

By Senator Webster

12-663A-00

See HB

1 A bill to be entitled
2 An act relating to vacation and timeshare
3 plans; amending s. 719.103, F.S.; providing for
4 governance of a timeshare cooperative; defining
5 the term "timeshare estate" for purposes of ch.
6 719, F.S., the Cooperative Act; amending s.
7 719.107, F.S.; providing for joint and several
8 liability for payments of assessments and
9 charges with respect to a timeshare unit;
10 amending s. 719.114, F.S.; providing for
11 assessing timeshare estates for purposes of ad
12 valorem taxes and special assessments; amending
13 s. 719.3026, F.S.; exempting certain contracts
14 from provisions governing products and
15 services; amending s. 719.401, F.S.; specifying
16 the term of the leasehold for a timeshare
17 cooperative; amending s. 719.503, F.S.;
18 requiring that certain additional disclosures
19 be made prior to the sale or transfer of a
20 timeshare estate; amending s. 719.504, F.S.;
21 requiring that the creation and sale of a
22 timeshare estate with respect to a cooperative
23 unit be disclosed in the prospectus or offering
24 circular; amending s. 721.03, F.S.; revising
25 provisions with respect to the scope of the
26 Florida Vacation Plan and Timesharing Act;
27 amending s. 721.05, F.S.; providing
28 definitions; amending s. 721.06, F.S.; revising
29 requirements with respect to contracts for the
30 purchase of timeshare interests; amending s.
31 721.065, F.S.; providing for resale listings;

1 providing legislative intent; providing for the
2 deposit of certain advance fees in a trust
3 account; providing requirements with respect to
4 resale; providing penalties; amending s.
5 721.07, F.S.; revising provisions with respect
6 to public offering statements; providing
7 conditions for the delivery of a purchaser
8 public offering statement which is not yet
9 approved by the Division of Florida Land Sales,
10 Condominiums, and Mobile Homes of the
11 Department of Business and Professional
12 Regulation; amending s. 721.075, F.S.; revising
13 provisions with respect to incidental benefits;
14 amending s. 721.08, F.S.; revising provisions
15 with respect to escrow accounts; providing
16 additional criteria with respect to compliance
17 with certain conditions for the release of
18 escrow funds; providing requirements with
19 respect to unclaimed escrow funds; amending s.
20 721.09, F.S.; revising provisions with respect
21 to reservation agreements; amending s. 721.10,
22 F.S.; revising provisions with respect to
23 cancellation; amending s. 721.11, F.S.;
24 providing a filing fee with respect to
25 advertising materials filed with the division;
26 revising language with respect to advertising
27 materials; providing additional criteria for
28 advertising materials; amending s. 721.111,
29 F.S.; revising provisions with respect to prize
30 and gift promotional offers; amending s.
31 721.12, F.S., relating to recordkeeping by a

1 seller; amending s. 721.13, F.S.; revising
2 provisions with respect to management;
3 providing additional powers of the board of
4 administration of the owners' association;
5 amending s. 721.14, F.S., relating to discharge
6 of the managing entity; amending s. 721.15,
7 F.S.; revising provisions with respect to
8 assessments for common expenses; providing
9 requirements with respect to insurance;
10 amending s. 721.16, F.S.; revising provisions
11 with respect to liens for overdue assessments
12 and liens for labor performed on, or materials
13 furnished to a timeshare unit; providing a lien
14 for certain damages done by a guest; amending
15 s. 721.17, F.S.; revising provisions with
16 respect to transfer of interest; amending s.
17 721.18, F.S., relating to exchange programs;
18 amending s. 721.19, F.S., relating to
19 provisions requiring the purchase or lease of
20 timeshare property by owners' associations or
21 purchasers; amending s. 721.20, F.S.; revising
22 provisions with respect to licensing
23 requirements; amending s. 721.21, F.S.,
24 relating to purchasers' remedies; amending s.
25 721.24, F.S.; revising provisions with respect
26 to firesafety; amending s. 721.26, F.S.;
27 revising provisions with respect to regulation
28 by the division; amending s. 721.27, F.S.;
29 revising provisions with respect to the annual
30 fee for each timeshare unit in the plan;
31 creating s. 721.29, F.S.; providing for the

1 protection of purchasers' rights when recording
2 is not available in certain jurisdictions;
3 amending s. 721.51, F.S.; revising provisions
4 with respect to legislative purpose and scope
5 concerning vacation clubs; amending s. 721.52,
6 F.S.; revising the definition of the term
7 "multisite timeshare plan"; amending s. 721.53,
8 F.S.; providing an additional piece of
9 information that the developer may provide to
10 the division prior to offering an accommodation
11 or facility as a part of a multisite timeshare
12 plan; amending s. 721.55, F.S.; revising
13 provisions with respect to the public offering
14 statement for a multisite timeshare plan;
15 amending s. 721.551, F.S., relating to the
16 delivery of a multisite timeshare plan public
17 offering statement; amending s. 721.552, F.S.,
18 relating to additions, substitutions, or
19 deletions of component site accommodations or
20 facilities; amending s. 721.56, F.S.; revising
21 provisions with respect to the management of
22 multisite timeshare plans; amending s. 721.58,
23 F.S.; deleting an annual fee; amending s.
24 721.81, F.S.; revising legislative purpose with
25 respect to the Timeshare Lien Foreclosure Act;
26 amending s. 721.82, F.S.; revising the
27 definition of the term "assessment lien";
28 amending s. 721.84, F.S., relating to the
29 appointment of a resident agent; amending s.
30 721.85, F.S., relating to service to notice
31 address or on registered agent; amending s.

1 721.86, F.S., including a cross-reference;
2 amending s. 718.103, F.S.; conforming a
3 cross-reference; providing severability;
4 providing an effective date.

5
6 Be It Enacted by the Legislature of the State of Florida:

7
8 Section 1. Subsection (21) of section 719.103, Florida
9 Statutes, is amended, and present subsections (23), (24),
10 (25), and (26) are redesignated as subsections (24), (25),
11 (26), and (27), respectively, and a new subsection (23) is
12 added to that section, to read:

13 719.103 Definitions.--As used in this chapter:

14 (21) "Residential cooperative" means a cooperative
15 consisting of cooperative units, any of which are intended for
16 use as a private residence. A cooperative is not a residential
17 cooperative if the use of the units is intended as primarily
18 commercial or industrial and not more than three units are
19 intended to be used for private residence, domicile, or
20 homestead, or if the units are intended to be used as housing
21 for maintenance, managerial, janitorial, or other operational
22 staff of the cooperative. If a cooperative is a residential
23 cooperative under this definition, but has units intended to
24 be commercial or industrial, then the cooperative is a
25 residential cooperative with respect to those units intended
26 for use as a private residence, domicile, or homestead, but
27 not a residential cooperative with respect to those units
28 intended for use commercially or industrially. With respect to
29 a timeshare cooperative, the timeshare instrument as defined
30 in s. 721.05 shall govern the intended use of each unit in the
31 cooperative.

1 (23) "Timeshare estate" means any interest in a unit
2 under which the exclusive right of use, possession, or
3 occupancy of the unit circulates among the various purchasers
4 of a timeshare plan pursuant to chapter 721 on a recurring
5 basis for a period of time.

6 Section 2. Subsection (1) of section 719.107, Florida
7 Statutes, is amended to read:

8 719.107 Common expenses; assessment.--

9 (1)(a) Common expenses include the expenses of the
10 operation, maintenance, repair, or replacement of the
11 cooperative property; costs of carrying out the powers and
12 duties of the association; and any other expense, whether or
13 not included in this paragraph, designated as common expense
14 by this chapter or the cooperative documents.

15 (b) If so provided in the bylaws, the cost of a master
16 antenna television system or duly franchised cable television
17 service obtained pursuant to a bulk contract shall be deemed a
18 common expense, and if not obtained pursuant to a bulk
19 contract, such cost shall be considered common expense if it
20 is designated as such in a written contract between the board
21 of administration and the company providing the master
22 television antenna system or the cable television service.
23 The contract shall be for a term of not less than 2 years.

24 1. Any contract made by the board after April 2, 1992,
25 for a community antenna system or duly franchised cable
26 television service may be canceled by a majority of the voting
27 interests present at the next regular or special meeting of
28 the association. Any member may make a motion to cancel the
29 contract, but if no motion is made or if such motion fails to
30 obtain the required majority at the next regular or special
31 meeting, whichever is sooner, following the making of the

1 contract, then such contract shall be deemed ratified for the
2 term therein expressed.

3 2. Any such contract shall provide, and shall be
4 deemed to provide if not expressly set forth, that any hearing
5 impaired or legally blind unit owner who does not occupy the
6 unit with a nonhearing impaired or sighted person may
7 discontinue the service without incurring disconnect fees,
8 penalties, or subsequent service charges, and as to such
9 units, the owners shall not be required to pay any common
10 expenses charge related to such service. If less than all
11 members of an association share the expenses of cable
12 television, the expense shall be shared equally by all
13 participating unit owners. The association may use the
14 provisions of s. 719.108 to enforce payment of the shares of
15 such costs by the unit owners receiving cable television.

16 (c) If any unpaid share of common expenses or
17 assessments is extinguished by foreclosure of a superior lien
18 or by a deed in lieu of foreclosure thereof, the unpaid share
19 of common expenses or assessments are common expenses
20 collectible from all the unit owners in the cooperative in
21 which the unit is located.

22 (d) With respect to each timeshare unit, each owner of
23 a timeshare estate therein is jointly and severally liable for
24 the payment of all assessments and other charges levied
25 against or with respect to that unit pursuant to the
26 cooperative documents, except to the extent that the
27 cooperative documents provide to the contrary. This paragraph
28 does not apply to any unit that is not committed to a
29 timeshare plan.

30 Section 3. Subsection (3) is added to section 719.114,
31 Florida Statutes, to read:

1 719.114 Separate taxation of cooperative parcels;
2 survival of contractual provisions after tax sale.--

3 (3) Cooperative property divided into timeshare
4 estates shall be assessed for purposes of ad valorem taxes and
5 special assessments as provided in s. 192.037.

6 Section 4. Section 719.3026, Florida Statutes, is
7 amended to read:

8 719.3026 Contracts for products and services; in
9 writing; bids; exceptions.--Associations with less than 100
10 units may opt out of the provisions of this section if
11 two-thirds of the unit owners vote to do so, which opt-out may
12 be accomplished by a proxy specifically setting forth the
13 exception from this section.

14 (1) All contracts as further described herein or any
15 contract that is not to be fully performed within 1 year after
16 the making thereof, for the purchase, lease, or renting of
17 materials or equipment to be used by the association in
18 accomplishing its purposes under this chapter, and all
19 contracts for the provision of services, shall be in writing.
20 If a contract for the purchase, lease, or renting of materials
21 or equipment, or for the provision of services, requires
22 payment by the association in an amount which in the aggregate
23 exceeds 5 percent of the association's budget, including
24 reserves, the association shall obtain competitive bids for
25 the materials, equipment, or services. Nothing contained
26 herein shall be construed to require the association to accept
27 the lowest bid.

28 (2)(a)1. Notwithstanding the foregoing, contracts with
29 employees of the association, and contracts for attorney,
30 accountant, architect, community association manager,
31 timeshare management firm, engineering, and landscape

1 architect services shall not be subject to the provisions of
2 this section.

3 2. A contract executed before January 1, 1992, and any
4 renewal thereof, is not subject to the competitive bid
5 requirements of this section. If a contract was awarded under
6 the competitive bid procedures of this section, any renewal of
7 that contract is not subject to such competitive bid
8 requirements if the contract contains a provision that allows
9 the board to cancel the contract on 30 days' notice.
10 Materials, equipment, or services provided to a cooperative
11 pursuant to a local government franchise agreement by a
12 franchise holder are not subject to the competitive bid
13 requirement. A contract with a manager, if made by a
14 competitive bid, may be made for up to 3 years. A condominium
15 whose declaration or bylaws provides for competitive bidding
16 for services may operate under the provisions of that
17 declaration or bylaws in lieu of this section if those
18 provisions are not less stringent than the requirements of
19 this section.

20 (b) This section does not limit the ability of an
21 association to obtain needed products and services in an
22 emergency.

23 (c) This section does not apply if the business entity
24 with which the association desires to enter into a contract is
25 the only source of supply within the county serving the
26 association.

27 Section 5. Subsection (1) of section 719.401, Florida
28 Statutes, is amended to read:

29 719.401 Leaseholds.--

30 (1) A cooperative may be created on lands held under
31 lease or may include recreational facilities or other common

1 elements or commonly used facilities on a leasehold, if, on
2 the date the first unit is conveyed by the developer to a bona
3 fide purchaser, the lease has an unexpired term of at least 50
4 years. However, if the cooperative constitutes a timeshare
5 cooperative created pursuant to chapter 721, the lease must
6 have an unexpired term of at least 30 years.If rent under the
7 lease is payable by the association or by the unit owners, the
8 lease shall include the following requirements:

9 (a) The leased land must be identified by a
10 description that is sufficient to pass title, and the leased
11 personal property must be identified by a general description
12 of the items of personal property and the approximate number
13 of each item of personal property that the developer is
14 committing to furnish for each room or other facility. In the
15 alternative, the personal property may be identified by a
16 representation as to the minimum amount of expenditure that
17 will be made to purchase the personal property for the
18 facility. Unless the lease is of a unit, the identification
19 of the land shall be supplemented by a survey showing the
20 relation of the leased land to the land included in the common
21 areas. This provision shall not prohibit adding additional
22 land or personal property in accordance with the terms of the
23 lease, provided there is no increase in rent or material
24 increase in maintenance costs to the individual unit owner.

25 (b) The lease shall not contain a reservation of the
26 right of possession or control of the leased property by the
27 lessor or any person other than unit owners or the
28 association, and shall not create rights to possession or use
29 of the leased property in any parties other than the
30 association or unit owners of the cooperative to be served by
31 the leased property, unless the reservations and rights

1 created are conspicuously disclosed. Any provision for use of
2 the leased property by anyone other than unit owners of the
3 cooperatives to be served by the leased property shall require
4 the other users to pay a fair and reasonable share of the
5 maintenance and repair obligations and other exactions due
6 from users of the leased property.

7 (c) The lease shall state the minimum number of unit
8 owners that will be required, directly or indirectly, to pay
9 the rent under the lease and the maximum number of units that
10 will be served by the leased property. The limitation of the
11 number of units to be served shall not preclude enlargement of
12 the facilities leased and an increase in their capacity, if
13 approved by the association operating the leased property
14 after unit owners other than the developer have assumed
15 control of the association. This paragraph does not apply if
16 the lessor is the Government of the United States or the State
17 of Florida or any political subdivision thereof or any agency
18 or any political subdivision thereof.

19 (d)1. In any action by the lessor to enforce a lien
20 for rent payable or in any action by the association or a unit
21 owner with respect to the obligations of the lessee or the
22 lessor under the lease, the unit owner or the association may
23 raise any issue or interpose any defenses, legal or equitable,
24 that he or she or it may have with respect to the lessor's
25 obligations under the lease. If the unit owner or the
26 association initiates any action or interposes any defense
27 other than payment of rent under the lease, the unit owner or
28 the association shall, upon service of process upon the
29 lessor, pay into the registry of the court any allegedly
30 accrued rent and the rent which accrues during the pendency of
31 the proceeding, when due. If the unit owner or the

1 association fails to pay the rent into the registry of the
2 court, it shall constitute an absolute waiver of the unit
3 owner's or association's defenses other than payment, and the
4 lessor shall be entitled to default. The unit owner or the
5 association shall notify the lessor of any deposits. When the
6 unit owner or the association has deposited the required funds
7 into the registry of the court, the lessor may apply to the
8 court for disbursement of all or part of the funds shown to be
9 necessary for the payment of taxes, mortgage payments,
10 maintenance and operating expenses, and other necessary
11 expenses incident to maintaining and equipping the leased
12 facilities or necessary for the payment of other expenses
13 arising out of personal hardship resulting from the loss of
14 rental income from the leased facilities. The court, after an
15 evidentiary hearing, may award all or part of the funds on
16 deposit to the lessor for such purpose. The court shall
17 require the lessor to post bond or other security, as a
18 condition to the release of funds from the registry, when the
19 value of the leased land and improvements, apart from the
20 lease itself, is inadequate to fully secure the sum of
21 existing encumbrances on the leased property and the amounts
22 released from the court registry.

23 2. When the association or unit owners have deposited
24 funds into the registry of the court pursuant to this
25 subsection, and the unit owners and association have otherwise
26 complied with their obligations under the lease or agreement,
27 other than paying rent into the registry of the court rather
28 than to the lessor, the lessor cannot hold the association or
29 unit owners in default on their rental payments nor may the
30 lessor file liens or initiate foreclosure proceedings against
31 unit owners. If the lessor, in violation of this subsection,

1 attempts such liens or foreclosures, then the lessor may be
2 liable for damages plus attorney's fees and costs which the
3 association or unit owners incurred in satisfying those liens
4 or foreclosures.

