

By the Committees on Real Property & Probate, Real
Property & Probate and Representative Edwards

1 A bill to be entitled
2 An act relating to timeshare plans; amending s.
3 721.03, F.S.; revising language with respect to
4 the scope of the chapter; providing for certain
5 rules; amending s. 721.05, F.S.; defining the
6 term "regulated short-term product"; amending
7 s. 721.06, F.S.; revising provisions with
8 respect to contracts for the purchase of
9 timeshare periods; amending s. 721.07, F.S.;
10 revising provisions with respect to public
11 offering statements; providing a time period
12 for amendments that add a new component site to
13 an approved multisite timeshare plan; amending
14 s. 721.075, F.S.; deleting language with
15 respect to certain incidental benefits offered
16 by a developer; amending s. 721.09, F.S.;
17 revising provisions with respect to reservation
18 agreements; providing for cancellation of such
19 agreements under certain circumstances;
20 amending s. 721.11, F.S.; requiring that
21 advertisements of regulated short-term products
22 be filed with the division; requiring
23 disclosure statements for purchase agreements;
24 amending s. 721.13, F.S.; revising provisions
25 with respect to management; amending s. 721.15,
26 F.S.; revising provisions with respect to
27 assessments for common expenses; amending s.
28 721.18, F.S.; revising a time period with
29 respect to the filing of certain information
30 concerning exchange programs; amending s.
31 721.26, F.S.; authorizing the imposition of

1 penalties with respect to certain rules;
2 amending s. 721.265, F.S.; providing service of
3 process in receivership proceedings; creating
4 part III of ch. 721, F.S.; creating the
5 "Timeshare Lien Foreclosure Act"; providing
6 legislative purpose; providing definitions;
7 providing for a registered agent; providing for
8 the consolidation of foreclosure actions;
9 creating part IV of ch. 721, F.S.; creating
10 timeshare commissioners of deeds; providing an
11 effective date.

12

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

14

15 Section 1. Paragraphs (b) and (c) of subsection (1) of
16 section 721.03, Florida Statutes, are amended to read:

17 721.03 Scope of chapter.--

18 (1) This chapter applies to all timeshare plans
19 consisting of more than seven timeshare periods over a period
20 of at least 3 years in which the accommodations or facilities
21 are located within this state; provided that:

22 (b) With respect to timeshare plans containing
23 accommodations or facilities located in this state which are
24 offered for sale outside the jurisdictional limits of the
25 United States, such offers shall be exempt from the
26 requirements of this chapter so long as the seller files the
27 information required by s. 721.07 or s. 721.55 with, and
28 obtains the approval of, the division ~~complies with the~~
29 ~~provisions of this paragraph.~~ This exemption became effective
30 upon the filing of such information with the division, if
31 approval is obtained within 6 months after the initial filing

1 at which time the exemption will expire unless the division
2 stipulates otherwise or approves the filing. The fees set
3 forth in s. 721.07(4) shall apply to all filings made
4 hereunder.Each purchase contract utilized in any offer of a
5 timeshare plan that occurs outside the jurisdictional limits
6 of the United States shall contain the following disclosure in
7 conspicuous type immediately above the space provided for the
8 purchaser's signature:

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

17
18 Purchaser should note that (name of developer or other person
19 or entity) at (address) has a (describe developer's or other
20 person's or entity's actual interest) in the accommodations
21 and facilities of the timeshare plan.

22
23 (c) The exemption provided in paragraph (a) shall not
24 apply unless and until a claim of exemption from regulation
25 containing the information required by paragraph (a) and s.
26 721.51(3)(b) and accompanied by the fee required by s.
27 721.51(3)(b) is filed with and approved by the division. The
28 division may adopt rules designating those provisions of ss.
29 721.07 and 721.55 which need not be addressed in the filings
30 required in paragraph (b).~~The exemption provided in paragraph~~
31 ~~(b) shall only apply to accommodations or facilities which~~

1 ~~have first been filed with and approved by the division~~
2 ~~pursuant to s. 721.07 or s. 721.55.~~

3 Section 2. Subsections (27), (28), (29), (30), (31),
4 (32), (33), (34), (35), and (36) of section 721.05, Florida
5 Statutes, are renumbered as subsections (28), (29), (30),
6 (31), (32), (33), (34), (35), (36), and (37), respectively,
7 and a new subsection (27) is added to said section to read:

8 721.05 Definitions.--As used in this chapter, the
9 term:

10 (27) "Regulated short-term product" means a
11 contractual right, offered by the seller, to use
12 accommodations of a timeshare plan, provided that:

13 (a) The agreement to purchase the short-term right to
14 use is executed in this state on the same day that the
15 prospective purchaser receives an offer to acquire an interest
16 in a timeshare plan and does not execute a purchase contract,
17 after attending a sales presentation; and

18 (b) The acquisition of the right to use includes an
19 agreement that all or a portion of the consideration paid by
20 the prospective purchaser for the right to use will be applied
21 to or credited against the price of a future purchase of a
22 timeshare interest, or that the cost of a future purchase of a
23 timeshare interest will be fixed or locked in at a specified
24 price.

25 Section 3. Paragraph (f) of subsection (1) of section
26 721.06, Florida Statutes, is amended to read:

27 721.06 Contracts for purchase of timeshare periods.--

28 (1) Each seller shall utilize, and furnish each
29 purchaser a fully completed and executed copy of, a contract
30 pertaining to the sale, which contract shall include the
31 following information:

1 (f) Immediately prior to the space reserved in the
2 contract for the signature of the purchaser, in conspicuous
3 type, substantially the following statements:

4
5 You may cancel this contract without any penalty or
6 obligation within 10 calendar days after ~~from~~ the date you
7 sign this contract, and within ~~until~~ 10 calendar days after
8 the date you receive the approved public offering statement,
9 whichever is later.

10 If you decide to cancel this contract, you must notify
11 the developer in writing of your intent to cancel. Your
12 notice of cancellation shall be effective upon the date sent
13 and shall be sent to ...(Name of Developer)... at ...(Address
14 of Developer).... Any attempt to obtain a waiver of your
15 cancellation right is unlawful. While you may execute all
16 closing documents in advance, the closing, as evidenced by
17 delivery of the deed or other document, before expiration of
18 your 10-day cancellation period, is prohibited.

