defraud any
- 131 purchaser or the division; or
- 132 2. To a person that would constitute an insider under s.
- 133 726.102(7).

134  
 135 ~~The provisions of~~ This paragraph does ~~shall~~ not be construed to  
 136 relieve any successor or concurrent developer from the  
 137 obligation to comply with the provisions of any applicable  
 138 timeshare instrument.

139 Section 6. This act shall take effect upon becoming a law.