5 3. Nothing in this paragraph shall affect litigation
6 commenced prior to October 1, 1979.

7 (e) If the lease is of recreational facilities or
8 other commonly used facilities that are not completed, rent
9 shall not commence until some of the facilities are completed.
10 Until all of the facilities leased are completed, rent shall
11 be prorated and paid only for the completed facilities in the
12 proportion that the value of the completed facilities bears to
13 the estimated value, when completed, of all of the facilities
14 that are leased. The facilities shall be complete when they
15 have been constructed, finished, and equipped and are
16 available for use.

17 (f)1. A lease of recreational or other commonly used
18 facilities entered into by the association or unit owners
19 prior to the time the control of the association is turned
20 over to unit owners other than the developer shall grant to
21 the lessee an option to purchase the leased property, payable
22 in cash on any anniversary date of the beginning of the lease
23 term after the 10th anniversary, at a price then determined by
24 agreement. If there is no agreement as to the price, then the
25 price shall be determined by arbitration. This paragraph shall
26 be applied to contracts entered into on, before, or after
27 January 1, 1977, regardless of the duration of the lease.

28 2. If the lessor wishes to sell his or her interest
29 and has received a bona fide offer to purchase it, the lessor
30 shall send the association and each unit owner a copy of the
31 executed offer. For 90 days following receipt of the offer by

1 the association or unit owners, the association or unit owners
2 have the option to purchase the interest on the terms and
3 conditions in the offer. The option shall be exercised, if at
4 all, by notice in writing given to the lessor within the
5 90-day period. If the association or unit owners do not
6 exercise the option, the lessor shall have the right, for a
7 period of 60 days after the 90-day period has expired, to
8 complete the transaction described in the offer to purchase.
9 If for any reason such transaction is not concluded within the
10 60 days, the offer shall have been abandoned, and the
11 provisions of this subsection shall be reimposed.

12 3. The option shall be exercised upon approval by
13 owners of two-thirds of the units served by the leased
14 property.

15 4. The provisions of this paragraph shall not apply to
16 a nonresidential cooperative and shall not apply if the lessor
17 is the Government of the United States or the State of Florida
18 or any political subdivision thereof or, in the case of an
19 underlying land lease, a person or entity which is not the
20 developer or directly or indirectly owned or controlled by the
21 developer and did not obtain, directly or indirectly,
22 ownership of the leased property from the developer.

23 (g) The lease or a subordination agreement executed by
24 the lessor must provide either:

25 1. That any lien which encumbers a unit for rent or
26 other moneys or exactions payable is subordinate to any
27 mortgage held by an institutional lender, or

28 2. That, upon the foreclosure of any mortgage held by
29 an institutional lender or upon delivery of a deed in lieu of
30 foreclosure, the lien for the unit owner's share of the rent
31 or other exactions shall not be extinguished but shall be

1 foreclosed and unenforceable against the mortgagee with
2 respect to that unit's share of the rent and other exactions
3 which mature or become due and payable on or before the date
4 of the final judgment of foreclosure, in the event of
5 foreclosure, or on or before the date of delivery of the deed
6 in lieu of foreclosure. The lien may, however, automatically
7 and by operation of the lease or other instrument, reattach to
8 the unit and secure the payment of the unit's proportionate
9 share of the rent or other exactions coming due subsequent to
10 the date of final decree of foreclosure or the date of
11 delivery of the deed in lieu of foreclosure.

12

13 This paragraph does not apply if the lessor is the Government
14 of the United States or the State of Florida or any political
15 subdivision thereof or any agency or political subdivision
16 thereof.

17 Section 6. Paragraph (a) of subsection (1) and
18 paragraph (b) of subsection (3) of section 719.503, Florida
19 Statutes, are amended to read:

20 719.503 Disclosure prior to sale.--

21 (1) DEVELOPER DISCLOSURE.--

22 (a) Contents of contracts.--Any contracts for the sale
23 of a unit or a lease thereof for an unexpired term of more
24 than 5 years shall contain:

25 1. The following legend in conspicuous type: THIS
26 AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF
27 THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE
28 OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND RECEIPT BY
29 BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED TO HIM OR
30 HER BY THE DEVELOPER UNDER SECTION 719.503, FLORIDA STATUTES.
31 THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY DELIVERING WRITTEN

1 NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER
2 THE DATE OF RECEIPT FROM THE DEVELOPER OF ANY AMENDMENT WHICH
3 MATERIALLY ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS
4 ADVERSE TO THE BUYER. ANY PURPORTED WAIVER OF THESE
5 VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE
6 TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS AFTER
7 THE BUYER HAS RECEIVED ALL OF THE ITEMS REQUIRED. BUYER'S
8 RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

9 2. The following caveat in conspicuous type shall be
10 placed upon the first page of the contract: ORAL
11 REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE
12 REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT
13 REPRESENTATIONS, REFERENCE SHOULD BE MADE TO THIS CONTRACT AND
14 THE DOCUMENTS REQUIRED BY SECTION 719.503, FLORIDA STATUTES,
15 TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE.

16 3. If the unit has been occupied by someone other than
17 the buyer, a statement that the unit has been occupied.

18 4. If the contract is for the sale or transfer of a
19 unit subject to a lease, the contract shall include as an
20 exhibit a copy of the executed lease and shall contain within
21 the text in conspicuous type: THE UNIT IS SUBJECT TO A LEASE
22 (OR SUBLEASE).

23 5. If the contract is for the lease of a unit for a
24 term of 5 years or more, the contract shall include as an
25 exhibit a copy of the proposed lease.

26 6. If the contract is for the sale or lease of a unit
27 that is subject to a lien for rent payable under a lease of a
28 recreational facility or other common areas, the contract
29 shall contain within the text the following statement in
30 conspicuous type: THIS CONTRACT IS FOR THE TRANSFER OF A UNIT
31 THAT IS SUBJECT TO A LIEN FOR RENT PAYABLE UNDER A LEASE OF

1 COMMON AREAS. FAILURE TO PAY RENT MAY RESULT IN FORECLOSURE OF
2 THE LIEN.

3 7. The contract shall state the name and address of
4 the escrow agent required by s. 719.202 and shall state that
5 the purchaser may obtain a receipt for his or her deposit from
6 the escrow agent, upon request.

7 8. If the contract is for the sale or transfer of a
8 unit in a cooperative in which timeshare estates have been or
9 may be created, the following text in conspicuous type: UNITS
10 IN THIS COOPERATIVE ARE SUBJECT TO TIMESHARE ESTATES. The
11 contract for the sale of a timeshare estate must also contain,
12 in conspicuous type, the following: FOR THE PURPOSE OF AD
13 VALOREM TAXES OR SPECIAL ASSESSMENTS LEVIED BY TAXING
14 AUTHORITIES AGAINST A TIMESHARE ESTATE, THE MANAGING ENTITY IS
15 GENERALLY CONSIDERED THE TAXPAYER UNDER FLORIDA LAW. YOU HAVE
16 THE RIGHT TO CHALLENGE AN ASSESSMENT BY A TAXING AUTHORITY
17 RELATING TO YOUR TIMESHARE ESTATE PURSUANT TO THE PROVISIONS
18 OF CHAPTER 194, FLORIDA STATUTES.

19 (3) OTHER DISCLOSURE.--

20 (b) Sales brochures, if any, shall be provided to each
21 purchaser, and the following caveat in conspicuous type shall
22 be placed on the inside front cover or on the first page
23 containing text material of the sales brochure, or otherwise
24 conspicuously displayed: ORAL REPRESENTATIONS CANNOT BE
25 RELIED UPON AS CORRECTLY STATING REPRESENTATIONS OF THE
26 DEVELOPER. FOR CORRECT REPRESENTATIONS, MAKE REFERENCE TO
27 THIS BROCHURE AND TO THE DOCUMENTS REQUIRED BY SECTION
28 719.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A
29 BUYER OR LESSEE. If timeshare estates have been or may be
30 created with respect to any unit in the cooperative, the sales
31 brochure for sales of timeshare estates in such units must

1 contain the following statement in conspicuous type: UNITS IN
2 THIS COOPERATIVE ARE SUBJECT TO TIMESHARE ESTATES.

3 Section 7. Subsection (5) of section 719.504, Florida
4 Statutes, is amended to read:

5 719.504 Prospectus or offering circular.--Every
6 developer of a residential cooperative which contains more
7 than 20 residential units, or which is part of a group of
8 residential cooperatives which will be served by property to
9 be used in common by unit owners of more than 20 residential
10 units, shall prepare a prospectus or offering circular and
11 file it with the Division of Florida Land Sales, Condominiums,
12 and Mobile Homes prior to entering into an enforceable
13 contract of purchase and sale of any unit or lease of a unit
14 for more than 5 years and shall furnish a copy of the
15 prospectus or offering circular to each buyer. In addition to
16 the prospectus or offering circular, each buyer shall be
17 furnished a separate page entitled "Frequently Asked Questions
18 and Answers," which must be in accordance with a format
19 approved by the division. This page must, in readable
20 language: inform prospective purchasers regarding their
21 voting rights and unit use restrictions, including
22 restrictions on the leasing of a unit; indicate whether and in
23 what amount the unit owners or the association is obligated to
24 pay rent or land use fees for recreational or other commonly
25 used facilities; contain a statement identifying that amount
26 of assessment which, pursuant to the budget, would be levied
27 upon each unit type, exclusive of any special assessments, and
28 which identifies the basis upon which assessments are levied,
29 whether monthly, quarterly, or otherwise; state and identify
30 any court cases in which the association is currently a party
31 of record in which the association may face liability in

1 excess of \$100,000; and state whether membership in a
2 recreational facilities association is mandatory and, if so,
3 identify the fees currently charged per unit type. The
4 division shall by rule require such other disclosure as in its
5 judgment will assist prospective purchasers. The prospectus or
6 offering circular may include more than one cooperative,
7 although not all such units are being offered for sale as of
8 the date of the prospectus or offering circular. The
9 prospectus or offering circular must contain the following
10 information:

11 (5)(a) A statement in conspicuous type describing
12 whether the cooperative is created and being sold as fee
13 simple interests or as leasehold interests. If the
14 cooperative is created or being sold on a leasehold, the
15 location of the lease in the disclosure materials shall be
16 stated.

17 **(b) If timeshare estates are or may be created with**
18 **respect to any unit in the cooperative, a statement in**
19 **conspicuous type stating that timeshare estates are created**
20 **and being sold in such specified units in the cooperative.**

21 Section 8. Section 721.03, Florida Statutes, is
22 amended to read:

23 721.03 Scope of chapter.--

24 (1) This chapter applies to all timeshare plans
25 consisting of more than seven timeshare periods over a period
26 of at least 3 years in which the accommodations and or
27 facilities, if any, are located within this state or offered
28 within this state; provided that:

29 (a) With respect to a timeshare plan ~~plans~~ containing
30 accommodations or facilities located in this state which has
31 previously been filed with and approved by the division and

1 which is ~~are~~ offered for sale in other jurisdictions within
2 the jurisdictional limits of the United States, ~~that regulate~~
3 the offering or sale of the timeshare plan in ~~plans~~, such
4 jurisdictions ~~offers~~ shall not be subject to the provisions of
5 this chapter ~~ss. 721.06, 721.08-721.12, and 721.20~~ to the
6 extent ~~that such activity is regulated in the other United~~
7 ~~States jurisdictions, but only after the division has received~~
8 ~~and accepted satisfactory evidence that the timeshare plan has~~
9 ~~been filed and accepted by the appropriate agency in the other~~
10 ~~jurisdictions. The director of the division shall also have~~
11 ~~the discretion to require all or a portion of the disclosures~~
12 ~~required by s. 721.07 or s. 721.55 to be made in connection~~
13 ~~with offers made in the other United States jurisdictions.~~

14 (b) With respect to a timeshare plan ~~plans~~ containing
15 accommodations or facilities located in this state which is
16 ~~are~~ offered for sale outside the jurisdictional limits of the
17 United States, such offer or sale ~~offers~~ shall be exempt from
18 the requirements of this chapter, provided that the developer
19 shall either file the timeshare plan with the division for
20 approval pursuant to this chapter, or pay an exemption
21 registration fee of \$100 and file the following minimum
22 information pertaining to the timeshare plan with the division
23 for approval:

- 24 1. The name and address of the timeshare plan.
- 25 2. The name and address of the developer and seller,
26 if any.
- 27 3. The location and a brief description of the
28 accommodations and facilities, if any, that are located in
29 this state.
- 30 4. The number of timeshare interests and timeshare
31 periods to be offered.

- 1 5. The term of the timeshare plan.
- 2 6. A copy of the timeshare instrument relating to the
3 management and operation of accommodations and facilities, if
4 any, that are located in this state.
- 5 7. A copy of the budget required by s. 721.07(5)(u) or
6 s. 721.55(4)(h), as applicable.
- 7 8. A copy of the management agreement and any other
8 contracts regarding management or operation of the
9 accommodations and facilities, if any, that are located in
10 this state, and which have terms in excess of 1 year.
- 11 9. A copy of the provision of the purchase contract to
12 be utilized in offering the timeshare plan containing ~~so long~~
13 as the seller files the information required by s. 721.07 or
14 s. 721.55 with, and obtains the approval of, the division.
15 ~~This exemption becomes effective upon the filing of such~~
16 ~~information with the division, if approval is obtained within~~
17 ~~6 months after the initial filing at which time the exemption~~
18 ~~will expire unless the division stipulates otherwise or~~
19 ~~approves the filing. The fees set forth in s. 721.07(4) apply~~
20 ~~to all filings made hereunder. Each purchase contract utilized~~
21 ~~in any offer of a timeshare plan that occurs outside the~~
22 ~~jurisdictional limits of the United States shall contain the~~
23 ~~following disclosure in conspicuous type immediately above the~~
24 ~~space provided for the purchaser's signature:~~
25
- 26 The offering of this timeshare plan outside the jurisdictional
27 limits of the United States of America is exempt from
28 regulation under Florida law, and any such purchase is not
29 protected by the State of Florida. However, the management
30 and operation of any accommodations or facilities located in
31

1 Florida is subject to Florida law and may give rise to
2 enforcement action regardless of the location of any offer.

3

4 ~~Purchaser should note that ... (name of developer or other~~
5 ~~person or entity) ... at ... (address) ... has a ... (describe~~
6 ~~developer's or other person's or entity's actual interest) ...~~
7 ~~in the accommodations and facilities of the timeshare plan.~~

8

9 ~~(c) The exemption provided in paragraph (a) shall not~~
10 ~~apply unless and until a claim of exemption from regulation~~
11 ~~containing the information required by paragraph (a) and s.~~
12 ~~721.51(3)(b) and accompanied by the fee required by s.~~
13 ~~721.51(3)(b) is filed with and approved by the division. The~~
14 ~~division may adopt rules designating those provisions of ss.~~
15 ~~721.07 and 721.55 which need not be addressed in the filings~~
16 ~~required in paragraph (b).~~

17 (c)(2) All timeshare accommodations or facilities
18 which are located outside the state but offered for sale in
19 this state shall be governed by the following:

20 1. The offering for sale in this state of timeshare
21 accommodations and facilities located outside the state is are
22 subject only to the provisions of ss. 721.01-721.12, 721.18,
23 721.20, 721.21, 721.26, and 721.28, and part II.

24 2. The division shall not require a developer of All
25 timeshare accommodations or facilities located outside of this
26 state to make changes in any timeshare instrument to conform
27 to the provisions of s. 721.07 or s. 721.55. The division
28 shall have the power to require disclosure of those provisions
29 of the timeshare instrument that do not conform to s. 721.07
30 or s. 721.55 as the director determines is necessary to

31

1 fairly, meaningfully, and effectively disclose all aspects of
2 the timeshare plan.

3 3. Except as provided in this subparagraph, the
4 division shall have no authority to determine whether any
5 person has complied with another state's laws or to disapprove
6 any out-of-state filing, timeshare instrument, or component
7 site document, based solely upon the lack or degree of
8 timeshare regulation in another state. The division may
9 require a developer to obtain and provide to the division
10 existing documentation relating to an out-of-state filing,
11 timeshare instrument, or component site document and prove
12 compliance of same with the laws of that state. In this
13 regard, the division may accept any evidence of the approval
14 or acceptance of any out-of-state filing, timeshare
15 instrument, or component site document by another state in
16 lieu of requiring a developer to file the out-of-state filing,
17 timeshare instrument, or component site document with the
18 division pursuant to this section, or the division may accept
19 an opinion letter from an attorney or law firm opining as to
20 the compliance of such out-of-state filing, timeshare
21 instrument, or component site document with the laws of
22 another state. The division may refuse to approve the
23 inclusion of any out-of-state filing, timeshare instrument, or
24 component site document as part of a public offering statement
25 based upon the inability of the developer to establish the
26 compliance of same with the laws of another state.