19 Section 4. Paragraph (a) of subsection (3) of section
20 721.07, Florida Statutes, is amended to read:

21 721.07 Public offering statement.--Prior to offering
22 any timeshare plan, the developer must file a public offering
23 statement with the division for approval as prescribed by s.
24 721.03, s. 721.55, or this section. Until the division
25 approves such filing, any contract regarding the sale of the
26 timeshare plan which is the subject of the public offering
27 statement is voidable by the purchaser.

28 (3)(a)1. Any change to an approved filing shall be
29 filed with the division for approval as an amendment prior to
30 becoming effective. The division shall have 20 days after
31 receipt of a proposed amendment to approve or cite

1 deficiencies in the proposed amendment. If the division fails
2 to act within 20 days, the amendment will be deemed approved.
3 If the proposed amendment adds a new component site to an
4 approved multisite timeshare plan, the division's initial
5 period in which to approve or cite deficiencies is 45 days.If
6 the developer fails to adequately respond to any deficiency
7 notice within 30 days, the division may reject the amendment.
8 Subsequent to such rejection, a new filing fee pursuant to
9 subsection (4) and a new division initial review period
10 pursuant to this paragraph shall apply to any refiling or
11 further review of the rejected amendment.

12 2. For filings only subject to this part, each
13 approved amendment, other than an amendment made only for the
14 purpose of the addition of a phase or phases to the timeshare
15 plan in the manner described in the timeshare instrument,
16 shall be delivered to a purchaser no later than 10 days prior
17 to closing. For filings made under part II, each approved
18 amendment to the multisite timeshare plan public offering
19 statement, other than an amendment made only for the purpose
20 of the addition, substitution, or deletion of a component site
21 pursuant to part II or the addition of a phase or phases to a
22 component site of a multisite timeshare plan in the manner
23 described in the timeshare instrument, shall be delivered to a
24 purchaser no later than 10 days prior to closing.

25 3. Amendments made to a timeshare instrument for a
26 component site located in this state shall only be delivered
27 to those purchasers who will receive a timeshare estate or a
28 specific timeshare license in that component site. Amendments
29 made to a timeshare instrument for a component site not
30 located in this state are not required to be delivered to
31 purchasers.

1 Section 5. Section 721.075, Florida Statutes, is
2 amended to read:

3 721.075 Incidental benefits.--Incidental benefits
4 shall be offered only as provided in this section.

5 (1) Accommodations, facilities, products, services,
6 discounts, or other benefits which satisfy the requirements of
7 this subsection shall be subject to the provisions of this
8 section and exempt from the other provisions of this part
9 which would otherwise apply to accommodations and facilities
10 if and only if:

11 (a) The use of or participation in the incidental
12 benefit by the prospective purchaser is completely voluntary,
13 and payment of any fee or other cost associated with the
14 incidental benefit is required only upon such use or
15 participation.

16 (b) No costs of acquisition, operation, maintenance,
17 or repair of the incidental benefit are passed on to
18 purchasers of the timeshare plan as common expenses of the
19 timeshare plan or as common expenses of a component site of a
20 multisite timeshare plan.

21 (c) The continued availability of the incidental
22 benefit is not necessary in order for any accommodation or
23 facility of the timeshare plan to be available for use by
24 purchasers of the timeshare plan in a manner consistent in all
25 material respects with the manner portrayed by any promotional
26 material, advertising, or public offering statement.

27 (d) The continued availability to purchasers of
28 timeshare plan accommodations on no greater than a one-to-one
29 purchaser to accommodation ratio is not dependent upon
30 continued availability of the incidental benefit.

31

1 (e) The incidental benefit will continue to be
2 available in the manner represented to prospective purchasers
3 for no less than 6 months but less than 3 years after the
4 first date that the timeshare plan is available for use by the
5 purchaser. The developer shall not be required to make the
6 incidental benefit available for longer than 18 months after
7 the date of purchase. Nothing herein shall prevent the renewal
8 or extension of the availability of an incidental benefit
9 ~~after the expiration of its term, provided that any ability to~~
10 ~~renew is not represented or otherwise portrayed to a~~
11 ~~prospective purchaser or to a purchaser prior to the~~
12 ~~expiration of his or her initial 10-day voidability period.~~

13 (f) The aggregate represented value of all incidental
14 benefits offered by a developer to a purchaser may not exceed
15 15 percent of the purchase price paid by the purchaser for his
16 or her timeshare period.

17 (g) The incidental benefit is filed with the division
18 in conjunction with the filing of a timeshare plan or in
19 connection with a previously filed timeshare plan.

20 (2) Each purchaser shall execute a separate
21 acknowledgment and disclosure statement with respect to all
22 incidental benefits, which statement shall include the
23 following information:

24 (a) A fair description of the incidental benefit,
25 including, but not limited to, the represented value of the
26 benefit; any user fees or costs associated therewith; and any
27 restrictions upon use or availability.

28 (b) A statement that use of or participation in the
29 incidental benefit by the prospective purchaser is completely
30 voluntary, and that payment of any fee or other cost

31

1 associated with the incidental benefit is required only upon
2 such use or participation.

3 (c) A statement that the incidental benefit is not
4 assignable or otherwise transferable by the prospective
5 purchaser or purchaser.

6 (d) The following disclosure in conspicuous type
7 immediately above the space for the purchaser's signature:

8
9 [Describe incidental benefit] is an incidental benefit
10 offered to prospective purchasers of the timeshare plan [or
11 other permitted reference pursuant to s. 721.11(5)(a)]. This
12 benefit is available for your use for a ~~term of~~ [minimum of 6
13 months but less than 3 years] after the first date that the
14 timeshare plan is available for your use. The availability of
15 the incidental benefit may or may not be renewed or extended.
16 You should not purchase an interest in the timeshare plan in
17 reliance upon the continued availability or renewal or
18 extension of this benefit.

19
20 The acknowledgment and disclosure statement for each
21 incidental benefit shall be filed with the division prior to
22 use. Each purchaser shall receive a copy of his or her
23 executed acknowledgment and disclosure statement as a document
24 required to be provided to him or her pursuant to s.
25 721.10(1)(b).

26 (3)(a) In the event that an incidental benefit becomes
27 unavailable to purchasers in the manner represented by the
28 developer in the acknowledgment and disclosure statement, the
29 developer shall pay the purchaser the greater of twice the
30 verifiable retail value or twice the represented value of the
31 unavailable incidental benefit in cash within 30 days of the

1 date that the unavailability of the incidental benefit was
2 made known to the developer unless the developer has reserved
3 a substitution right pursuant to paragraph (b) by making the
4 required disclosure in the acknowledgment and disclosure
5 statement and timely makes the substitution as required by
6 paragraph (b). The developer shall promptly notify the
7 division upon learning of the unavailability of any incidental
8 benefit.

9 (b) If an incidental benefit becomes unavailable as a
10 result of events beyond the control of the developer, the
11 developer may reserve the right to substitute a replacement
12 incidental benefit of a type, quality, value, and term
13 reasonably similar to the unavailable incidental benefit by
14 including the following language in the disclosure required by
15 paragraph (2)(d):

16
17 In the event [describe incidental benefit] becomes
18 unavailable as a result of events beyond the control of the
19 developer, the developer reserves the right to substitute a
20 replacement incidental benefit of a type, quality, value, and
21 term reasonably similar to the unavailable incidental benefit.

22
23 The substituted incidental benefit shall be delivered to the
24 purchaser within 30 days after the date that the
25 unavailability of the incidental benefit was made known to the
26 developer.

27 ~~(4) If the aggregate represented value of all~~
28 ~~incidental benefits offered by a developer to a purchaser~~
29 ~~exceeds 5 percent of the purchase price paid by that~~
30 ~~purchaser, then, prior to offering the incidental benefits,~~
31 ~~the developer must file an irrevocable letter of credit,~~

1 ~~surety bond, or other assurance acceptable to the director of~~
2 ~~the division that will reasonably assure the delivery of the~~
3 ~~promised incidental benefits to the purchaser; provided,~~
4 ~~however, that the maximum amount of such assurance shall equal~~
5 ~~the portion of the aggregate represented value of the offered~~
6 ~~incidental benefits which exceeds 5 percent of the purchase~~
7 ~~price contracted for by that purchaser. Proceeds from any~~
8 ~~assurance accepted by the division shall be used to provide~~
9 ~~refunds to purchasers pursuant to this section. If the~~
10 ~~aggregate represented value of all incidental benefits offered~~
11 ~~by a developer to a purchaser is equal to or less than 5~~
12 ~~percent of the purchase price paid by that purchaser, no~~
13 ~~assurance shall be required from the developer prior to~~
14 ~~offering any incidental benefit.~~

15 (4)~~(5)~~ All purchaser remedies pursuant to s. 721.21
16 shall be available for any violation of the provisions of this
17 section.

18 Section 6. Subsection (1) of section 721.09, Florida
19 Statutes, is amended to read:

20 721.09 Reservation agreements; escrows.--

21 (1)(a) Prior to filing the public offering statement
22 with the division, a seller shall not offer a timeshare plan
23 for sale but may accept reservation deposits and advertise the
24 reservation deposit program upon approval by the division of a
25 fully executed escrow agreement and reservation agreement
26 properly filed with the division.

27 (b) Reservations shall not be taken on a timeshare
28 plan unless the seller has an ownership interest or leasehold
29 interest, of a duration at least equal to the duration of the
30 proposed timeshare plan, in the land upon which the timeshare
31 plan is to be developed.

1 (c) If the timeshare plan subject to the reservation
2 agreement has not been filed with the division under s.
3 721.07(5) or s. 721.55 within 90 days after the date the
4 division approves the reservation agreement filing, the seller
5 must immediately cancel all outstanding reservation
6 agreements, refund all escrowed funds to prospective
7 purchasers, and discontinue accepting reservation deposits or
8 advertising the availability of reservation agreements.

9 (d) A seller who has filed a reservation agreement and
10 an escrow agreement under this section may advertise the
11 reservation agreement program if the advertising material
12 meets the following requirements:

13 1. The seller complies with the provisions of s.
14 721.11 with respect to such advertising material.

15 2. The advertising material is limited to a general
16 description of the proposed timeshare plan, including, but not
17 limited to, a general description of the type, number, and
18 size of accommodations and facilities and the name of the
19 proposed timeshare plan.

20 3. The advertising material contains a statement that
21 the advertising material is being distributed in connection
22 with an approved reservation agreement filing only and that
23 the seller cannot offer an interest in the timeshare plan for
24 sale until a public offering statement has been filed with the
25 division under this chapter.

26 Section 7. Subsection (6) is added to section 721.11,
27 Florida Statutes, to read:

28 721.11 Advertising materials; oral statements.--

29 (6) Failure to provide cancellation rights or
30 disclosures as required by this subsection in connection with
31 the sale of a regulated short-term product constitutes

1 misrepresentation in accordance with paragraph (4)(a). Any
2 agreement relating to the sale of a regulated short-term
3 product must be regulated as advertising material and is
4 subject to the following:

5 (a) A standard form of any agreement relating to the
6 sale of a regulated short-term product must be filed 10 days
7 prior to use with the division as advertising material under
8 this section. Each seller shall furnish each purchaser of a
9 regulated short-term product with a fully completed and
10 executed copy of the agreement at the time of execution.

11 (b) A purchaser of a regulated short-term product has
12 the right to cancel the agreement until midnight of the 10th
13 calendar day following the execution date of the agreement.
14 The right of cancellation may not be waived by the prospective
15 purchaser or by any other person on behalf of the prospective
16 purchaser. Notice of cancellation must be given in the same
17 manner prescribed for giving notice of cancellation under s.
18 721.10(2). If the prospective purchaser gives a valid notice
19 of cancellation or is otherwise entitled to cancel the sale,
20 the funds or property received from or on behalf of the
21 prospective purchaser, or the proceeds thereof, must be
22 returned to the prospective purchaser. Such refund must be
23 made in the same manner prescribed for refunds under s.
24 721.10.

25 (c) An agreement for purchase of a regulated
26 short-term product must contain substantially the following
27 statements, given at the time the agreement is made:

28 1. A statement that if the purchaser of a regulated
29 short-term product cancels the agreement during the 10-day
30 cancellation period, the seller will refund to the prospective
31 purchaser the total amount of all payments made by the

1 prospective purchaser under the agreement, reduced by the
2 proportion of any benefits the prospective purchaser has
3 actually received under the agreement prior to the effective
4 date of the cancellation.