27 4. The division is authorized to enter into an
28 agreement with another state for the purpose of facilitating
29 the processing of out-of-state timeshare instruments or other
30 component site documents pursuant to this chapter and for the
31

1 purpose of facilitating the referral of consumer complaints to
2 the appropriate state.

3 5. Notwithstanding any other provision of this
4 paragraph, the offer, in this state, of an additional interest
5 to existing purchasers in the same timeshare plan or the same
6 component site of a multisite timeshare plan with
7 accommodations and facilities located outside of this state
8 shall not be which are located outside the state but offered
9 for sale in this state as part of a vacation club are also
10 subject to the provisions of this chapter if the offer
11 complies with the provisions of s. 721.11(4)part FF.

12 (2)(3) When a timeshare plan is subject to both the
13 provisions of this chapter and the provisions of chapter 718
14 or chapter 719, the plan shall meet the requirements of both
15 chapters unless exempted as provided in this section. The
16 division shall have the authority to adopt rules
17 differentiating between timeshare condominiums and
18 nontimeshare condominiums, and between timeshare cooperatives
19 and nontimeshare cooperatives, in the interpretation and
20 implementation of chapters 718 and 719, respectively. In the
21 event of a conflict between the provisions of this chapter and
22 the provisions of chapter 718 or chapter 719, the provisions
23 of this chapter shall prevail.

24 (3)(4) A timeshare plan which is subject to the
25 provisions of chapter 718 or chapter 719, if fully in
26 compliance with the provisions of this chapter, is exempt from
27 the following:

28 (a) Sections 718.202 and 719.202, relating to sales or
29 reservation deposits prior to closing.

30 (b) Sections 718.502 and 719.502, relating to filing
31 prior to sale or lease.

1 (c) Sections 718.503 and 719.503, relating to
2 disclosure prior to sale.

3 (d) Sections 718.504 and 719.504, relating to
4 prospectus or offering circular.

5 (e) Part VI of chapter 718 and part VI of chapter 719,
6 relating to conversion of existing improvements to the
7 condominium or cooperative form of ownership, respectively,
8 provided that a developer converting existing improvements to
9 a timeshare condominium or timeshare cooperative must comply
10 with ss. 718.606, 718.608, 718.61, and 718.62, or ss. 719.606,
11 719.608, 719.61, and 719.62, if applicable, and, if the
12 existing improvements received a certificate of occupancy more
13 than 18 months before such conversion, one of the following:

14 1. The accommodations and facilities shall be
15 renovated and improved to a condition such that the remaining
16 useful life in years of the roof, plumbing, air-conditioning,
17 and any component of the structure which has a useful life
18 less than the useful life of the overall structure is equal to
19 the useful life of accommodations or facilities that would
20 exist if such accommodations and facilities were newly
21 constructed and not previously occupied.

22 2. The developer shall fund reserve accounts for
23 capital expenditures and deferred maintenance for the roof,
24 plumbing, air-conditioning, and any component of the structure
25 the useful life of which is less than the useful life of the
26 overall structure. The reserve accounts shall be funded for
27 each component in an amount equal to the product of the
28 estimated current replacement cost of such component (as
29 disclosed and substantiated by a certificate under the seal of
30 an architect or engineer authorized to practice in this state)
31 multiplied by a fraction, the numerator of which shall be the

1 remaining life of the component in years (as disclosed and
2 substantiated by a certificate under the seal of an architect
3 or engineer authorized to practice in this state) and the
4 denominator of which shall be the total useful life of the
5 component in years (as disclosed and substantiated by a
6 certificate under the seal of an architect or engineer
7 authorized to practice in this state). Alternatively, the
8 reserve accounts may be funded for each component in an amount
9 equal to the amount that, except for the application of this
10 subsection, would be required to be maintained pursuant to s.
11 718.618(1) or s. 719.618(1). The developer shall fund the
12 reserve accounts contemplated in this subparagraph out of the
13 proceeds of each sale of a timeshare interest, on a pro rata
14 basis, in an amount not less than a percentage of the total
15 amount to be deposited in the reserve account equal to the
16 percentage of ownership allocable to the timeshare interest
17 sold.

18 3. The developer shall provide each purchaser with a
19 warranty of fitness and merchantability pursuant to s.
20 718.618(6) or s. 719.618(6).

21 4. The developer shall post a surety bond issued by a
22 company licensed to do business in this state in an amount
23 which would be equal to the total amount of all reserve
24 accounts required under subparagraph 2., payable to the
25 owners' association.

26 ~~(4)(5)~~ The treatment of timeshare estates for ad
27 valorem tax purposes and special assessments shall be as
28 prescribed in chapters 192 through 200.

29 ~~(5)(6)~~ Membership camping plans shall be subject to
30 the provisions of ss. 509.501-509.512 and not to the
31 provisions of this chapter.

1 ~~(6)(7)~~ Unless otherwise provided herein, this chapter
2 shall not apply to the offering of any timeshare plan under
3 which the prospective purchaser's total financial obligation
4 will be \$3,000~~\$1,500~~ or less during the entire term of the
5 plan.

6 ~~(7)(8)~~ Every escrow agent or trustee required under
7 this chapter, or under chapter 192 as it relates to timeshare
8 plans, must be independent.

9 ~~(8)(9)~~ With respect to any accommodation or facility
10 of a timeshare plan which is situated upon personal property,
11 the division shall have the authority to adopt rules
12 interpreting and implementing the provisions of this chapter
13 as they apply to such accommodation or facility, or as they
14 apply to any other laws of this state, of the several states,
15 or of the United States with respect to such accommodation or
16 facility.

17 (9) Notwithstanding the provisions of any other law,
18 s. 687.03 shall govern with respect to the rate of interest
19 permitted for any loan, advance of money, line of credit,
20 forbearance to enforce the collection of any sum of money, or
21 other obligation in connection with a timeshare license.

22 (10) A developer or seller may not offer any number of
23 timeshare interests that would cause the total number of
24 timeshare interests offered to exceed a one-to-one purchaser
25 to accommodation ratio.

26 Section 9. Section 721.05, Florida Statutes, is
27 amended to read:

28 721.05 Definitions.--As used in this chapter, the
29 term:

30 (1) "Accommodation" means any apartment, condominium
31 or cooperative unit, cabin, lodge, hotel or motel room,

1 campground, or other private or commercial structure which is
2 situated on real or personal property and designed for
3 occupancy or use by one or more individuals. The term does
4 not include an incidental benefit as defined in this section.

5 (2) "Agreement for deed" means any written contract
6 utilized in the sale of timeshare estates which provides that
7 legal title will not be conveyed to the purchaser until the
8 contract price has been paid in full and the terms of payment
9 of which extend for a period in excess of 180 days after
10 either the date of execution of the contract or completion of
11 construction, whichever occurs later.

12 (3) "Assessment" means the share of funds required for
13 the payment of common expenses which is assessed from time to
14 time against each purchaser by the managing entity.

15 (4) "Closing" means:

16 (a) For any plan selling timeshare estates, conveyance
17 of the legal or beneficial title to a timeshare interest
18 ~~period~~ as evidenced by the delivery of a deed or other
19 instrument to the purchaser or to the clerk of the court for
20 recording or conveyance of the equitable title to a timeshare
21 interest ~~period~~ as evidenced by the irrevocable delivery of
22 an agreement for deed to the clerk of the court for recording.

23 (b) For any plan selling timeshare licenses, the final
24 execution and delivery by all parties of the last document
25 necessary for vesting in the purchaser the full rights
26 available under the plan.

27 (5) "Common expenses" means:

28 (a) Those expenses properly incurred for the
29 maintenance, operation, and repair of the accommodations or
30 facilities, or both, constituting the timeshare plan.

31

1 (b) Any other expenses designated as common expenses
2 in a timeshare instrument.

3 (c) Any past due and uncollected ad valorem taxes
4 assessed against a timeshare development pursuant to s.
5 192.037.

6 (6) "Completion of construction" means:

7 (a)1. That a certificate of occupancy has been issued
8 for the entire building in which the timeshare unit being sold
9 is located, or for the improvement, or that the equivalent
10 authorization has been issued, by the governmental body having
11 jurisdiction; or

12 2. In a jurisdiction in which no certificate of
13 occupancy or equivalent authorization is issued, that the
14 construction, finishing, and equipping of the building or
15 improvements according to the plans and specifications have
16 been substantially completed; and

17 (b) That all accommodations and facilities of the
18 timeshare plan are available for use in a manner identical in
19 all material respects to the manner portrayed by the
20 promotional material, advertising, and registered public
21 offering statements ~~filed with the division.~~

22 ~~(c) Notwithstanding the provisions of paragraph (b), a~~
23 ~~seller of a timeshare plan that is not a multisite timeshare~~
24 ~~plan may portray possible accommodations or facilities to~~
25 ~~prospective purchasers in advertising material or a public~~
26 ~~offering statement filed with the division without such~~
27 ~~accommodations or facilities being available for use by~~
28 ~~purchasers so long as the advertising material or public~~
29 ~~offering statement complies with the provisions of s.~~
30 ~~721.11(4).~~

31

1 ~~(d) Notwithstanding the provisions of paragraph (b), a~~
2 ~~developer of a timeshare plan that is not a multisite~~
3 ~~timeshare plan may portray the general geographic location of~~
4 ~~possible accommodations or facilities to prospective~~
5 ~~purchasers by disseminating oral or written statements~~
6 ~~regarding same to broadcast or print media with no obligation~~
7 ~~on the developer's part to actually construct such~~
8 ~~accommodations or facilities or to file such accommodations~~
9 ~~and facilities with the division, but only so long as such~~
10 ~~oral or written statements are not considered advertising~~
11 ~~material pursuant to s. 721.11(3)(e). For purposes of this~~
12 ~~paragraph, the term "general geographic location" means the~~
13 ~~boundaries of a state or country.~~

14 ~~(e) Notwithstanding the provisions of paragraph (b), a~~
15 ~~seller of a multisite timeshare plan may portray possible~~
16 ~~component sites to purchasers pursuant to s. 721.553.~~

17 (7) "Conspicuous type" means:

18 (a) Type in upper and lower case letters two point
19 sizes larger than the largest nonconspicuous type, exclusive
20 of headings, on the page on which it appears but in at least
21 10-point type; or

22 (b) Where the use of 10-point type would be
23 impractical or impossible with respect to a particular piece
24 of written advertising material, ~~then the division may approve~~
25 ~~the use of~~ a different style of type or print may be used, so
26 long as the print remains conspicuous under the circumstances.

27
28 Where conspicuous type is required, it must be separated on
29 all sides from other type and print. Conspicuous type may be
30 utilized in contracts for purchase or public offering

31

1 statements only where required by law or as authorized by the
2 division.

3 (8) "Contract" means any agreement conferring the
4 rights and obligations of a timeshare plan on the purchaser.

5 (9) "Developer" includes:

6 (a) A "creating developer," which means any person who
7 creates the timeshare plan;

8 (b) A "successor developer," which means any person
9 who succeeds to the interest of the persons in this subsection
10 by sale, lease, assignment, mortgage, or other transfer, but
11 the term includes only those persons who offer timeshare
12 interests ~~periods~~ in the ordinary course of business; and

13 (c) A "concurrent developer," which means any person
14 acting concurrently with the persons in this subsection with
15 the purpose of offering timeshare interests ~~periods~~ in the
16 ordinary course of business.

17 (d) The term "developer" does not include:

18 1. An owner of a timeshare interest ~~period~~ who has
19 acquired the timeshare interest ~~period~~ for his or her own use
20 and occupancy and who later offers it for resale; provided
21 that a rebuttable presumption shall exist that an owner who
22 has acquired more than seven timeshare interests ~~periods~~ did
23 not acquire them for his or her own use and occupancy;

24 2. A managing entity that is not otherwise a developer
25 and that offers, or engages a third party to offer on its
26 behalf, timeshare interests of a timeshare plan in its own
27 ~~right and that offers timeshare periods for its own account in~~
28 a timeshare plan which it manages, provided that such offer
29 complies to existing purchasers of that timeshare plan, or a
30 ~~managing entity which complies~~ with the provisions of s.
31 721.065; or

1 3. A person who owns or is conveyed, assigned, or
2 transferred more than seven timeshare interests ~~periods from a~~
3 ~~developer in a single voluntary or involuntary transaction and~~
4 who subsequently conveys, assigns, or transfers all acquired
5 ~~of the timeshare interests periods received from the developer~~
6 to a single purchaser in a single transaction, which
7 transaction may occur in stages; or

8 4. A person who has acquired or has the right to
9 acquire more than seven timeshare interests from a developer
10 or other interestholder in connection with security under a
11 loan or a securitization transaction and who subsequently
12 arranges for all or a portion of the timeshare interests to be
13 offered by one or more developers in the ordinary course of
14 business on their own behalves or on behalf of such person.

15 (e) A successor or concurrent developer shall be
16 exempt from any liability inuring to a predecessor or
17 concurrent developer of the same timeshare plan, provided that
18 this exemption shall not apply to any of the successor or
19 concurrent developer's responsibilities, duties, or
20 liabilities with respect to the timeshare plan that accrue
21 after the date the successor or concurrent developer became a
22 successor or concurrent developer, and provided that such
23 transfer does not constitute a fraudulent transfer. In
24 addition to other provisions of law, a transfer by a
25 predecessor developer to a successor or concurrent developer
26 shall be deemed fraudulent if the predecessor developer made
27 the transfer:

28 1. With actual intent to hinder, delay, or defraud any
29 purchaser or the division; or

30 2. To a person that would constitute an insider under
31 s. 726.102(7).

1
2 The provisions of this paragraph shall not be construed to
3 relieve any successor or concurrent developer from the
4 obligation to comply with the provisions of any applicable
5 timeshare instrument.

6 (10) "Division" means the Division of Florida Land
7 Sales, Condominiums, and Mobile Homes of the Department of
8 Business and Professional Regulation.

9 (11) "Enrolled" means paid membership in an exchange
10 program or membership in an exchange program evidenced by
11 written acceptance or confirmation of membership.

12 (12) "Escrow account" means an account established
13 solely for the purposes set forth in this chapter with a
14 financial institution located within this state.

15 (13) "Escrow agent" includes only:

16 (a) A savings and loan association, bank, trust
17 company, or other financial institution, any of which must be
18 located in this state and any of which must have a net worth
19 in excess of \$5 million;

20 (b) An attorney who is a member of The Florida Bar or
21 his or her law firm, so long as the attorney or firm has
22 posted a fidelity bond issued by a company authorized and
23 licensed to do business in this state as surety in the amount
24 of \$50,000;

25 (c) A real estate broker who is licensed pursuant to
26 chapter 475 or his or her brokerage firm, so long as the
27 broker or firm has posted a fidelity bond issued by a company
28 authorized and licensed to do business in this state as surety
29 in the amount of \$50,000; or

30 (d) A title insurance agent that is licensed pursuant
31 to s. 626.8417 or a title insurance agency that is licensed

1 pursuant to s. 626.8418, so long as the agent or agency has
2 posted a fidelity bond issued by a company authorized and
3 licensed to do business in this state as surety in the amount
4 of \$50,000.

5
6 If an escrow agent is required to post a \$50,000 fidelity bond
7 pursuant to this subsection, the escrow agent shall only be
8 required to post and maintain one such bond, regardless of the
9 number of escrow accounts maintained by that agent for any
10 number of developers, managing entities, or timeshare plans at
11 any given time.

12 (14) "Exchange company" means any person owning or
13 operating, or owning and operating, an exchange program.

14 (15) "Exchange program" means any method, arrangement,
15 or procedure for the voluntary exchange of the right to use
16 and occupy accommodations and facilities among purchasers. The
17 term does not include the assignment of the right to use and
18 occupy accommodations and facilities to purchasers pursuant to
19 a particular multisite timeshare plan's reservation system.
20 Any method, arrangement, or procedure that otherwise meets
21 this definition, wherein the purchaser's total contractual
22 financial obligation exceeds \$3,000 per any individual,
23 recurring timeshare period, shall be regulated as a multisite
24 timeshare plan in accordance with part II.

25 (16) "Facility" means any amenity, including any
26 structure, furnishing, fixture, equipment, service,
27 improvement, or real or personal property, improved or
28 unimproved, other than the accommodation of the timeshare
29 plan, which is made available to the purchasers of a timeshare
30 plan. The term does not include an incidental benefit as
31 defined in this section.