5 2. A statement that the specific value for each
6 benefit received by the prospective purchaser under the
7 agreement will be as agreed to between the prospective
8 purchaser and the seller.

9 (d) An agreement for purchase of a regulated
10 short-term product must contain substantially the following
11 statements in conspicuous type immediately above the space
12 reserved in the agreement for the signature of the prospective
13 purchaser:

14 You may cancel this agreement without any
15 penalty or obligation within 10 calendar days
16 [or specify a longer time period represented to
17 the purchaser] after the date you sign this
18 agreement. If you decide to cancel this
19 agreement, you must notify the seller in
20 writing of your intent to cancel. Your notice
21 of cancellation is effective upon the date sent
22 and must be sent to ...(Name of Seller)... at
23 ...(Address of Seller).... Any attempt to
24 obtain a waiver of your cancellation right is
25 unlawful.

26 If you execute a purchase contract for a
27 timeshare period, section 721.08, Florida
28 Statutes, (escrow accounts) will apply to any
29 funds or other property received from you or on
30 your behalf. Section 721.10, Florida Statutes,
31 (cancellation) will apply to the purchase and

1 you will not be entitled to a cancellation
2 refund of the short-term product [or specify an
3 alternate refund policy under these
4 circumstances].
5 (e) If the seller provides the purchaser with the
6 right to cancel the purchase of a regulated short-term product
7 at any time up to 7 days prior to the purchaser's reserved use
8 of the accommodations, but in no event less than 10 days, and
9 if the seller refunds the total amount of all payments made by
10 the purchaser reduced by the proportion of any benefits the
11 purchaser has actually received prior to the effective date of
12 the cancellation, the specific value of which has been agreed
13 to between the purchaser and the seller, the short-term
14 product offer shall be exempt from the requirements of
15 paragraphs (b), (c), and (d). An agreement relating to the
16 sale of the regulated short-term product made pursuant to this
17 paragraph must contain a statement setting forth the
18 cancellation and refund rights of the prospective purchaser in
19 a manner that is consistent with this section and s. 721.10,
20 including a description of the length of the cancellation
21 right, a statement that the purchaser's intent to cancel must
22 be in writing and sent to the seller at a specified address, a
23 statement that the notice of cancellation is effective upon
24 the date sent, and a statement that any attempt to waive the
25 cancellation right is unlawful. The right of cancellation
26 shall be given in the same manner prescribed for giving notice
27 of cancellation pursuant to s. 721.10(2). In the event that
28 the prospective purchaser gives a valid notice of
29 cancellation, or is otherwise entitled to cancel the sale, the
30 funds or property received from or on behalf of the
31 prospective purchaser, or the proceeds thereof, shall be

1 returned to the prospective purchaser. Such refund shall be
2 made in the manner prescribed for refunds under s. 721.10.

3 Section 8. Paragraphs (c), (e), and (i) of subsection
4 (3) and subsection (4) of section 721.13, Florida Statutes,
5 are amended to read:

6 721.13 Management.--

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

9 (c)1. Providing each year to all purchasers an
10 itemized annual budget which shall include all estimated
11 revenues and expenses. The budget shall be in the form
12 required by s. 721.07(5)(x) and shall be the final budget
13 adopted by the managing entity for the current fiscal year.
14 The budget shall contain, as a footnote or otherwise, any
15 related party transaction disclosures or notes which appear in
16 the audited financial statements of the managing entity for
17 the previous budget year as required by paragraph (e). A copy
18 of the final budget shall be filed with the division within 30
19 days after its adoption by the managing entity together with a
20 statement of the number of periods of 7-day annual use
21 availability that exist within the timeshare plan, including
22 those periods filed for sale by the developer but not yet
23 committed to the timeshare plan, for which annual fees are
24 required to be paid to the division pursuant to s. 721.27.

25 2. Notwithstanding anything contained in chapter 718
26 or chapter 719 to the contrary, the board of administration of
27 an owners' association which serves as managing entity may
28 from time to time reallocate reserves for deferred maintenance
29 and capital expenditures required by s. 721.07(5)(x)3.a.(XI)
30 from any deferred maintenance or capital expenditure reserve
31 account to any other deferred maintenance or capital

1 expenditure reserve account or accounts in its discretion
2 without the consent of purchasers of the timeshare plan.
3 Funds in any deferred maintenance or capital expenditure
4 reserve account may not be transferred to any operating
5 account without the consent of a majority of the purchasers of
6 the timeshare plan.

7 (e) Arranging for an annual ~~independent~~ audit of the
8 financial statements ~~all the books and financial records~~ of
9 the timeshare plan by a certified public accountant licensed
10 by the Board of Accountancy of the Department of Business and
11 Professional Regulation, in accordance with generally accepted
12 auditing standards as defined by the rules of the Board of
13 Accountancy of the Department of Business and Professional
14 Regulation. The financial statements required by this section
15 must be prepared on an accrual basis using fund accounting,
16 and must be presented in accordance with generally accepted
17 accounting principles. A copy of the audited financial
18 statements must ~~audit shall~~ be filed with the division and
19 forwarded to the board of directors and officers of the
20 owners' association, ~~or~~, if one exists, no later than 5
21 calendar months after the end of the timeshare plan's fiscal
22 year. If no owners' association exists, ~~the owner of each~~
23 purchaser must ~~timeshare period shall~~ be notified, no later
24 than 5 months after the end of the timeshare plan's fiscal
25 year, that a copy of the audited financial statements ~~such~~
26 ~~audit~~ is available upon request to the managing entity.

27 Notwithstanding any requirement of s. 718.111(13) or (14), the
28 audited financial statements required by this section shall be
29 the only annual financial reporting requirements for timeshare
30 condominiums.

31

1 (i) Submitting to the division the statement of
2 receipts and disbursements regarding the ad valorem tax escrow
3 account as required by s. 192.037(6)(e). The statement of
4 receipts and disbursements must also include a statement
5 disclosing that all ad valorem taxes have been paid in full to
6 the tax collector through the current assessment year, or, if
7 all such ad valorem taxes have not been paid in full to the
8 tax collector, a statement disclosing those assessment years
9 for which there are outstanding ad valorem taxes due and the
10 total amount of all delinquent taxes, interest, and penalties
11 for each such assessment year as of the date of the statement
12 of receipts and disbursements.

13 (4) The managing entity shall maintain among its
14 records and provide to the division upon request a complete
15 list of the names and addresses of all purchasers and owners
16 of timeshare units in the timeshare plan. The managing entity
17 shall update this list no less frequently than quarterly.
18 Pursuant to paragraph (3)(d), the managing entity may not
19 publish this owner's list or provide a copy of it to any
20 purchaser or to any third party other than the division.
21 ~~However, if the managing entity includes a condominium~~
22 ~~association subject to the provisions of chapter 718 or a~~
23 ~~cooperative association subject to the provisions of chapter~~
24 ~~719,~~ the managing entity shall initiate a mailing to those
25 persons listed on the owner's list upon the written request of
26 any purchaser if the purpose of the mailing is to advance
27 legitimate association business, such as a proxy solicitation
28 for any purpose, including the recall of one or more board
29 members or the discharge of the manager or management firm.
30 The use of any proxies solicited in this manner must comply
31 with the provisions of the timeshare instrument and this

1 chapter. The board of administration of the association shall
2 be responsible for determining the appropriateness of any
3 mailing requested pursuant to this subsection, and it shall be
4 a violation of this chapter and of part VIII of chapter 468
5 for the board of administration and/or the manager or
6 management firm to refuse to initiate any mailing requested
7 for the purpose of advancing legitimate association business.
8 The purchaser who requests the mailing must reimburse the
9 association in advance for the association's actual costs in
10 performing the mailing.

11 Section 9. Subsection (1) of section 721.15, Florida
12 Statutes, is amended to read:

13 721.15 Assessments for common expenses.--

14 (1)(a) Until a managing entity is created or provided
15 pursuant to s. 721.13, the developer shall pay all common
16 expenses. The timeshare instrument shall provide for the
17 allocation of common expenses among all timeshare units or
18 timeshare periods on a reasonable basis, as appropriate,
19 including timeshare periods owned or not yet sold by the
20 developer. The timeshare instrument may provide that the
21 common expenses allocated may differ between those units that
22 are part of the timeshare plan and those units that are not
23 part of the timeshare plan; however, the different proportion
24 of expenses shall be based upon reasonable differences in the
25 benefit provided to each.The timeshare instrument shall
26 allocate common expenses to timeshare periods owned or not yet
27 sold by the developer on the same basis that common expenses
28 are allocated to similar or equivalent timeshare periods sold
29 to purchasers. ~~Timeshare plans that are also governed by~~
30 ~~chapter 718 or chapter 719 shall allocate common expenses~~
31

1 ~~among the timeshare units in the manner required by those~~
2 ~~chapters.~~

3 **(b)** Notwithstanding any provision of chapter 718 or
4 chapter 719 to the contrary, the allocation of total common
5 expenses for a condominium or a cooperative timeshare plan may
6 vary on any reasonable basis including, but not limited to,
7 unit size, unit type, unit location, specific identification,
8 or a combination of these factors, if the percentage interest
9 in the common elements attributable to each timeshare
10 condominium parcel or timeshare cooperative parcel equals the
11 share of the total common expenses allocable to that parcel.
12 The share of a timeshare interest in the common expenses
13 allocable to the timeshare condominium parcel or the timeshare
14 cooperative parcel containing such interest may vary on any
15 reasonable basis, if the timeshare interest's share of its
16 parcel's common expense allocation is equal to that timeshare
17 interest's share of the percentage interest in common elements
18 attributable to such parcel.

19 Section 10. Subsection (2) of section 721.18, Florida
20 Statutes, is amended to read:

21 721.18 Exchange programs; filing of information and
22 other materials; filing fees; unlawful acts in connection with
23 an exchange program.--

24 (2) Each exchange company offering an exchange program
25 to purchasers in this state shall file the information
26 specified in subsection (1) and the audit specified in
27 subsection (1) on or before June 1 at least 20 days prior to
28 ~~July 1~~ of each year. However, an exchange company shall make
29 its initial filing at least 20 days prior to offering an
30 exchange program to any purchaser in this state. Each filing
31 shall be accompanied by an annual filing fee of \$500. Within

1 20 days of receipt of such filing, the division shall
2 determine whether the filing is adequate to meet the
3 requirements of this section and shall notify the exchange
4 company in writing that the division has either approved the
5 filing or found specified deficiencies in the filing. If the
6 division fails to respond within 20 days, the filing shall be
7 deemed approved. The exchange company may correct the
8 deficiencies; and, within 10 days after receipt of corrections
9 from the exchange company, the division shall notify the
10 exchange company in writing that the division has either
11 approved the filing or found additional specified deficiencies
12 in the filing. If at any time the division determines that any
13 of such information supplied by an exchange company fails to
14 meet the requirements of this section, the division may
15 undertake enforcement action against the exchange company in
16 accordance with the provision of s. 721.26.

17 Section 11. Section 721.26, Florida Statutes, is
18 amended to read:

19 721.26 Regulation by division.--The division has the
20 power to enforce and ensure compliance with the provisions of
21 this chapter, except for parts III and IV, using the powers
22 provided in this chapter, as well as the powers prescribed in
23 chapters 498, 718, and 719. In performing its duties, the
24 division shall have the following powers and duties:

25 (1) To aid in the enforcement of this chapter, or any
26 division rule or order promulgated or issued pursuant to this
27 chapter, the division may make necessary public or private
28 investigations within or outside this state to determine
29 whether any person has violated or is about to violate this
30 chapter, or any division rule or order promulgated or issued
31 pursuant to this chapter.

1 (2) The division may require or permit any person to
2 file a written statement under oath or otherwise, as the
3 division determines, as to the facts and circumstances
4 concerning a matter under investigation.

5 (3) For the purpose of any investigation under this
6 chapter, the director of the division or any officer or
7 employee designated by the director may administer oaths or
8 affirmations, subpoena witnesses and compel their attendance,
9 take evidence, and require the production of any matter which
10 is relevant to the investigation, including the identity,
11 existence, description, nature, custody, condition, and
12 location of any books, documents, or other tangible things and
13 the identity and location of persons having knowledge of
14 relevant facts or any other matter reasonably calculated to
15 lead to the discovery of material evidence. Failure to obey a
16 subpoena or to answer questions propounded by the
17 investigating officer and upon reasonable notice to all
18 persons affected thereby shall be a violation of this chapter.
19 In addition to the other enforcement powers authorized in this
20 subsection, the division may, at its discretion, apply to the
21 circuit court for an order compelling compliance.