1 (17) "Incidental benefit" means an accommodation,
2 product, service, discount, or other benefit which is offered
3 to a prospective purchaser of a timeshare plan or to a
4 purchaser of a timeshare plan prior to the expiration of his
5 or her initial 10-day voidability period pursuant to s.
6 721.10; which is not an exchange program as defined in
7 subsection (15); and which complies with the provisions of s.
8 721.075. The term shall not include an offer of the use of
9 the accommodations and facilities of the timeshare plan on a
10 free or discounted one-time basis.

11 (18) "Independent," for purposes of determining
12 eligibility of escrow agents and trustees pursuant to s.
13 721.03(7)(8), means that:

14 (a) The escrow agent or trustee is not a relative, as
15 described in s. 112.3135(1)(d), or an employee of the
16 developer, seller, or managing entity, or of any officer,
17 director, affiliate, or subsidiary thereof.

18 (b) There is no financial relationship, other than the
19 payment of fiduciary fees or as otherwise provided in this
20 subsection, between the escrow agent or trustee and the
21 developer, seller, or managing entity, or any officer,
22 director, affiliate, or subsidiary thereof.

23 (c) Compensation paid by the developer to an escrow
24 agent or trustee for services rendered shall not be paid from
25 funds in the escrow or trust account unless and until the
26 developer is otherwise entitled to receive the disbursement of
27 such funds from the escrow or trust account pursuant to this
28 chapter.

29 (d) A person shall not be disqualified to serve as an
30 escrow agent or a trustee solely because of the following:

31

1 1. A nonemployee, attorney-client relationship exists
2 between the developer and the escrow agent or trustee;

3 2. The escrow agent or trustee provides brokerage
4 services as defined by chapter 475 for the developer;

5 3. The escrow agent or trustee provides the developer
6 with routine banking services which do not include
7 construction or receivables financing or any other lending
8 activities; or

9 4. The escrow agent or trustee performs closings for
10 the developer or seller or issues owner's or lender's title
11 insurance commitments or policies in connection with such
12 closings.

13 (19) "Interestholder" means a developer, an owner of
14 the underlying fee, a mortgagee, judgment creditor, or other
15 lienor, or any other person having an interest in or lien or
16 encumbrance against the accommodations or facilities of the
17 timeshare plan.

18 (20) "Managing entity" means the person who operates
19 or maintains the timeshare plan pursuant to s. 721.13(1).

20 (21) "Memorandum of agreement" means a written
21 document, in recordable form, which includes the names of the
22 ~~purchaser and seller~~ and the purchasers, a legal description
23 of the timeshare property and all timeshare interests to be
24 included in such document ~~period~~, and a description of the
25 type of timeshare license sold by the seller.

26 (22) "Offer to sell," "offer for sale," "offered for
27 sale," or "offer" means the solicitation, advertisement, or
28 inducement, or any other method or attempt, to encourage any
29 person to acquire the opportunity to participate in a
30 timeshare plan.

31

1 (23) "One-to-one purchaser to accommodation ratio"
2 means the ratio of the number of purchasers eligible to use
3 the accommodations of a timeshare plan on a given day to the
4 number of accommodations available for use within the plan on
5 that day, such that the total number of purchasers eligible to
6 use the accommodations of the timeshare plan during a given
7 calendar year never exceeds the total number of accommodations
8 available for use in the timeshare plan during that year. For
9 purposes of calculation under this subsection, each purchaser
10 must be counted at least once, and no individual timeshare
11 unit may be counted more than 365 times per calendar year (or
12 more than 366 times per leap year). A purchaser who is
13 delinquent in the payment of timeshare plan assessments shall
14 continue to be considered eligible to use the accommodations
15 of the timeshare plan for purposes of this subsection
16 notwithstanding any application of s. 721.13(6).

17 (24) "Owner of the underlying fee" means any person
18 having an interest in the real property underlying the
19 accommodations or facilities of the timeshare plan at or
20 subsequent to the time of creation of the timeshare plan ~~or~~
21 ~~any person who purchases 15 or more timeshare periods for~~
22 ~~resale in the ordinary course of business.~~

23 (25) "Owners' association" means the association made
24 up of all purchasers of a timeshare plan who have purchased
25 timeshare estates.

26 (26) "Public offering statement" means the written
27 materials describing a single-site timeshare plan or a
28 multisite timeshare plan, including a text and any exhibits
29 attached thereto as required by ss. 721.07, 721.55, and
30 721.551. The term "public offering statement" shall refer to
31

1 both a registered public offering statement and a purchaser
2 public offering statement.

3 (27)~~(26)~~ "Purchaser" means any person, other than a
4 developer, who by means of a voluntary transfer acquires a
5 legal or equitable interest in a timeshare plan other than as
6 security for an obligation.

7 (28) "Purchaser public offering statement" means that
8 portion of the registered public offering statement which must
9 be delivered to purchasers pursuant to s. 721.07(6) or s.
10 721.551.

11 (29) "Registered public offering statement" means a
12 public offering statement which has been filed with the
13 division pursuant to s. 721.07(5) or s. 721.55.

14 (30)~~(27)~~ "Regulated short-term product" means a
15 contractual right, offered by the seller, to use
16 accommodations of a timeshare plan or other accommodations,
17 provided that:

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

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

30 (31)~~(28)~~ "Seller" means any developer or any other
31 person, or any agent or employee thereof, who offers timeshare

1 interests ~~periods~~ in the ordinary course of business. The
2 term "seller" does not include:

3 (a) An owner of a timeshare interest ~~period~~ who has
4 acquired the timeshare interest ~~period~~ for his or her own use
5 and occupancy and who later offers it for resale; provided
6 that a rebuttable presumption shall exist that an owner who
7 has acquired more than seven timeshare interests ~~periods~~ did
8 not acquire them for his or her own use and occupancy;

9 (b) A managing entity that is not otherwise a seller
10 and that offers, or engages a third party to offer on its
11 behalf, timeshare interests of a timeshare plan in its own
12 right and that offers timeshare periods for its own account in
13 a timeshare plan which it manages, provided that such offer
14 complies to existing purchasers of that timeshare plan, or a
15 managing entity which complies with the provisions of s.
16 721.065; or

17 (c) A person who owns or is conveyed, assigned, or
18 transferred more than seven timeshare interests ~~periods from a~~
19 ~~developer in a single voluntary or involuntary transaction and~~
20 ~~who subsequently conveys, assigns, or transfers all~~ acquired
21 ~~of the timeshare interests~~ periods received from the developer
22 to a single purchaser in a single transaction, which
23 transaction may occur in stages; or

24 (d) A person who has acquired or has the right to
25 acquire more than seven timeshare interests from a developer
26 or other interestholder in connection with security under a
27 loan or a securitization transaction and who subsequently
28 arranges for all or a portion of the timeshare interests to be
29 offered by one or more developers in the ordinary course of
30 business on their own behalves or on behalf of such person.

31

1 ~~(32)~~~~(29)~~ "Timeshare estate" means a right to occupy a
2 timeshare unit, coupled with a freehold estate or an estate
3 for years with a future interest in a timeshare property or a
4 specified portion thereof. The term shall also mean an
5 interest in a condominium unit pursuant to s. 718.103, an
6 interest in a cooperative unit pursuant to s. 719.103, or an
7 interest in a trust that complies in all respects with the
8 provisions of s. 721.08(2)(c)3.

9 ~~(33)~~~~(30)~~ "Timeshare instrument" means one or more
10 documents, by whatever name denominated, creating or governing
11 the operation of a timeshare plan.

12 ~~(34)~~ "Timeshare interest" means a timeshare estate or
13 timeshare license.

14 ~~(35)~~~~(31)~~ "Timeshare license" means a right to occupy a
15 timeshare unit, which right is neither coupled with a freehold
16 interest, nor coupled with an estate for years with a future
17 interest, in a timeshare property.

18 ~~(36)~~~~(32)~~ "Timeshare period" means the period or
19 periods of time when a purchaser of a timeshare interest plan
20 is afforded the opportunity to use the accommodations or
21 facilities, or both, of a timeshare plan.

22 ~~(37)~~~~(33)~~ "Timeshare plan" means any arrangement, plan,
23 scheme, or similar device, other than an exchange program,
24 whether by membership, agreement, tenancy in common, sale,
25 lease, deed, rental agreement, license, or right-to-use
26 agreement or by any other means, whereby a purchaser, for
27 consideration, receives ownership rights in or a right to use
28 accommodations, and facilities, if any, for a period of time
29 less than a full year during any given year, but not
30 necessarily for consecutive years.

31

1 ~~(38)(34)~~ "Timeshare property" means one or more
2 timeshare units subject to the same timeshare instrument,
3 together with any other property or rights to property
4 appurtenant to those timeshare units. Notwithstanding anything
5 to the contrary contained in chapter 718 or chapter 719, the
6 timeshare instrument for a timeshare condominium or
7 cooperative may designate personal property, contractual
8 rights, affiliation agreements of component sites of vacation
9 clubs, exchange companies, or reservation systems, or any
10 other agreements or personal property, as common elements or
11 limited common elements of the timeshare condominium or
12 cooperative.

13 ~~(39)(35)~~ "Timeshare unit" means an accommodation of a
14 timeshare plan which is divided into timeshare periods. Any
15 timeshare unit in which a door or doors connecting two or more
16 separate rooms are capable of being locked to create two or
17 more private dwellings shall only constitute one timeshare
18 unit for purposes of this chapter, unless the timeshare
19 instrument provides that timeshare interests may be separately
20 conveyed in such locked-off portions.

21 ~~(40)(36)~~ "Vacation ownership plan" means any timeshare
22 plan consisting exclusively of timeshare estates.

23 ~~(41)(37)~~ "Vacation plan" or "vacation membership plan"
24 means any timeshare plan consisting exclusively of timeshare
25 licenses or consisting of a combination of timeshare licenses
26 and timeshare estates.

27 Section 10. Section 721.06, Florida Statutes, is
28 amended to read:

29 721.06 Contracts for purchase of timeshare interests
30 periods.--

31

1 (1) Each seller shall utilize, and furnish each
2 purchaser a fully completed and executed copy of ~~a~~ a contract
3 pertaining to the sale, which contract shall include the
4 following information:

5 (a) The actual date the contract is executed by each
6 party.

7 (b) The names and addresses of the developer, ~~any~~
8 ~~owner of the underlying fee,~~ and the timeshare plan.

9 (c) ~~The total financial obligation of the purchaser,~~
10 ~~including the~~ initial purchase price and any additional
11 charges to which the purchaser may be subject in connection
12 with the purchase of the timeshare interest, such as
13 financing, or which will be collected from the purchaser on or
14 before closing, such as the current year's annual assessment
15 for common expenses.

16 (d) Any annually recurring use charge and the next
17 year's estimated annual assessment for common expenses and for
18 ad valorem taxes or, if an estimate for next year's assessment
19 is unavailable, the current year's actual annual assessment
20 for common expenses and for ad valorem taxes. ~~reservation,~~
21 ~~maintenance, management, and recreation charges.~~

22 ~~(e)~~(d) The estimated date of completion of
23 construction of each accommodation or facility promised to be
24 completed which is not completed at the time the contract is
25 executed and the estimated date of closing.

26 ~~(f)~~(e) A brief description of the nature and duration
27 of the timeshare interest period being sold, including whether
28 any interest in real property is being conveyed and the
29 specific number of years constituting the term of the
30 timeshare plan.

31

1 ~~(g)(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 the date you sign
7 this contract, and within 10 calendar days after the date you
8 receive the approved public offering statement, whichever is
9 later.

10 If you decide to cancel this contract, you must notify
11 the seller ~~developer~~ in writing of your intent to cancel.
12 Your notice of cancellation shall be effective upon the date
13 sent and shall be sent to ...(Name of Seller ~~Developer~~)... at
14 ...(Address of Seller ~~Developer~~).... Any attempt to obtain a
15 waiver of your cancellation right is void and of no effect
16 ~~unlawful~~. While you may execute all closing documents in
17 advance, the closing, as evidenced by delivery of the deed or
18 other document, before expiration of your 10-day cancellation
19 period, is prohibited.
20

21 ~~(h)(g)~~ If a timeshare estate ~~license~~ is being
22 conveyed, the following statement in conspicuous type:
23

24 ~~You may also cancel this contract at any time after the~~
25 ~~accommodations or facilities are no longer available as~~
26 ~~provided in this contract and the public offering statement.~~
27

28 ~~(h)~~ ~~If a timeshare estate is being conveyed, the~~
29 ~~following statement in conspicuous type:~~
30
31

1 For the purpose of ad valorem assessment, taxation and
2 special assessments, the managing entity will be considered
3 the taxpayer as your agent pursuant to section 192.037,
4 Florida Statutes.

5
6 (i) A statement that, in the event the purchaser
7 cancels the contract during a 10-day cancellation period, the
8 developer will refund to the purchaser the total amount of all
9 payments made by the purchaser under the contract, reduced by
10 the proportion of any contract benefits the purchaser has
11 actually received under the contract prior to the effective
12 date of the cancellation. The statement shall further provide
13 that the refund will be made within 20 days after receipt of
14 notice of cancellation or within 5 days after receipt of funds
15 from the purchaser's cleared check, whichever is later. A
16 seller and a purchaser shall agree in writing on a specific
17 value for each contract benefit received by the purchaser for
18 purposes of this paragraph. The term "contract benefit" shall
19 not include purchaser public offering statements or other
20 documentation or materials that must be furnished to a
21 purchaser pursuant to statute or rule.

22 (j) If the timeshare interest ~~period~~ is being sold
23 pursuant to an agreement for deed, a statement that the
24 signing of the agreement for deed does not entitle the
25 purchaser to receive a deed until all payments under the
26 agreement have been made.

27 (k) Unless the developer is at the time of offering
28 the plan the owner in fee simple absolute of the
29 accommodations and facilities of the timeshare plan, free and
30 clear of all liens and encumbrances, a statement that the
31 developer is not the sole owner of the underlying fee of such

1 ~~the~~ accommodations or facilities without liens or
2 encumbrances, which statement shall include:

3 1. The names and addresses of all persons or entities
4 having an ownership interest or other interest in the
5 accommodations or facilities; and

6 2. The actual interest of the developer in the
7 accommodations or facilities. As an alternative to including
8 the statement in the purchase contract, a seller may include a
9 reference to the location of such information in the purchaser
10 public offering statement text.

11 ~~(1) If the contract is for the sale or transfer of a~~
12 ~~timeshare period in which the accommodations or facilities are~~
13 ~~subject to a lease, the following statement within the text in~~
14 ~~conspicuous type: This timeshare period is subject to a lease~~
15 ~~(or sublease). A copy of the executed lease shall be attached~~
16 ~~as an exhibit.~~

17 (1)(m) If the purchaser will receive an interest in a
18 multisite timeshare plan pursuant to part II, the following
19 statement shall be provided in conspicuous type in
20 substantially the following form:

21
22 The developer is required to provide the managing
23 entity of the multisite timeshare plan~~(or multisite vacation~~
24 ~~ownership plan or multisite vacation plan or vacation club)~~
25 with a copy of the approved public offering statement text and
26 exhibits filed with the division and any approved amendments
27 thereto, and any other component site documents as described
28 in section 721.07 or section 721.55, Florida Statutes, that
29 are not required to be ~~not~~ filed with the division, to be
30 maintained by the managing entity for inspection as part of
31 the books and records of the plan.

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(m)~~(n)~~ The following statement in conspicuous type:

Any resale of this timeshare interest must be accompanied by certain disclosures in accordance with section 721.065, Florida Statutes.

(n) A description of any rights reserved by the developer to alter or modify the offering prior to closing.

(2) An agreement for deed shall be recorded by the developer within 30 days after the day it is executed by the purchaser. The developer shall pay all recording costs associated therewith.

(3) The escrow agent shall provide the developer with a receipt for all purchaser funds or other property received by the escrow agent from a seller.

~~(4) A developer may not offer any number of timeshare estates or timeshare licenses that would cause the total number of estates or licenses offered to exceed a one-to-one purchaser to accommodation ratio.~~

Section 11. Section 721.065, Florida Statutes, is amended to read:

721.065 Resale purchase agreements.--

(1) An owner who acquires a timeshare interest period for her or his own use and occupancy and later offers it for resale, or any agent of such person, must utilize a resale purchase agreement which complies with the provisions of subsection (2) to effectuate any resale of the timeshare interest period. A managing entity that is not otherwise a developer and that, for its own account, sells, or engages a third party to sell on its behalf, 50 or fewer timeshare

1 ~~interests which, for its own account, offers fewer than 20~~
2 ~~timeshare periods~~ in the timeshare plan which it manages in a
3 given calendar year to persons who are not existing purchasers
4 of that timeshare plan may also use a resale purchase
5 agreement which complies with subsection (2) in lieu of
6 complying with the provisions of ss. 721.06-721.12 and 721.20.
7 A managing entity that is not otherwise a developer and that
8 sells, or engages a third party to sell on its behalf,
9 timeshare interests in the timeshare plan which it manages to
10 persons who are existing purchasers of that timeshare plan may
11 also use a resale purchase agreement in compliance with
12 subsection (2) in lieu of complying with the provisions of ss.
13 721.06-721.12 and 721.20.For purposes of this subsection, a
14 rebuttable presumption shall exist that an owner who has
15 acquired more than seven timeshare ~~interests periods~~ did not
16 acquire them for her or his own use and occupancy.