22 (4) The division may prepare and disseminate a
23 prospectus and other information to assist prospective
24 purchasers, sellers, and managing entities of timeshare plans
25 in assessing the rights, privileges, and duties pertaining
26 thereto.

27 (5) Notwithstanding any remedies available to
28 purchasers, if the division has reasonable cause to believe
29 that a violation of this chapter, or of any division rule or
30 order promulgated or issued pursuant to this chapter, has
31 occurred, the division may institute enforcement proceedings

1 in its own name against any regulated party, as such term is
2 defined in this subsection:

3 (a)1. "Regulated party," for purposes of this section,
4 means any developer, exchange company, seller, managing
5 entity, association, association director, association
6 officer, management firm, escrow agent, trustee, any
7 respective assignees or agents, or any other person having
8 duties or obligations pursuant to this chapter.

9 2. Any person who materially participates in any offer
10 or disposition of any interest in, or the management or
11 operation of, a timeshare plan in violation of this chapter or
12 relevant rules involving fraud, deception, false pretenses,
13 misrepresentation, or false advertising or the disbursement,
14 concealment, or diversion of any funds or assets, which
15 conduct adversely affects the interests of a purchaser, and
16 which person directly or indirectly controls a regulated party
17 or is a general partner, officer, director, agent, or employee
18 of such regulated party, shall be jointly and severally liable
19 under this subsection with such regulated party, unless such
20 person did not know, and in the exercise of reasonable care
21 could not have known, of the existence of the facts giving
22 rise to the violation of this chapter. A right of
23 contribution shall exist among jointly and severally liable
24 persons pursuant to this paragraph.

25 (b) The division may permit any person whose conduct
26 or actions may be under investigation to waive formal
27 proceedings and enter into a consent proceeding whereby an
28 order, rule, or letter of censure or warning, whether formal
29 or informal, may be entered against that person.

30 (c) The division may issue an order requiring a
31 regulated party to cease and desist from an unlawful practice

1 under this chapter and take such affirmative action as in the
2 judgment of the division will carry out the purposes of this
3 chapter.

4 (d)1. The division may bring an action in circuit
5 court for declaratory or injunctive relief or for other
6 appropriate relief, including restitution.

7 2. The division shall have broad authority and
8 discretion to petition the circuit court to appoint a receiver
9 with respect to any managing entity which fails to perform its
10 duties and obligations under this chapter with respect to the
11 operation of a timeshare plan. The circumstances giving rise
12 to an appropriate petition for receivership under this
13 subparagraph include, but are not limited to:

14 a. Damage to or destruction of any of the
15 accommodations or facilities of a timeshare plan, where the
16 managing entity has failed to repair or reconstruct same.

17 b. A breach of fiduciary duty by the managing entity,
18 including, but not limited to, undisclosed self-dealing or
19 failure to timely assess, collect, or disburse the common
20 expenses of the timeshare plan.

21 c. Failure of the managing entity to operate the
22 timeshare plan in accordance with the timeshare instrument and
23 this chapter.

24

25 If, under the circumstances, it appears that the events giving
26 rise to the petition for receivership cannot be reasonably and
27 timely corrected in a cost-effective manner consistent with
28 the timeshare instrument, the receiver may petition the
29 circuit court to implement such amendments or revisions to the
30 timeshare instrument as may be necessary to enable the
31 managing entity to resume effective operation of the timeshare

1 plan, or to enter an order terminating the timeshare plan, or
2 to enter such further orders regarding the disposition of the
3 timeshare property as the court deems appropriate. All
4 reasonable costs and fees of the receiver relating to the
5 receivership shall become common expenses of the timeshare
6 plan upon order of the court.

7 3. The division may revoke its approval of any filing
8 for any timeshare plan for which a petition for receivership
9 has been filed pursuant to this paragraph.

10 (e)1. The division may impose a penalty against any
11 regulated party for a violation of this chapter or any rule
12 adopted thereunder. A penalty may be imposed on the basis of
13 each day of continuing violation, but in no event may the
14 penalty for any offense exceed \$10,000. All accounts
15 collected shall be deposited with the Treasurer to the credit
16 of the Division of Florida Land Sales, Condominiums, and
17 Mobile Homes Trust Fund.

18 2.a. If a regulated party fails to pay a penalty, the
19 division shall thereupon issue an order directing that such
20 regulated party cease and desist from further operation until
21 such time as the penalty is paid; or the division may pursue
22 enforcement of the penalty in a court of competent
23 jurisdiction.

24 b. If an association or managing entity fails to pay a
25 civil penalty, the division may pursue enforcement in a court
26 of competent jurisdiction.

27 (f) In order to permit the regulated party an
28 opportunity either to appeal such decision administratively or
29 to seek relief in a court of competent jurisdiction, the order
30 imposing the penalty or the cease and desist order shall not
31 become effective until 20 days after the date of such order.

1 (g) Any action commenced by the division shall be
2 brought in the county in which the division has its executive
3 offices or in the county where the violation occurred.

4 (h) Notice to any regulated party shall be complete
5 when delivered by United States mail, return receipt
6 requested, to the party's address currently on file with the
7 division or to such other address at which the division is
8 able to locate the party. Every regulated party has an
9 affirmative duty to notify the division of any change of
10 address at least 5 business days prior to such change.

11 (6) The division is authorized to adopt, amend, or
12 repeal rules pursuant to chapter 120 as necessary to
13 implement, enforce, and interpret this chapter.

14 (7)(a) The use of any unfair or deceptive act or
15 practice by any person in connection with the sales or other
16 operations of an exchange program or timeshare plan is a
17 violation of this chapter.

18 (b) Any violation of the Florida Deceptive and Unfair
19 Trade Practices Act, ss. 501.201 et seq., relating to the
20 creation, promotion, sale, operation, or management of any
21 timeshare plan shall also be a violation of this chapter.

22 (c) The division is authorized to institute
23 proceedings against any such person and take any appropriate
24 action authorized in this section in connection therewith,
25 notwithstanding any remedies available to purchasers.

26 (8) The failure of any person to comply with any order
27 of the division is a violation of this chapter.

28 Section 12. Subsection (3) is added to section
29 721.265, Florida Statutes, to read:

30 721.265 Service of process.--
31

1 (a) A lien for delinquent assessments as provided in
2 ss. 721.16 and 718.116 as to timeshare condominiums; or

3 (b) A lien for unpaid taxes and special assessments as
4 provided in s. 192.037(8).

5 (2) "Junior interestholder" means any person who has a
6 lien or interest of record against a timeshare estate in the
7 county in which the timeshare estate is located, which is
8 inferior to the mortgage lien or assessment lien being
9 foreclosed under this part.

10 (3) "Lienholder" means a holder of an assessment lien
11 or a holder of a mortgage lien, as applicable. A receiver
12 appointed under s. 721.26 is a lienholder for purposes of this
13 part.

14 (4) "Mortgage" has the same meaning as set forth in s.
15 697.01.

16 (5) "Mortgage lien" means a security interest in a
17 timeshare estate created by a mortgage encumbering the
18 timeshare estate.

19 (6) "Mortgagee" means a person holding a mortgage
20 lien.

21 (7) "Mortgagor" means a person granting a mortgage
22 lien or a person who has assumed the obligation secured by a
23 mortgage lien.

24 (8) "Notice address" means:

25 (a) As to an assessment lien, the address of the
26 current owner of a timeshare estate as reflected by the books
27 and records of the timeshare plan under ss. 721.13(4) and
28 721.15(7).

29 (b) As to a mortgage lien:

30 1. The address of the mortgagor as set forth in the
31 mortgage, the promissory note or a separate document executed

1 by the mortgagor at the time the mortgage lien was created, or
2 the most current address of the mortgagor according to the
3 records of the mortgagee.

4 2. If the current owner of the timeshare estate is
5 different from the mortgagor, the address of the current owner
6 of the timeshare estate as reflected by the books and records
7 of the mortgagee.

8 (c) As to a junior interestholder, the address as set
9 forth in the recorded instrument creating the junior interest
10 or lien, or any recorded supplement thereto changing the
11 address, or written notification by the junior interestholder
12 to the foreclosing lienholder of such change in address.

13 (9) "Obligor" means the mortgagor, the person subject
14 to an assessment lien, or the record owner of the timeshare
15 estate.

16 (10) "Registered agent" means an agent duly appointed
17 by the obligor under s. 721.84 for the purpose of accepting
18 all notices and service of process under this part. A
19 registered agent may be an individual resident in this state
20 whose business office qualifies as a registered office, or a
21 domestic or foreign corporation or a not-for-profit
22 corporation as defined in chapter 617 authorized to transact
23 business or to conduct its affairs in this state, whose
24 business office qualifies as a registered office. A registered
25 agent for any obligor may not be the lienholder or the
26 attorney for the lienholder.

27 (11) "Registered office" means the street address of
28 the business office of the registered agent appointed under s.
29 721.84, located in this state.

30 721.83 Consolidation of foreclosure actions.--
31

1 (1) A complaint in a foreclosure proceeding involving
2 timeshare estates may join in the same action multiple
3 defendant obligors and junior interestholders of separate
4 timeshare estates, provided:

5 (a) The foreclosure proceeding involves a single
6 timeshare property;

7 (b) The foreclosure proceeding is filed by a single
8 plaintiff;

9 (c) The default and remedy provisions in the written
10 instruments on which the foreclosure proceeding is based are
11 substantially the same for each defendant; and

12 (d) The nature of the defaults alleged are the same
13 for each defendant.

14 (2) In any foreclosure proceeding involving multiple
15 defendants filed under subsection (1), the court shall sever
16 for separate trial any count of the complaint in which a
17 defense or counterclaim is timely raised by a defendant.

18 721.84 Appointment of a registered agent; duties.--

19 (1) Any obligor may appoint a registered agent on whom
20 notices and process may be served under s. 721.85. The
21 statement of appointment must be in writing signed by the
22 obligor and must:

23 (a) Provide the name of the registered agent and the
24 street address for the registered office;

25 (b) Identify the obligor for whom the registered agent
26 serves;

27 (c) Indicate the purpose of the appointment;

28 (d) Specify the instruments out of which the liens
29 arise;

30 (e) Designate the address the obligor wishes to use to
31 receive mail from the registered agent; and

1 (f) Contain the obligor's undertaking to inform the
2 registered agent of any change in such designated address.

3
4 The statement of appointment must also provide for the
5 registered agent's acceptance of the appointment, which must
6 confirm that the registered agent is familiar with and accepts
7 the obligations of that position as set forth in this section.

8 (2) An obligor may change but not revoke its
9 appointment of registered agent and registered office under
10 this chapter by executing a written statement of change that
11 identifies the former registered agent and registered address
12 and also satisfies all of the requirements of subsection (1).
13 A copy of the statement of change must be promptly provided to
14 the former registered agent and the affected lienholder and
15 becomes effective upon receipt by the affected lienholder.

16 (3) A registered agent appointed under subsection (1)
17 or a successor registered agent appointed under subsection (2)
18 shall provide the lienholder with a copy of the obligor's
19 appointment and the executed acceptance of the appointment by
20 the registered agent promptly following the registered agent's
21 receipt of the statement of appointment or statement of change
22 executed by the obligor. The statement of appointment or
23 statement of change becomes effective upon receipt by the
24 lienholder of the fully executed form. A successor registered
25 agent shall promptly provide a copy of a statement of change
26 to the former registered agent.

27 (4) A registered agent may change its business name or
28 the street address of the registered office for any obligor
29 for which it serves as registered agent by:

30
31

1 (a) Notifying all obligors of the specific change in
2 writing at the address such obligor designated for receipt of
3 mail from the registered agent; and

4 (b) Delivering to each respective lienholder a
5 statement that updates the information on the original
6 appointment or change of appointment, identifies the names of
7 all affected obligors, and states that each such affected
8 obligor has been notified of the change.