17 (2) Any resale purchase agreement utilized by a person
18 described in subsection (1) must contain all of the following:

19 (a) The name and address of the timeshare plan and of
20 the managing entity of the timeshare plan.

21 (b) The following statements in conspicuous type
22 located immediately prior to the disclosure required by
23 paragraph (c):

24
25 The current year's assessment for common expenses allocable to
26 the timeshare interest period you are purchasing is \$.....

27 This assessment, which may be increased from time to time by
28 the managing entity of the timeshare plan, is payable in full
29 each year on or before This assessment

30 (includes/does not include) yearly ad valorem real estate
31 taxes, which (are/are not) billed and collected separately.

1 (If ad valorem real property taxes are not included in the
2 current year's assessment for common expenses, the following
3 statement must be included: The most recent annual assessment
4 for ad valorem real estate taxes for the timeshare interest
5 ~~period~~ you are purchasing is \$.....) (If there are any
6 delinquent assessments for common expenses or ad valorem taxes
7 outstanding with respect to the timeshare interest ~~period~~ in
8 question, the following statement must be included: A
9 delinquency in the amount of \$.... for unpaid common expenses
10 or ad valorem taxes currently exists with respect to the
11 timeshare interest ~~period~~ you are purchasing, together with a
12 per diem charge of \$.... for interest and late charges.) For
13 the purpose of ad valorem assessment, taxation, and special
14 assessments, the managing entity will be considered the
15 taxpayer as your agent pursuant to section 192.037, Florida
16 Statutes. Each owner is personally liable for the payment of
17 her or his assessments for common expenses, and failure to
18 timely pay these assessments may result in restriction or loss
19 of your use and/or ownership rights.

20
21 There are many important documents relating to the timeshare
22 plan which you should review prior to purchasing a timeshare
23 interest ~~period~~, including the declaration of condominium or
24 covenants and restrictions; the association articles and
25 bylaws; the current year's operating and reserve budgets; and
26 any rules and regulations affecting the use of timeshare plan
27 accommodations and facilities.

28
29 (c) The following statement in conspicuous type
30 located immediately prior to the space in the contract
31 reserved for the signature of the purchaser:

1
2 You may cancel this contract without any penalty or obligation
3 within 10 days after the date you sign this contract. If you
4 decide to cancel this contract, you must notify the seller in
5 writing of your intent to cancel. Your notice of cancellation
6 shall be effective upon the date sent and shall be sent to the
7 seller at ...(address).... Any attempt to obtain a waiver of
8 your cancellation right is void and of no effect. While you
9 may execute all closing documents in advance, the closing, as
10 evidenced by delivery of the deed or other document, before
11 expiration of your 10-day cancellation period, is prohibited.

12
13 (d) The year in which the purchaser will first be
14 entitled to occupancy of a timeshare period associated with
15 the timeshare interest that is the subject of the resale
16 purchase agreement.

17 (3) If a resale purchase agreement utilized by a
18 person described in subsection (1) does not comply with the
19 provisions of subsection (2), the contract shall be voidable
20 at the option of the purchaser for a period of 1 year after
21 the date of closing.

22 Section 12. Section 721.07, Florida Statutes, is
23 amended to read:

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

1 (1) The division shall, upon receiving a registered
2 public offering statement from a developer, mail to the
3 developer an acknowledgment of receipt. The failure of the
4 division to send such acknowledgment will not, however,
5 relieve the developer from the duty of complying with this
6 section.

7 (2)(a) Within 45 days after receipt of a registered
8 public offering statement which is subject only to this part
9 and is submitted in proper form as prescribed by rule, or
10 within 120 days after receipt of a registered public offering
11 statement which is subject to part II and is submitted in
12 proper form as prescribed by rule, the division shall
13 determine whether the proposed registered public offering
14 statement is adequate to meet the requirements of this section
15 and shall notify the developer by mail that the division has
16 either approved the statement or found specified deficiencies
17 in the statement. If the division fails to approve the
18 statement or specify deficiencies in the statement within the
19 period specified in this paragraph, the filing will be deemed
20 approved.

21 (b) If the developer fails to respond to any cited
22 deficiencies within 20 days after receipt of the division's
23 deficiency notice, the division may reject the filing.
24 Subsequent to such rejection, a new filing fee pursuant to
25 subsection (4) and a new division initial review period
26 pursuant to paragraph (a) shall apply to any refiling or
27 further review of the rejected filing.

28 (c) Within 20 days after receipt of the developer's
29 timely and complete response to any deficiency notice, the
30 division shall notify the developer by mail that the division
31 has either approved the filing, found additional specified

1 deficiencies in it, or determined that any previously
2 specified deficiency has not been corrected. If the division
3 fails to approve or specify additional deficiencies within 20
4 days after receipt of the developer's timely and complete
5 response, the filing will be deemed approved.

6 (d) A developer shall have the authority to deliver to
7 purchasers any purchaser public offering statement that is not
8 yet approved by the division, provided that the following
9 shall apply:

10 1. At the time the developer delivers an unapproved
11 purchaser public offering statement to a purchaser pursuant to
12 this paragraph, the developer shall deliver a fully completed
13 and executed copy of the purchase contract required by s.
14 721.06 that contains the following statement in conspicuous
15 type in substantially the following form which shall replace
16 the statements required by s. 721.06(1)(g):

17
18 The developer is delivering to you a public offering statement
19 that has been filed with but not yet approved by the Division
20 of Florida Land Sales, Condominiums, and Mobile Homes. Any
21 revisions to the unapproved public offering statement you have
22 received must be delivered to you, but only if the revisions
23 materially alter or modify the offering in a manner adverse to
24 you. After the division approves the public offering
25 statement, you will receive notice of the approval from the
26 developer and the required revisions, if any.

27
28 Your statutory right to cancel this transaction without any
29 penalty or obligation expires 10 calendar days after the date
30 you signed your purchase contract or after you receive
31

1 revisions required to be delivered to you, if any, whichever
2 is later.

3
4 2. After receipt of approval from the division and
5 prior to closing, if any revisions made to the documents
6 contained in the purchaser public offering statement
7 materially alter or modify the offering in a manner adverse to
8 a purchaser, the developer shall send the purchaser such
9 revisions together with a notice containing a statement in
10 conspicuous type in substantially the following form:

11
12 The unapproved public offering statement previously delivered
13 to you, together with the enclosed revisions, has been
14 approved by the Division of Florida Land Sales, Condominiums,
15 and Mobile Homes. Accordingly, your cancellation right expires
16 10 days after you sign your purchase contract or you receive
17 these revisions, whichever is later. If you have any questions
18 regarding your cancellation rights, you may contact the
19 division at [insert division's current address].

20
21 3. After receipt of approval from the division and
22 prior to closing, if no revisions have been made to the
23 documents contained in the unapproved purchaser public
24 offering statement, or if such revisions do not materially
25 alter or modify the offering in a manner adverse to a
26 purchaser, the developer shall send the purchaser a notice
27 containing a statement in conspicuous type in substantially
28 the following form:

29
30 The unapproved public offering statement previously delivered
31 to you has been approved by the Division of Florida Land

1 Sales, Condominiums, and Mobile Homes. Revisions made to the
2 unapproved public offering statement, if any, are either not
3 required to be delivered to you or are not deemed by the
4 developer to materially alter or modify the offering in a
5 manner that is adverse to you. Accordingly, your cancellation
6 right expired 10 days after you signed your purchase contract.
7 A complete copy of the approved public offering statement is
8 available through the managing entity for inspection as part
9 of the books and records of the plan. If you have any
10 questions regarding your cancellation rights, you may contact
11 the division at [insert division's current address].~~The~~
12 ~~division is authorized to enter into an agreement with another~~
13 ~~state for the purpose of facilitating the processing of~~
14 ~~out-of-state timeshare instruments or other component site~~
15 ~~documents pursuant to subsection (5) or part II and for the~~
16 ~~purpose of facilitating the referral of consumer complaints to~~
17 ~~the appropriate state.~~

18
19 ~~(e) The division shall have no authority to determine~~
20 ~~whether any person has complied with another state's laws or~~
21 ~~to disapprove any filing, or out-of-state timeshare instrument~~
22 ~~or component site document, based solely upon the lack or~~
23 ~~degree of timeshare regulation in another state. The division~~
24 ~~may require a developer to obtain and provide to the division~~
25 ~~existing documentation certified by another state relating to~~
26 ~~an out-of-state filing, timeshare instrument, or component~~
27 ~~site document and attesting to the compliance of same with the~~
28 ~~laws of that state. The division may accept evidence of the~~
29 ~~approval or acceptance of any out-of-state filing, timeshare~~
30 ~~instrument, or component site document by another state in~~
31 ~~lieu of requiring a developer to file the out-of-state filing,~~

1 ~~timeshare instrument, or component site document with the~~
2 ~~division pursuant to this section. The division may refuse to~~
3 ~~approve the inclusion of any out-of-state filing, timeshare~~
4 ~~instrument, or component site document as part of a public~~
5 ~~offering statement based upon the inability of the developer~~
6 ~~to establish the compliance of same with the laws of another~~
7 ~~state.~~

8 (3)(a)1. Any change to an approved filing shall be
9 filed with the division for approval as an amendment prior to
10 becoming effective. The division shall have 20 days after
11 receipt of a proposed amendment to approve or cite
12 deficiencies in the proposed amendment. If the division fails
13 to act within 20 days, the amendment will be deemed approved.
14 If the proposed amendment adds a new component site to an
15 approved multisite timeshare plan, the division's initial
16 period in which to approve or cite deficiencies is 45 days. If
17 the developer fails to adequately respond to any deficiency
18 notice within 30 days, the division may reject the amendment.
19 Subsequent to such rejection, a new filing fee pursuant to
20 subsection (4) and a new division initial review period
21 pursuant to this paragraph shall apply to any refiling or
22 further review of the rejected amendment.

23 2. For filings only subject to this part, each
24 approved amendment to the approved purchaser public offering
25 statement, other than an amendment made only for the purpose
26 of the addition of a phase or phases to the timeshare plan in
27 the manner described in the timeshare instrument or any
28 amendment that does not materially alter or modify the
29 offering in a manner that is adverse to a purchaser, shall be
30 delivered to a purchaser no later than 10 days prior to
31 closing. For filings made under part II, each approved

1 amendment to the multisite timeshare plan purchaser public
2 offering statement, other than an amendment made only for the
3 purpose of the addition, substitution, or deletion of a
4 component site pursuant to part II or the addition of a phase
5 or phases to a component site of a multisite timeshare plan in
6 the manner described in the timeshare instrument or any
7 amendment that does not materially alter or modify the
8 offering in a manner that is adverse to a purchaser, shall be
9 delivered to a purchaser no later than 10 days prior to
10 closing.

11 3. Amendments made to a timeshare instrument for a
12 component site located in this state are not required to ~~shall~~
13 ~~only~~ be delivered to ~~those~~ purchasers who do not ~~will~~ receive
14 a timeshare estate or a specific timeshare license in that
15 component site. Amendments made to a timeshare instrument for
16 a component site not located in this state are not required to
17 be delivered to purchasers.

18 (b) At the time that any amendments required to be
19 delivered to purchasers, as provided in paragraph (a), are
20 delivered to purchasers, the developer shall provide to those
21 purchasers who have not closed a written statement that ~~if any~~
22 ~~of such amendments materially alter or modify the offering in~~
23 ~~a manner which is adverse to the purchaser,~~ the purchaser or
24 lessee will have a 10-day voidability period.

25 (4)(a) Upon the filing of a registered public offering
26 statement, the developer shall pay a filing fee of \$2 for each
27 7 days of annual use availability in each timeshare unit that
28 may be offered as a part of the proposed timeshare plan
29 pursuant to the filing. ~~Commencing January 1, 1995, the~~
30 ~~division may by rule increase the filing fee up to a maximum~~
31 ~~of \$3 for each 7 days of annual use availability in each~~

1 ~~timeshare unit that is offered as a part of the proposed~~
2 ~~timeshare plan.~~

3 (b) Upon the filing of an amendment to an approved
4 registered public offering statement, other than an amendment
5 adding a phase to the timeshare plan, the developer shall pay
6 a filing fee of \$100.

7 (5) Every registered public offering statement ~~filed~~
8 ~~with the division~~ for a timeshare plan which is not a
9 multisite ~~multistate~~ timeshare plan shall contain the
10 information required by this subsection. The division is
11 authorized to provide by rule the method by which a developer
12 must provide such information to the division.

13 (a) A cover page stating only:

14 1. The name of the timeshare plan; and
15 2. The following statement, in conspicuous type: This
16 public offering statement contains important matters to be
17 considered in acquiring a timeshare interest period. The
18 statements contained in this public offering statement herein
19 are only summary in nature. A prospective purchaser should
20 refer to all references, accompanying exhibits hereto,
21 contract documents, and sales materials. You should not rely
22 upon oral representations as being correct. Refer to this
23 document and accompanying exhibits for correct
24 representations. The seller is prohibited from making any
25 representations other than those contained in the contract and
26 this public offering statement.

27 (b) A listing of all statements required to be in
28 conspicuous type in the public offering statement ~~statements~~
29 and in all exhibits thereto.

30 (c) A separate index of the contents and exhibits of
31 the public offering statement.

1 (d) A text, which shall include, where applicable, the
2 disclosures set forth in paragraphs (e)-(hh) ~~and~~
3 ~~cross-references to the location in the public offering~~
4 ~~statement of each exhibit.~~

5 (e) A description of the timeshare plan, including,
6 but not limited to:

7 1. Its name and location.

8 2. An explanation of the form of timeshare ownership
9 that is being offered, including a statement as to whether any
10 interest in the underlying real property will be conveyed to
11 the purchaser. If the plan is being created or being sold on a
12 leasehold, a description of the material terms of the lease
13 shall be included ~~the location of the lease in the exhibits to~~
14 ~~the public offering statement shall be stated.~~

15 3. An explanation of the manner in which the
16 apportionment of common expenses and ownership of the common
17 elements has been determined.

18 (f) A description of the accommodations ~~and~~
19 ~~facilities~~, including, but not limited to:

20 1. The number of timeshare buildings, ~~the number of~~
21 ~~units in each building, the number of timeshare periods in~~
22 ~~each unit, the total number of timeshare periods~~ declared as
23 part of the timeshare plan and filed with the division, and
24 ~~being offered,~~ the number of bathrooms and bedrooms in each
25 type of timeshare unit, ~~and the total number of units and unit~~
26 ~~weeks.~~

27 2. The latest date estimated for completion of
28 constructing, finishing, and equipping the timeshare units
29 declared as part of the timeshare plan and filed with the
30 division.

31

1 3. The estimated maximum number of units and timeshare
2 periods that will use the accommodations and facilities. If
3 the maximum number of timeshare units or timeshare periods
4 will vary, a description of the basis for variation ~~and the~~
5 ~~minimum amount of dollars per timeshare period to be spent for~~
6 ~~additional recreational facilities or for enlargement of such~~
7 ~~facilities. If the addition or enlargement of facilities will~~
8 ~~result in a material increase of a purchaser's maintenance~~
9 ~~expense or rental expense, the maximum increase and~~
10 ~~limitations thereon shall be stated.~~

11 ~~4. A statement of whether the developer intends to~~
12 ~~offer whole units in addition to timeshare units.~~

13 ~~4.5.~~ The duration, in years, of the timeshare plan.