9 (5) A registered agent may resign his or her agency
10 appointment for any obligor for which he or she serves as
11 registered agent, provided that:

12 (a) The resigning registered agent executes a written
13 statement of resignation that identifies himself or herself
14 and the street address of his or her registered office, and
15 identifies the obligors affected by his or her resignation;

16 (b) A successor registered agent is appointed and such
17 successor registered agent executes an acceptance of
18 appointment as successor registered agent and satisfies all of
19 the requirements of subsection (1). The resigning registered
20 agent may designate the successor registered agent; however,
21 if the resigning registered agent fails to designate a
22 successor registered agent or the designated successor
23 registered agent fails to accept, the successor registered
24 agent for the affected obligors may be designated by the
25 mortgagee as to the mortgagee lien and by the association of
26 the timeshare plan as to the assessment lien; and

27 (c) Copies of the statement of resignation and
28 acceptance of appointment as successor registered agent are
29 promptly mailed to the affected obligors at the obligors' last
30 designated address shown on the records of the resigning
31 registered agent and to the affected lienholders. The agency

1 and registered office of the resigning registered agent are
2 terminated and the agency and registered office of the
3 successor registered agent are effective as of the 10th day
4 after the date on which the statement of resignation and
5 acceptance of appointment as successor registered agent are
6 received by the lienholder, unless a longer period is provided
7 in the statement of resignation and acceptance of appointment
8 as successor registered agent.

9 (6) Unless otherwise provided in this section, a
10 registered agent in receipt of any notice or other document
11 addressed from the lienholder to the obligor in care of the
12 registered agent at the registered office must mail, by first
13 class mail if the obligor's address is within the United
14 States, and by international air mail if the obligor's address
15 is outside the United States, with postage fees prepaid, such
16 notice or documents to the obligor at the obligor's last
17 designated address within 5 days of receipt.

18 (7) In the absence of a written agreement to the
19 contrary, a registered agent is not liable for the failure to
20 give notice to the obligor of the receipt of any document
21 under this part if, such registered agent has complied in a
22 timely manner with the procedures and duties in this section.

23 721.85 Service to notice address or on registered
24 agent.--

25 (1) Service of process for a foreclosure proceeding
26 involving a timeshare estate may be made by any means
27 recognized by law. In addition, substituted service on a party
28 who has appointed a registered agent under s. 721.84 may be
29 made on such registered agent at the registered office. Also,
30 when using s. 48.194 where in rem or quasi in rem relief only
31 is sought, such service of process provisions are modified in

1 connection with a foreclosure proceeding against a timeshare
2 estate to provide that:
3 (a) Such service of process may be made on any person
4 whether the person is located inside or outside this state, by
5 certified or registered mail, addressed to the person to be
6 served at the notice address, or on the party's registered
7 agent duly appointed under s. 721.84, at the registered
8 office; and
9 (b) Service shall be considered obtained upon the
10 signing of the return receipt by any person at the notice
11 address, or by the registered agent.
12 (2) The current owner and the mortgagor of a timeshare
13 estate must promptly notify the association of the timeshare
14 plan and the mortgagee of any change of address.
15 721.86 Miscellaneous provisions.--
16 (1) The procedures in this part must be given effect
17 in the context of any foreclosure proceedings against
18 timeshare estates governed by this chapter, chapter 702, or
19 chapter 718.
20 (2) If any provision of this part, or the application
21 thereof to any person or circumstances, is held invalid, such
22 invalidity does not affect other provisions or applications of
23 this part which can be given effect without the invalid
24 provision or application. To this end, the provisions of this
25 part are declared severable.
26 (3) The division has no authority to regulate,
27 enforce, or ensure compliance with any provision of this part.
28 (4) In addition to assessment liens and mortgage liens
29 arising after the effective date of this part, the provisions
30 of this part apply to all assessment liens and mortgage liens
31

1 existing prior to the effective date of this act regarding
2 which a foreclosure proceeding has not yet commenced.

3 Section 14. Part IV of chapter 721, Florida Statutes,
4 consisting of sections 721.96, 721.97, and 721.98, is created
5 to read:

6 PART IV

7 COMMISSIONER OF DEEDS

8 721.96 Purpose.--The purpose of this part is to
9 provide for the appointment of commissioners of deeds to take
10 acknowledgments, proofs of execution, and oaths outside the
11 United States in connection with the execution of any deed,
12 mortgage, deed of trust, contract, power of attorney, or any
13 other agreement, instrument or writing concerning, relating
14 to, or to be used or recorded in connection with a timeshare
15 estate, timeshare license, any property subject to a timeshare
16 plan, or the operation of a timeshare plan located within this
17 state.

18 721.97 Timeshare commissioner of deeds.--

19 (1) The Governor may appoint commissioners of deeds to
20 take acknowledgments, proofs of execution, or oaths in any
21 foreign country. The term of office is 4 years. Commissioners
22 of deeds shall have authority to take acknowledgments, proofs
23 of execution, and oaths in connection with the execution of
24 any deed, mortgage, deed of trust, contract, power of
25 attorney, or any other writing to be used or recorded in
26 connection with a timeshare estate, timeshare license, any
27 property subject to a timeshare plan, or the operation of a
28 timeshare plan located within this state; provided such
29 instrument or writing is executed outside the United States.
30 Such acknowledgments, proofs of execution, and oaths must be
31 taken or made in the manner directed by the laws of this

1 state, including, but not limited to, s. 117.05(4), (5)(a),
2 and (6) and certified by a commissioner of deeds. The
3 certification must be endorsed on or annexed to the instrument
4 or writing aforesaid and has the same effect as if made or
5 taken by a notary public licensed in this state.

6 (2) Any person seeking to be appointed a commissioner
7 of deeds must take and subscribe to an oath, before a notary
8 public in this state or any other state, or a person
9 authorized to take oaths in another country, to well and
10 faithfully execute and perform the duties of such commissioner
11 of deeds. The oath must be filed with the Department of State
12 prior to the person being commissioned.

13 (3) Official acts performed by any previously
14 appointed commissioners of deeds, between May 30, 1997, and
15 the effective date of this part, are declared valid as though
16 such official acts were performed in accordance with and under
17 the authority of this part.

18 721.98 Powers of the division.--The division has no
19 duty or authority to regulate, enforce, or ensure compliance
20 with any provision of this part.

21 Section 15. This act shall take effect upon becoming a
22 law; however, with respect to any timeshare plan filing
23 approved by the division prior to the date this act becomes a
24 law, the amendment to s. 721.06(1)(f), Florida Statutes, shall
25 not apply to such filing until January 1, 1999, unless and
26 only to the extent that the developer otherwise voluntarily
27 agrees to comply with all or a portion of such provisions.

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