14 (g) A description of the ~~recreational and other~~
15 ~~commonly used~~ facilities that will be used only by purchasers
16 of the plan, including, but not limited to:

17 1. The intended purpose, if not apparent from the
18 description.~~Each room and its intended purposes, location~~
19 ~~capacity in numbers of people.~~

20 2. ~~Each swimming pool and its general location,~~
21 ~~approximate size, depths, and capacity; its approximate deck~~
22 ~~size and capacity; and whether the pool is heated.~~

23 3. ~~Each additional facility; the number of each such~~
24 ~~facility; and its approximate location, approximate size, and~~
25 ~~approximate capacity.~~

26 4. ~~A general description of the items of personal~~
27 ~~property and the approximate numbers of each item of personal~~
28 ~~property that the developer is committing to furnish for each~~
29 ~~room or other facility or, in the alternative, a~~
30 ~~representation as to the minimum amount of expenditure that~~

31

1 ~~will be made to purchase the personal property for the~~
2 ~~facility.~~

3 2.5. ~~The estimated date when each room or other~~
4 ~~facility will be available for use by the purchaser.~~

5 ~~6. An identification of each room, accommodation, or~~
6 ~~other facility to be used by purchasers that will not be owned~~
7 ~~by the purchasers or the association.~~

8 ~~7. A reference to the location in the disclosure~~
9 ~~materials of the lease or other agreements providing for the~~
10 ~~use of those facilities.~~

11 ~~8. A description of the terms of the lease or other~~
12 ~~agreement, including the length of its term; the rent payable,~~
13 ~~directly or indirectly, by each purchaser; and the total rent~~
14 ~~payable to the lessor, stated in weekly, monthly, and annual~~
15 ~~amounts for the entire term of the lease; and a description of~~
16 ~~any option to purchase the property under any such lease,~~
17 ~~including the time the option may be exercised, the purchase~~
18 ~~price or how it is to be determined, the manner of payment,~~
19 ~~and whether the option may be exercised for a purchaser's~~
20 ~~share or only as to the entire leased property.~~

21 3.9. ~~A statement as to whether the facilities will~~
22 ~~developer may provide additional facilities not described~~
23 ~~above; the general locations and types of such facilities;~~
24 ~~improvements or changes that may be made; the approximate~~
25 ~~dollar amounts to be expended; and the estimated maximum~~
26 ~~additional common expense or cost to the individual purchaser~~
27 ~~that may be charged during the first annual period of~~
28 ~~operation of the modified or added facilities.~~

29 ~~(h) A description of the recreational and other~~
30 ~~commonly used facilities which will not be used exclusively by~~
31 ~~purchasers of the timeshare plan, and, if not, a statement as~~

1 to whether the purchasers of the timeshare plan are required
2 to pay and which require the payment of any portion of the
3 maintenance and expenses of such facilities., either directly
4 or indirectly, by the purchasers. The description shall
5 include, but not be limited to, the following:
6 1. Each building or facility committed to be built.
7 2. Facilities not committed to be built except under
8 certain conditions, and a statement of those conditions or
9 contingencies.
10 3. As to each facility committed to be built, or which
11 will be committed to be built upon the happening of one of the
12 conditions in subparagraph 2., a statement as to whether it
13 will be owned by the purchasers having the use thereof or by
14 an association or other entity which will be controlled by the
15 purchasers, or others, and the location in the exhibits of the
16 lease or other document providing for use of those facilities.
17 4. The year in which each facility will be available
18 for use by the purchasers or, in the alternative, the maximum
19 number of purchasers in the project at the time each of the
20 facilities is committed to be completed.
21 5. A general description of the items of personal
22 property and the approximate numbers of each item of personal
23 property that the developer is committing to furnish for each
24 room or other facility or, in the alternative, a
25 representation as to the minimum amount of expenditure that
26 will be made to purchase the personal property for the
27 facility.
28 6. If there are leases, descriptions thereof,
29 including the length of their terms, the rents payable, and
30 descriptions of any options to purchase.
31

1 (h)(i)1. If any ~~recreational facilities or other~~
2 facilities offered by the developer for use by purchasers are
3 to be leased or have club memberships ~~membership~~ associated
4 with them, other than participation in a vacation club, one of
5 the following statements in conspicuous type: There is a
6 ~~recreational facilities~~ lease associated with one or more
7 facilities of the ~~this~~ timeshare plan; or, There is a club
8 membership associated with one or more facilities of the ~~this~~
9 timeshare plan. ~~There shall be a reference to the location in~~
10 ~~the disclosure materials where the recreation lease or club~~
11 ~~membership is described in detail.~~

12 2. If it is mandatory that purchasers ~~unit owners~~ pay
13 fees, rent, dues, or other charges under a ~~recreational~~
14 facilities lease or club membership for the use of the
15 facilities, other than participation in a vacation club, the
16 applicable statement in conspicuous type in substantially the
17 following form:

18 a. Membership in a ~~the recreational~~ facilities club is
19 mandatory for purchasers;

20 b. Purchasers or the association(s) are required, as a
21 condition of ownership, to be lessees under the ~~recreational~~
22 facilities lease;

23 c. Purchasers or the association(s) are required to
24 pay their share of the rent or costs and expenses of
25 maintenance, management, upkeep, and replacement, ~~rent, and~~
26 ~~fees~~ under the ~~recreational~~ facilities lease (or the other
27 instruments providing the facilities); or

28 d. A similar statement of the nature of the
29 organization or the manner in which the use rights are
30 created, and that purchasers are required to pay.

31

1 Immediately following the applicable statement a description
2 of the lease or other instrument shall be stated, including a
3 description of terms of the payment of rent or costs and
4 expenses of maintenance, management, upkeep, and replacement
5 of the facilities, ~~the location in the disclosure materials~~
6 ~~where the development is described in detail shall be stated.~~

7 3. If the purchasers are required to pay a use ~~if the~~
8 ~~developer, or any other person other than the purchasers and~~
9 ~~other persons having use rights in the facilities, reserves,~~
10 ~~or is entitled to receive, any rent, fee, or other payment for~~
11 ~~the use of the facilities, not including the rent or~~
12 ~~maintenance, management, upkeep, or replacement costs and~~
13 ~~expenses,~~ the following statement in conspicuous type: The
14 purchasers or the association(s) must pay ~~rent or land use~~
15 fees for one or more recreational or other commonly used
16 facilities. Immediately following this statement a
17 description of the use fees shall be included, ~~the location in~~
18 ~~the disclosure materials where the rent or land use fees are~~
19 ~~described in detail shall be stated.~~

20 4. ~~If, in any recreation format, whether leasehold,~~
21 ~~club, or other,~~ any person other than the association has the
22 right to a lien on the timeshare interests ~~periods~~ to secure
23 the payment of assessments, rent, or other exactions, a
24 statement in conspicuous type in substantially the following
25 form:

26 a. There is a lien or lien right against each
27 timeshare interest ~~period~~ to secure the payment of rent and
28 other exactions under the facilities ~~recreation~~ lease. A
29 purchaser's failure to make these payments may result in
30 foreclosure of the lien; or

31

1 b. There is a lien or lien right against each
2 timeshare interest period to secure the payment of assessments
3 or other exactions coming due for the use, maintenance,
4 upkeep, or repair of one or more ~~the recreational or commonly~~
5 ~~used~~ facilities. A purchaser's failure to make these payments
6 may result in foreclosure of the lien.

7
8 Immediately following the applicable statement, a description
9 of the lien right shall be included ~~the location in the~~
10 ~~disclosure materials where the lien or lien right is described~~
11 ~~in detail shall be stated.~~

12 (i)~~(j)~~ If the developer or any other person has the
13 right to increase or add to the ~~recreational~~ facilities at any
14 time after the establishment of the timeshare plan, without
15 the consent of the purchasers or association being required, a
16 statement in conspicuous type in substantially the following
17 form: ~~Recreational~~ Facilities may be expanded or added without
18 consent of the purchasers or the association(s). Immediately
19 following this statement, a description of ~~the location in the~~
20 ~~disclosure materials where~~ such reserved rights ~~are described~~
21 shall be included ~~stated~~.

22 (j)~~(k)~~ An explanation of the status of the title to
23 the real property underlying the timeshare plan, including a
24 statement of the existence of any lien, defect, judgment,
25 mortgage, or other encumbrance affecting the title to the
26 property, and how such lien, defect, judgment, mortgage, or
27 other encumbrance will be removed or satisfied prior to
28 closing.

29 (k)~~(l)~~ A description of any judgment against the
30 developer, the managing entity, or owner of the underlying
31 fee, which judgment is material to the timeshare plan; the

1 status of any pending suit to which the developer, the
2 managing entity, or owner of the underlying fee is a party,
3 which suit is material to the timeshare plan; and any other
4 suit which is material to the timeshare plan of which the
5 developer, managing entity, or owner of the underlying fee has
6 actual knowledge. If no judgments or pending suits exist,
7 there shall be a statement of such fact.

8 (l)~~(m)~~ A description of all unusual and material
9 circumstances, features, and characteristics of the real
10 property.

11 (m)~~(n)~~ A description of any financing to be offered to
12 purchasers by the developer or any person or entity in which
13 the developer has a financial interest, together with a
14 disclosure that the description of such financing may be
15 changed by the developer and that any change in the financing
16 offered to prospective purchasers will not be deemed to be a
17 material change.

18 (n)~~(o)~~ A detailed explanation of any financial
19 arrangements which have been provided for completion of all
20 promised improvements.

21 ~~(p) A statement as to whether the plan of the~~
22 ~~developer includes a program of leasing units or timeshare~~
23 ~~periods rather than selling them, or leasing and selling them~~
24 ~~subject to such leases. If so, there shall be a description~~
25 ~~of the plan, including the number and identification of the~~
26 ~~units and the provisions and term of the proposed leases, and~~
27 ~~a statement in conspicuous type that: The units (or timeshare~~
28 ~~periods) may be transferred subject to a lease.~~

29 (o)~~(q)~~ The name and address of the managing entity; a
30 statement whether the seller may change the managing entity or
31 its control and, if so, the manner by which the seller may

1 change the managing entity; a statement of the arrangements
2 for management, maintenance, and operation of the
3 accommodations and facilities and of other property that will
4 serve the purchasers; and a description of the management
5 arrangement and any contracts for these purposes having a term
6 in excess of 1 year, including the names of the contracting
7 parties, the term of the contract, the nature of the services
8 included, and the compensation, stated for a month and for a
9 year, and provisions for increases in the compensation.

10 ~~Copies of all described contracts shall be attached as~~
11 ~~exhibits.~~

12 (p)~~(r)~~ If ~~the developer, or any person other than the~~
13 ~~purchasers purchaser,~~ has the right to retain control of the
14 board of administration of the association for a period of
15 time which may exceed 1 year after the closing of the sale of
16 a majority of the timeshare interests ~~units~~ in that timeshare
17 plan to persons other than successors or concurrent developers
18 and the plan is one in which all purchasers automatically
19 become members of the association, a statement in conspicuous
20 type in substantially the following form: The developer (or
21 other person) has the right to retain control of the
22 association after a majority of the timeshare interests ~~units~~
23 have been sold. Immediately following this statement, a
24 description of the applicable transfer of control provisions
25 of the timeshare plan shall be included ~~the location in the~~
26 ~~disclosure materials where this right to control is described~~
27 ~~in detail shall be stated.~~

28 (q)~~(s)~~1. If there are any restrictions upon the sale,
29 transfer, conveyance, or leasing of a timeshare interest
30 ~~period,~~ a statement in conspicuous type in substantially the
31 following form: The sale, lease, or transfer of timeshare

1 ~~interests periods~~ is restricted or controlled. Immediately
2 following this statement, a description of the nature of the
3 ~~location in the disclosure materials where the restriction,~~
4 ~~limitation, or control on the sale, lease, or transfer of~~
5 ~~timeshare interests periods is described in detail~~ shall be
6 included stated.

7 2. The following statement in conspicuous type in
8 substantially the following form: The purchase of a timeshare
9 interest period should be based upon its value as a vacation
10 experience or for spending leisure time, and not considered
11 for purposes of acquiring an appreciating investment or with
12 an expectation that the timeshare interest period may be
13 resold.

14 (r)(t) If the timeshare plan is part of a phase
15 project, a statement to that effect and a complete description
16 of the phasing. Notwithstanding any provisions of s. 718.110
17 or s. 719.1055, a developer may develop a timeshare
18 condominium or a timeshare cooperative in phases if the
19 original declaration of condominium or cooperative documents
20 submitting the initial phase to condominium ownership or
21 cooperative ownership or an amendment to the declaration of
22 condominium or cooperative documents which has been approved
23 by all of the unit owners and unit mortgagees provides for
24 phasing. Notwithstanding any provisions of s. 718.403 or s.
25 719.403 to the contrary, the original declaration of
26 condominium or cooperative documents, or an amendment to the
27 declaration of condominium or cooperative documents adopted
28 pursuant to this subsection, need only generally describe the
29 developer's phasing plan and the land which may become part of
30 the condominium or cooperative, and, in conjunction therewith,
31 the developer may also reserve all rights to vary his or her

1 phasing plan as to phase boundaries, plot plans and floor
2 plans, timeshare unit types, timeshare unit sizes and
3 timeshare unit type mixes, numbers of timeshare units, and
4 ~~recreational areas~~ and facilities with respect to each
5 subsequent phase. There shall be no time limit during which a
6 developer of a timeshare condominium or timeshare cooperative
7 must complete his or her phasing plan, and the developer shall
8 not be required to notify owners of existing timeshare estates
9 of his or her decision not to add one or more proposed phases.

10 (s)~~(u)~~ A description of the material restrictions, if
11 any, to be imposed on timeshare interests ~~periods~~ concerning
12 the use of any of the accommodations or facilities, including
13 statements as to whether there are restrictions upon children
14 and pets or a reference to, and ~~references to the volumes and~~
15 ~~pages of the timeshare plan documents where such restrictions~~
16 ~~are found; or, if such restrictions are contained elsewhere,~~
17 ~~then~~ a copy of the documents containing the restrictions which
18 shall be attached as an exhibit. If there are no
19 restrictions, there shall be a statement of such fact.

20 (t)~~(v)~~ If there is any land that is offered by the
21 developer for use by the purchasers and which is neither owned
22 by them nor leased to them, the association, or any entity
23 controlled by the purchasers, a statement describing the land,
24 how it will serve the timeshare plan, and the nature and term
25 of service. ~~Immediately following this statement, the~~
26 ~~location in the disclosure materials where the declaration or~~
27 ~~other instrument creating such servitude is found shall be~~
28 ~~stated.~~

29 ~~(w)~~ A description of the manner in which utility and
30 other services, including, but not limited to, sewage and
31 waste disposal, water supply, and storm drainage, will be

1 ~~provided and the names of the persons or entities furnishing~~
2 ~~them.~~

3 (u)~~(x)~~ An estimated operating budget for the timeshare
4 plan and a schedule of the purchaser's expenses ~~expense~~ shall
5 be attached as an exhibit and shall contain the following
6 information:

7 1. The estimated annual expenses of the timeshare plan
8 collectible from purchasers by assessments. The estimated
9 payments by the purchaser for assessments shall also be stated
10 in the estimated amounts for the times when they will be due.
11 Expenses shall also be shown for the shortest timeshare period
12 offered for sale by the developer. If the timeshare plan
13 provides for the offer and sale of units to be used on a
14 nontimeshare basis, the estimated monthly and annual expenses
15 of such units shall be set forth in a separate schedule.

16 2. The estimated weekly, monthly, and annual expenses
17 of the purchaser of each timeshare interest period, other than
18 assessments payable to the managing entity. Expenses which
19 are personal to purchasers that are not uniformly incurred by
20 all purchasers or that are not provided for or contemplated by
21 the timeshare plan documents may be excluded from this
22 estimate.

23 3. The estimated items of expenses of the timeshare
24 plan and the managing entity, except as excluded under
25 subparagraph 2., including, but not limited to, if applicable,
26 the following items, which shall be stated either as
27 management expenses collectible by assessments or as expenses
28 of the purchaser payable to persons other than the managing
29 entity:

30 a. Expenses for the managing entity:

31 (I) Administration of the managing entity.

- 1 (II) Management fees.
- 2 (III) Maintenance.
- 3 (IV) Rent for ~~recreational and other commonly used~~
4 facilities.
- 5 (V) Taxes upon timeshare property.
- 6 (VI) Taxes upon leased areas.
- 7 (VII) Insurance.
- 8 (VIII) Security provisions.
- 9 (IX) Other expenses.
- 10 (X) Operating capital.
- 11 (XI) Reserves for deferred maintenance and reserves
12 for capital expenditures. All reserves for any accommodations
13 and facilities located in this state shall be calculated by a
14 formula which is based upon estimated life and replacement
15 cost of each reserve item. Reserves for deferred maintenance
16 for such accommodations and facilities shall include accounts
17 for roof replacement, building painting, pavement resurfacing,
18 replacement of timeshare unit furnishings and equipment, and
19 any other component, the useful life of which is less than the
20 useful life of the overall structure. For any accommodations
21 and facilities located outside of this state, the developer
22 shall disclose the amount of reserves for deferred maintenance
23 or capital expenditures required by the law of the situs
24 state, if applicable, and maintained for such accommodations
25 and facilities.
- 26 (XII) Fees payable to the division.
- 27 b. Expenses for a purchaser:
- 28 (I) Rent for the timeshare unit, if subject to a
29 lease.
- 30 (II) Rent payable by the purchaser directly to the
31 lessor or agent under any ~~recreational lease or~~ lease for the

1 use of ~~commonly used~~ facilities, which use and payment is a
2 mandatory condition of ownership and is not included in the
3 common expenses ~~expense~~ or assessments for common maintenance
4 paid by the purchasers to the managing entity ~~association~~.

5 4. The estimated amounts shall be stated for a period
6 of at least 12 months and may distinguish between the period
7 prior to the time that purchasers elect a majority of the
8 board of administration and the period after that date.

9 5. If the developer intends to guarantee the level of
10 assessments, such guarantee must be based upon a good faith
11 estimate of the revenues and expenses of the timeshare plan.
12 The guarantee must include a description of the following:

13 a. The specific time period measured in one or more
14 calendar or fiscal years during which the guarantee will be in
15 effect.

16 b. A statement that the developer will pay all common
17 expenses incurred in excess of the total revenues of the
18 timeshare plan pursuant to s. 721.15(2) if the developer has
19 excused himself or herself from the payment of assessments
20 during the guarantee period.

21 c. The level, expressed in total dollars, at which the
22 developer guarantees the budget. If the developer has
23 reserved the right to extend or increase the guarantee level
24 pursuant to s. 721.15(2), a disclosure must be included to
25 that effect.

26 6. If the developer intends to provide a trust fund to
27 defer or reduce the payment of annual assessments, a copy of
28 the trust instrument shall be attached as an exhibit and shall
29 include a description of such arrangement, including, but not
30 limited to:

31

1 a. The specific amount of such trust funds and the
2 source of the funds.

3 b. The name and address of the trustee.

4 c. The investment methods permitted by the trust
5 agreement.

6 d. A statement in conspicuous type that the funds from
7 the trust account may not cover all assessments and that there
8 is no guarantee that purchasers will not have to pay
9 assessments in the future.

10 7. The budget shall be based either on the number of
11 timeshare interests declared as part of the timeshare plan as
12 of the beginning of the calendar year for which the budget is
13 promulgated or on the number of timeshare interests estimated
14 to be declared as part of the timeshare plan during the
15 calendar year for which that budget is promulgated. In any
16 event the budget shall contain a note identifying the number
17 of timeshare interests covered by the budget and indicating
18 the number of timeshare interests estimated to be declared as
19 part of the timeshare plan during that calendar year, if any.

20 ~~(v)(y)~~ A schedule of estimated closing expenses to be
21 paid by a purchaser or lessee of a timeshare interest period
22 and a statement as to whether a title opinion or title
23 insurance policy is available to the purchaser and, if so, at
24 whose expense.

25 ~~(w)(z)~~ The identity of the developer and the chief
26 operating officer or principal directing the creation and sale
27 of the timeshare plan and a statement of the experience of
28 each in this field or, if no experience, a statement of that
29 fact.

30
31

1 ~~(aa) A statement of any service, maintenance, or~~
2 ~~recreation contracts or leases that may be canceled by the~~
3 ~~purchasers.~~

4 (x)~~(bb)~~ A statement of the total financial obligation
5 of the purchaser, including the purchase price and any
6 additional charges to which the purchaser may be subject.

7 (y)~~(cc)~~ The name of any person who will or may have
8 the right to alter, amend, or add to the charges to which the
9 purchaser may be subject and the terms and conditions under
10 which such alterations, amendments, or additions may be
11 imposed.

12 (z)~~(dd)~~ A statement ~~An explanation~~ of the purchaser's
13 right of cancellation of the purchase contract.

14 (aa)~~(ee)~~ A description of the insurance coverage
15 provided for the timeshare plan ~~benefit of the purchasers.~~

16 (bb)~~(ff)~~ A statement as to whether the timeshare plan
17 is participating in an exchange program and, if so, the name
18 and address of the exchange company offering the exchange
19 program.

20 (cc) The existence of rules and regulations regarding
21 any reservation features governing a purchaser's ability to
22 make reservations for a timeshare period, including, if
23 applicable, a conspicuous type disclaimer in substantially the
24 following form:

25
26 The right to reserve a timeshare period is subject to rules
27 and regulations of the timeshare plan reservation system.

28
29 (dd) If a developer is filing a timeshare plan that
30 includes a timeshare instrument or component site document
31 that was in conformance with the laws and rules in existence

1 at the time the timeshare plan was created but does not
2 conform to existing laws and rules that govern the timeshare
3 plan and the developer does not have the authority or power to
4 amend or change the timeshare instrument or component site
5 document to conform to such existing laws or rules as directed
6 by the division, a brief explanation of current law and the
7 conflict with the timeshare instrument or component site
8 document, preceded by disclaimer in conspicuous type in
9 substantially the following form:

10
11 Florida law has been amended and certain provisions in [insert
12 appropriate reference to timeshare instrument or component
13 site document] that were in conformance with Florida law as it
14 existed at the time the timeshare plan was created are not in
15 conformance with current Florida law. These documents may only
16 be amended by [insert appropriate reference to person or
17 entity that has the right to amend or change the timeshare
18 instrument or component site document]. The developer does not
19 warrant that such documents are in technical compliance with
20 all applicable Florida laws and regulations. All questions
21 regarding amendment of these documents should be directed to
22 [insert appropriate reference to person or entity that has the
23 right to amend or change the timeshare instrument or component
24 site document].

25
26 (ee)~~(gg)~~ Any other information that a ~~the~~ seller, with
27 the approval of the division, desires to include in the public
28 offering statement.

29 (ff)~~(hh)~~ Copies of the following documents and plans,
30 to the extent they are applicable, shall be included as
31 exhibits to the registered public offering statement provided,

1 if the timeshare plan has not been declared at the time of the
2 filing, the developer may provide proposed documents:
3 1. ~~The declaration of condominium, or the proposed~~
4 ~~declaration if the declaration has not been recorded.~~
5 2. ~~The cooperative documents, or the proposed~~
6 ~~cooperative documents if the documents have not been recorded.~~
7 3. ~~The declaration of covenants and restrictions, or~~
8 ~~proposed declaration if the declaration has not been recorded.~~
9 4. The articles of incorporation creating the
10 association.
11 5. The bylaws of the association.
12 6. The ground lease or other underlying lease of the
13 real property on which the timeshare plan is situated.
14 7. The management agreement and all maintenance and
15 other contracts regarding the management and operation of the
16 timeshare property which have terms in excess of 1 year.
17 8. The estimated operating budget for the timeshare
18 plan and the required schedule of purchasers' expenses.
19 9. The floor plan of each type of accommodation and
20 the plot plan showing the location of all accommodations and
21 facilities declared as part of the timeshare plan and filed
22 with the division.
23 10. The lease for any facilities.~~The lease of~~
24 ~~recreational facilities and other facilities which will be~~
25 ~~used only by purchasers of the timeshare plan.~~
26 11. ~~The lease of facilities used by purchasers and~~
27 ~~others.~~
28 12. ~~The form of timeshare period lease, if the offer~~
29 ~~is of a leasehold.~~
30
31

1 ~~11.13.~~ A declaration of servitude of properties
2 serving the accommodations and ~~or~~ facilities, but not owned by
3 purchasers or leased to them or the association.

4 ~~12.14.~~ Any documents required by s. 721.03(3)(e) as
5 the result of the inclusion of a timeshare plan in the
6 conversion of building ~~The statement of condition of the~~
7 ~~existing building or buildings, if the offering is of~~
8 ~~timeshare periods in an operation being converted to~~
9 condominium or cooperative ownership.

10 ~~15.~~ ~~The statement of inspection for termite damage and~~
11 ~~treatment of the existing improvements, if the timeshare~~
12 ~~property is a conversion.~~

13 ~~13.16.~~ The form of agreement for sale or lease of
14 timeshare interests ~~periods~~.

15 ~~14.17.~~ The executed agreement for escrow of payments
16 made to the developer prior to closing and the form of any
17 agreement for escrow of ad valorem tax escrow payments to be
18 made into an ad valorem tax escrow account pursuant to s.
19 192.037(6).

20 ~~15.18.~~ The documents containing any restrictions on
21 use of the property required by paragraph (s) ~~(u)~~.

22 ~~16.19.~~ Any other documents or instruments creating
23 the timeshare plan.

24 ~~20.~~ ~~Any contract or lease to be signed by the~~
25 ~~purchasers.~~

26 (gg) ~~(ii)~~ Such other information as is necessary to
27 fairly, meaningfully, and effectively disclose all aspects of
28 the timeshare plan, including, but not limited to, any
29 disclosures made necessary by the operation of s.
30 721.03 (8) ~~(9)~~. However, if a developer has, in good faith,
31 attempted to comply with the requirements of this section, and

1 if, in fact, he or she has substantially complied with the
2 disclosure requirements of this chapter, nonmaterial errors or
3 omissions shall not be actionable.

4 ~~(hh)(jj)~~ Notwithstanding the provisions of this
5 subsection, the registered public offering statement for a
6 component site of a multisite timeshare plan filed pursuant to
7 this subsection may contain cross-references to information
8 contained in the related multisite timeshare plan registered
9 public offering statement filed pursuant to s. 721.55 in lieu
10 of repeating such information.

11 (6) The division is authorized to prescribe by rule
12 the form of the approved purchaser public offering statement
13 that must be furnished by the developer to each purchaser.
14 The form of the purchaser public offering statement that is
15 furnished to purchasers must provide fair, meaningful, and
16 effective disclosure of all aspects of the timeshare plan. For
17 timeshare plans filed pursuant to this part, the developer
18 shall furnish each purchaser with the following:

19 (a) A copy of the purchaser public offering statement
20 text in the form approved by the division for delivery to
21 purchasers.

22 (b) Copies of the exhibits required to be filed with
23 the division pursuant to subparagraphs (5)~~(ff)(hh)~~1., 2., 4.,
24 5., 8., and 16 ~~19~~.

25 (c) A receipt for timeshare plan documents and a list
26 describing any exhibit to the registered public offering
27 statement filed with the division which is not delivered to
28 the purchaser. The division is authorized to prescribe by
29 rule the form of the receipt for timeshare plan documents and
30 the description of exhibits list that must be furnished to the
31 purchaser. The description of documents list utilized by a

1 developer shall be filed with the division for review as part
2 of the registered public offering statement ~~filing~~ pursuant to
3 this section. The developer shall be required to provide the
4 managing entity with a copy of the approved registered public
5 offering statement ~~text and exhibits filed with the division~~
6 and any approved amendments thereto to be maintained by the
7 managing entity as part of the books and records of the
8 timeshare plan pursuant to s. 721.13(3)(d).

9 (d) Any other exhibit which the developer includes as
10 part of the purchaser public offering statement, provided that
11 the developer first files the exhibit with the division.

12 (e) An executed copy of any document which the
13 purchaser signs.

14 ~~(7) For purposes of this section, descriptions shall~~
15 ~~include locations, areas, capacities, numbers, volumes, or~~
16 ~~sizes and may be stated as approximations or minimums.~~

17 Section 13. Section 721.075, Florida Statutes, is
18 amended to read:

19 721.075 Incidental benefits.--Incidental benefits
20 shall be offered only as provided in this section.

21 (1) Accommodations, facilities, products, services,
22 discounts, or other benefits which satisfy the requirements of
23 this subsection shall be subject to the provisions of this
24 section and exempt from the other provisions of this chapter
25 ~~part~~ which would otherwise apply to such accommodations or ~~and~~
26 facilities if and only if:

27 (a) The use of or participation in the incidental
28 benefit by the prospective purchaser is completely voluntary,
29 and payment of any fee or other cost associated with the
30 incidental benefit is required only upon such use or
31 participation.

1 (b) No costs of acquisition, operation, maintenance,
2 or repair of the incidental benefit are passed on to
3 purchasers of the timeshare plan as common expenses of the
4 timeshare plan or as common expenses of a component site of a
5 multisite timeshare plan.

6 (c) The continued availability of the incidental
7 benefit is not necessary in order for any accommodation or
8 facility of the timeshare plan to be available for use by
9 purchasers of the timeshare plan in a manner consistent in all
10 material respects with the manner portrayed by any promotional
11 material, advertising, or purchaser public offering statement.

12 (d) The continued availability to purchasers of
13 timeshare plan accommodations on no greater than a one-to-one
14 purchaser to accommodation ratio is not dependent upon
15 continued availability of the incidental benefit.

16 (e) The incidental benefit will continue to be
17 available in the manner represented to prospective purchasers
18 for ~~no less than 6 months but less than 3 years~~ or less after
19 the first date that the timeshare plan is available for use by
20 the purchaser. ~~The developer shall not be required to make~~
21 ~~the incidental benefit available for longer than 18 months~~
22 ~~after the date of purchase.~~ Nothing herein shall prevent the
23 renewal or extension of the availability of an incidental
24 benefit.

25 (f) The aggregate represented value of all incidental
26 benefits offered by a developer to a purchaser may not exceed
27 15 percent of the purchase price paid by the purchaser for his
28 or her timeshare interest ~~period~~.

29 (g) The incidental benefit is filed with the division
30 in conjunction with the filing of a timeshare plan or in
31 connection with a previously filed timeshare plan.

1 (2) Each purchaser shall execute a separate
2 acknowledgment and disclosure statement with respect to all
3 incidental benefits, which statement shall include the
4 following information:

5 (a) A fair description of the incidental benefit,
6 including, but not limited to, ~~the represented value of the~~
7 ~~benefit~~, any user fees or costs associated therewith, and any
8 restrictions upon use or availability.

9 (b) A statement that use of or participation in the
10 incidental benefit by the prospective purchaser is completely
11 voluntary, and that payment of any fee or other cost
12 associated with the incidental benefit is required only upon
13 such use or participation.

14 (c) A statement that the incidental benefit is not
15 assignable or otherwise transferable by the prospective
16 purchaser or purchaser.

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

19
20 The~~Describe~~ incidental benefit[s] described in this
21 statement is [are] ~~benefit is an incidental benefit~~ offered to
22 prospective purchasers of the timeshare plan [or other
23 permitted reference pursuant to s. 721.11(5)(a)]. This
24 [These] benefit[s] is [are]~~benefit is~~ available for your use
25 for ~~a~~ [some period minimum of 6 months but less than 3 years
26 or less] after the first date that the timeshare plan is
27 available for your use. The availability of the incidental
28 benefit[s]~~benefit~~ may or may not be renewed or extended. You
29 should not purchase an interest in the timeshare plan in
30 reliance upon the continued availability or renewal or
31 extension of this[these] benefit[s]~~benefit~~.

1
2 The acknowledgment and disclosure statement for any each
3 incidental benefit shall be filed with the division prior to
4 use. Each purchaser shall receive a copy of his or her
5 executed acknowledgment and disclosure statement as a document
6 required to be provided to him or her pursuant to s.
7 721.10(1)(b).

8 (3)(a) In the event that an incidental benefit becomes
9 unavailable to purchasers in the manner represented by the
10 developer in the acknowledgment and disclosure statement, the
11 developer shall pay the purchaser the greater of twice the
12 verifiable retail value or twice the represented value of the
13 unavailable incidental benefit in cash within 30 days of the
14 date that the unavailability of the incidental benefit was
15 made known to the developer unless the developer has reserved
16 a substitution right pursuant to paragraph (b) ~~by making the~~
17 ~~required disclosure in the acknowledgment and disclosure~~
18 ~~statement~~ and timely makes the substitution as required by
19 paragraph (b). The developer shall promptly notify the
20 division upon learning of the unavailability of any incidental
21 benefit.

22 (b) If an incidental benefit becomes unavailable as a
23 result of events beyond the control of the developer, the
24 developer may reserve the right to substitute a replacement
25 incidental benefit of a type, quality, value, and term
26 reasonably similar to the unavailable incidental benefit. If
27 the developer reserves the right to substitute, the
28 acknowledgement and disclosure statement required pursuant to
29 paragraph (2)(a) shall contain the following conspicuous
30 disclosure by including the following language in the
31 ~~disclosure required by paragraph (2)(d):~~

1
2 In the event ~~any~~describe incidental benefit described
3 in this statement ~~benefit~~ becomes unavailable as a result of
4 events beyond the control of the developer, the developer
5 reserves the right to substitute a replacement incidental
6 benefit of a type, quality, value, and term reasonably similar
7 to the unavailable incidental benefit.

8
9 The substituted incidental benefit shall be delivered to the
10 purchaser within 30 days after the date that the
11 unavailability of the incidental benefit was made known to the
12 developer.

13 (4) All purchaser remedies pursuant to s. 721.21 shall
14 be available for any violation of the provisions of this
15 section.

16 Section 14. Section 721.08, Florida Statutes, is
17 amended to read:

18 721.08 Escrow accounts; nondisturbance instruments;
19 alternate security arrangements.--

20 (1) Prior to the filing of a registered public
21 offering statement with the division, all developers shall
22 establish an escrow account with an escrow agent for the
23 purpose of protecting the funds or other property of
24 purchasers required to be escrowed by this section. An escrow
25 agent shall maintain the accounts called for in this section
26 only in such a manner as to be under the direct supervision
27 and control of the escrow agent. The escrow agent shall have
28 a fiduciary duty to each purchaser to maintain the escrow
29 accounts in accordance with good accounting practices and to
30 release the purchaser's funds or other property from escrow
31 only in accordance with this chapter. The escrow agent shall

1 retain all affidavits received pursuant to this section for a
2 period of 5 years. Should the escrow agent receive
3 conflicting demands for funds or property held in escrow, the
4 escrow agent shall immediately notify the division of the
5 dispute and either promptly submit the matter to arbitration
6 or, by interpleader or otherwise, seek an adjudication of the
7 matter by court.

8 (2) One hundred percent of all funds or other property
9 which is received from or on behalf of purchasers of the
10 timeshare plan or timeshare interest period prior to the
11 occurrence of events required in this subsection shall be
12 deposited pursuant to an escrow agreement approved by the
13 division. The escrow agreement shall provide that the funds
14 or property may be released from escrow only as follows:

15 (a) Cancellation.--In the event a purchaser gives a
16 valid notice of cancellation pursuant to s. 721.10 or is
17 otherwise entitled to cancel the sale, the funds or property
18 received from or on behalf of the purchaser, or the proceeds
19 thereof, shall be returned to the purchaser. Such refund
20 shall be made within 20 days of demand therefor by the
21 purchaser or within 5 days after receipt of funds from the
22 purchaser's cleared check, whichever is later. If the
23 purchaser has received benefits under the contract prior to
24 the effective date of the cancellation, the funds or property
25 to be returned to the purchaser may be reduced by the
26 proportion of contract benefits actually received.

27 (b) Purchaser's default.--Following expiration of the
28 10-day cancellation period, if the purchaser defaults in the
29 performance of her or his obligations under the terms of the
30 contract to purchase or such other agreement by which a ~~the~~
31 seller sells the timeshare interest period, the developer

1 shall provide an affidavit to the escrow agent requesting
2 release of the escrowed funds or property and shall provide a
3 copy of such affidavit to the purchaser who has defaulted.
4 The developer's affidavit, as required herein, shall include:
5 1. A statement that the purchaser has defaulted and
6 that the developer has not defaulted;
7 2. A brief explanation of the nature of the default
8 and the date of its occurrence;
9 3. A statement that pursuant to the terms of the
10 contract the developer is entitled to the funds held by the
11 escrow agent; and
12 4. A statement that the developer has not received
13 from the purchaser any written notice of a dispute between the
14 purchaser and developer or a claim by the purchaser to the
15 escrow.
16 (c) Compliance with conditions.--
17 1. If the timeshare plan is one in which timeshare
18 licenses are to be sold and no cancellation or default has
19 occurred, the escrow agent may release the escrowed funds or
20 property upon presentation of:
21 a. An affidavit by the developer that all of the
22 following conditions have been met:
23 (I) Expiration of the cancellation period.
24 (II) Completion of construction.
25 (III) Closing.
26 (IV) Execution and recordation by each interestholder
27 of the nondisturbance and notice to creditors instrument, as
28 described in this section.
29 b. A certified copy of the recorded nondisturbance and
30 notice to creditors instrument that complies with subsection
31 (3).

1 c. One of the following:

2 (I) A copy of a memorandum of agreement, as defined in
3 s. 721.05(21), together with satisfactory evidence that the
4 original memorandum of agreement has been irretrievably
5 delivered for recording to the appropriate official
6 responsible for maintaining the public records in the county
7 in which the subject accommodations and ~~or~~ facilities are
8 located. The original memorandum of agreement must be
9 recorded within 180 days after the date on which the purchaser
10 executed her or his purchase agreement.

11 (II) A notice delivered for recording to the
12 appropriate official responsible for maintaining the public
13 records in each county in which the subject accommodations and
14 facilities are located notifying all persons of the identity
15 of an independent escrow agent that shall maintain separate
16 books and records, in accordance with good accounting
17 practices, for the timeshare plan in which timeshare licenses
18 are to be sold. The books and records shall indicate each
19 accommodation and facility that is subject to such a timeshare
20 plan and each purchaser of a timeshare license in the
21 timeshare plan.

22 2. If the timeshare plan is one in which timeshare
23 estates are to be sold, other than timeshare estates in a
24 trust pursuant to subparagraph 3., and no cancellation or
25 default has occurred, the escrow agent may release the
26 escrowed funds or property upon presentation of:

27 a. An affidavit by the developer that all of the
28 following conditions have been met:

29 (I) Expiration of the cancellation period.

30 (II) Completion of construction.

31 (III) Closing.

1 b. If the timeshare estate is sold by agreement for
2 deed, a certified copy of the recorded nondisturbance and
3 notice to creditors instrument, as described in this section.

4 c. Evidence that the timeshare estate is free and
5 clear of the claims of any interestholders, other than the
6 claims of interestholders that, through a recorded instrument,
7 are irrevocably made subject to the timeshare instrument and
8 the use rights of purchasers made available through the
9 timeshare instrument, or that are the subject of a recorded
10 nondisturbance and notice to creditors instrument that
11 complies with subsection (3).

12 3. If the timeshare plan is one in which timeshare
13 estates are to be sold in a trust that complies in all
14 respects with the provisions of sub-subparagraph b., and no
15 cancellation or default has occurred, the escrow agent may
16 release the escrowed funds or property upon presentation of:

17 a. An affidavit by the developer that all of the
18 following conditions have been met:

19 (I) Expiration of the cancellation period.

20 (II) Completion of construction.

21 (III) Transfer of the subject accommodations and
22 facilities, or all use rights therein, to the trust.

23 (IV) Closing.

24 b. Prior to the transfer by each interestholder of the
25 subject accommodations, facilities, or all use rights therein
26 to a trust, any lien or other encumbrance against such
27 accommodations, facilities, or use rights shall be made
28 subject to a nondisturbance and notice to creditors instrument
29 as described in this section. The trustee of such trust shall
30 also constitute an interestholder and record a nondisturbance
31 and notice to creditors instrument with respect to all

1 accommodations, facilities, and use rights transferred to the
2 trust. No transfer pursuant to this sub-subparagraph shall
3 become effective until the trustee accepts such transfer and
4 the responsibilities set forth herein. A trust established
5 pursuant to this sub-subparagraph shall comply with the
6 following provisions:

7 (I) The trustee shall be an individual or a business
8 entity authorized and qualified to conduct trust business in
9 this state. Any corporation authorized to do business in this
10 state may act as trustee in connection with a timeshare plan
11 pursuant to this chapter. The trustee must be independent from
12 any developer or managing entity of the timeshare plan or any
13 interestholder of any accommodation or facility of such plan.

14 (II) The trust shall be irrevocable so long as any
15 purchaser has a right to occupy any portion of the timeshare
16 property.

17 (III) The trustee shall not convey, hypothecate,
18 mortgage, assign, or otherwise transfer or encumber in any
19 fashion any portion of the timeshare property with respect to
20 which any purchaser has a right of use or occupancy unless the
21 timeshare plan is terminated pursuant to the timeshare
22 instrument.

23 (IV) All purchasers of the timeshare plan and the
24 managing entity of the timeshare plan shall be express
25 beneficiaries of the trust. The trustee shall act as a
26 fiduciary to the beneficiaries of the trust. The personal
27 liability of the trustee shall be governed by s. 737.306. All
28 expenses reasonably incurred by the trustee in the performance
29 of its duties, together with any reasonable compensation of
30 the trustee, shall be common expenses of the timeshare plan.

31

1 (V) The trustee shall not resign upon less than 30
2 days' prior written notice to the managing entity and the
3 division. No resignation shall become effective until a
4 substitute trustee, approved by the division, is appointed by
5 the managing entity and accepts the appointment.

6 (VI) The documents establishing the trust arrangement
7 shall constitute a part of the timeshare instrument.

8 4. If the developer has previously provided a
9 certified copy of any document required by this paragraph
10 ~~section~~, she or he may for all subsequent disbursements
11 substitute a true and correct copy of the certified copy,
12 provided no changes to the document have been made or are
13 required to be made.

14 (3) The nondisturbance and notice to creditors
15 instrument, when required, shall be executed by each
16 interestholder. The instrument shall state that:

17 (a) If the party seeking enforcement is not in default
18 of its obligations, the instrument may be enforced by both the
19 seller and any purchaser of the timeshare plan;

20 (b) The instrument shall be effective as between the
21 timeshare purchaser and interestholder despite any rejection
22 or cancellation of the contract between the timeshare
23 purchaser and developer as a result of bankruptcy proceedings
24 of the developer; and

25 (c) So long as the interestholder has any interest in
26 the accommodations, facilities, or plan, the interestholder
27 will fully honor all the rights of the timeshare purchasers in
28 and to the timeshare plan, will honor the purchasers' right to
29 cancel their contracts and receive appropriate refunds, and
30 will comply with all other requirements of this chapter and
31 rules promulgated hereunder.

1
2 The instrument shall contain language sufficient to provide
3 subsequent creditors of the developer and interestholders with
4 notice of the existence of the timeshare plan and of the
5 rights of purchasers and shall serve to protect the interest
6 of the timeshare purchasers from any claims of subsequent
7 creditors. A copy of the recorded nondisturbance and notice
8 to creditors instrument, when required, shall be provided to
9 each timeshare purchaser at the time the purchase contract is
10 executed.

11 (4) In lieu of any escrow provisions required by this
12 act, the director of the division shall have the discretion to
13 permit deposit of the funds or other property in an escrow
14 account as required by the jurisdiction in which the sale took
15 place.

16 (5)(a) In lieu of any escrows required by this
17 section, the director of the division shall have the
18 discretion to accept other assurances, including, but not
19 limited to, a surety bond issued by a company authorized and
20 licensed to do business in this state as surety or an
21 irrevocable letter of credit in an amount equal to the escrow
22 requirements of this section.

23 (b) Notwithstanding anything in chapter 718 or chapter
24 719 to the contrary, the director of the division shall have
25 the discretion to accept other assurances pursuant to
26 paragraph (a) in lieu of any requirement that completion of
27 construction of one or more accommodations or facilities of a
28 timeshare plan be accomplished prior to closing.

29 (6) An escrow agent holding funds escrowed pursuant to
30 this section may invest such escrowed funds in securities of
31 the United States Government, or any agency thereof, or in

1 savings or time deposits in institutions insured by an agency
2 of the United States Government. The right to receive the
3 interest generated by any such investments shall be paid to
4 the party to whom the escrowed funds or property are paid
5 unless otherwise specified by contract.

6 (7) Each escrow agent shall maintain separate books
7 and records for each timeshare plan and shall maintain such
8 books and records in accordance with good accounting
9 practices.

10 (8) An escrow agent holding escrowed funds pursuant to
11 this chapter which have not been claimed for a period of 5
12 years after the date of deposit shall make at least one
13 reasonable attempt to deliver such unclaimed funds to the
14 purchaser who submitted such funds to escrow. In making such
15 attempt, an escrow agent is entitled to rely on a purchaser's
16 last known address as set forth in the books and records of
17 the escrow agent and is not required to conduct any further
18 search for the purchaser. If an escrow agent's attempt to
19 deliver unclaimed funds to any purchaser is unsuccessful, the
20 escrow agent may deliver such unclaimed funds to the division
21 and the division shall deposit such unclaimed funds in the
22 Division of Florida Land Sales, Condominiums, and Mobile Homes
23 Trust Fund, 30 days after giving notice in a publication of
24 general circulation in the county in which the timeshare
25 property containing the purchaser's timeshare interest is
26 located. The purchaser may claim the same at any time prior to
27 the delivery of such funds to the division. After delivery of
28 such funds to the division, the purchaser shall have no more
29 rights to the unclaimed funds. The escrow agent shall not be
30 liable for any claims from any party arising out of the escrow
31

1 agent's delivery of the unclaimed funds to the division
2 pursuant to this section.

3 (9) For each transfer of the legal title to a
4 timeshare estate, the developer shall deliver an instrument
5 evidencing such transfer to the purchaser or to the clerk of
6 the court for recording.

7 (10)~~(8)~~ Any developer, seller, or escrow agent who
8 intentionally fails to comply with the provisions of this
9 section concerning the establishment of an escrow account,
10 deposits of funds into escrow, and withdrawal therefrom is
11 guilty of a felony of the third degree, punishable as provided
12 in s. 775.082, s. 775.083, or s. 775.084, or the successor
13 thereof. The failure to establish an escrow account or to
14 place funds therein as required in this section is prima facie
15 evidence of an intentional and purposeful violation of this
16 section.

17 Section 15. Section 721.09, Florida Statutes, is
18 amended to read:

19 721.09 Reservation agreements; escrows.--

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

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

31

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 registered public offering statement has been
25 filed with the division under this chapter.

26 (2) Each executed reservation agreement shall be
27 signed by the developer and shall contain the following:

28 (a) A statement that the escrow agent will grant a
29 prospective purchaser an immediate, unqualified refund of the
30 reservation deposit upon the written request of either the
31 purchaser or the seller directed to the escrow agent.

1 (b) A statement that the escrow agent may not
2 otherwise release moneys unless a contract is signed by the
3 purchaser, authorizing the transfer of the escrowed
4 reservation deposit as a deposit on the purchase price. Such
5 deposit shall then be subject to the requirements of s.
6 721.08.

7 (c) A statement of the obligation of the developer to
8 file a registered public offering statement with the division
9 prior to entering into binding contracts.

10 (d) A statement of the right of the purchaser to
11 receive the purchaser public offering statement required by
12 this chapter.

13 (e) The name and address of the escrow agent and a
14 statement that the escrow agent will provide a receipt.

15 (f) A statement that the seller assures that the
16 purchase price represented in or pursuant to the reservation
17 agreement will be the price in the contract for the purchase
18 or that the price represented may be exceeded within a stated
19 amount or percentage or a statement that no assurance is given
20 as to the price in the contract for purchase.

21 (3)(a) The total amount paid for a reservation shall
22 be deposited into a reservation escrow account.

23 (b) An escrow agent shall maintain the accounts called
24 for in this section only in such a manner as to be under the
25 direct supervision and control of the escrow agent.

26 (c) The escrow agent may invest the escrowed funds in
27 securities of the United States Government, or any agency
28 thereof, or in savings or time deposits in institutions
29 insured by an agency of the United States Government. The
30 interest generated by any such investments shall be payable to
31 the party entitled to receive the escrowed funds or property.

1 (d) The escrowed funds shall at all reasonable times
2 be available for withdrawal in full by the escrow agent.

3 (e) Each escrow agent shall maintain separate books
4 and records for each timeshare plan and shall maintain such
5 books and records in accordance with good accounting
6 practices.

7 (f) Any seller or escrow agent who intentionally fails
8 to comply with the provisions of this section regarding
9 deposit of funds in escrow and withdrawal therefrom is guilty
10 of a felony of the third degree, punishable as provided in s.
11 775.082, s. 775.083, or s. 775.084, or the successor of any of
12 such sections. The failure to establish an escrow account or
13 to place funds therein as required in this section is prima
14 facie evidence of an intentional and purposeful violation of
15 this section.

16 Section 16. Section 721.10, Florida Statutes, is
17 amended to read:

18 721.10 Cancellation.--

19 (1) A purchaser has the right to cancel the contract
20 until midnight of the 10th calendar day following whichever of
21 the following days occurs later:

22 (a) The execution date; or

23 (b) The day on which the purchaser received the last
24 of all documents required to be provided to him or her,
25 including the notice required by s. 721.07(2)(d)2., if
26 applicable.

27
28 This right of cancellation may not be waived by any purchaser
29 or by any other person on behalf of the purchaser.

30 Furthermore, no closing may occur until the cancellation
31 period of the timeshare purchaser has expired. Any attempt to

1 obtain a waiver of the cancellation right of the timeshare
2 purchaser, or to hold a closing prior to the expiration of the
3 cancellation period, is unlawful and such closing is voidable
4 at the option of the purchaser for a period of 1 year after
5 the expiration of the cancellation period. However, nothing
6 in this section precludes the execution of documents in
7 advance of closing for delivery after expiration of the
8 cancellation period.

9 (2) Any notice of cancellation shall be considered
10 given on the date postmarked if mailed, or when transmitted
11 from the place of origin if telegraphed, so long as the notice
12 is actually received by the developer or escrow agent. If
13 given by means of a writing transmitted other than by mail or
14 telegraph, the notice of cancellation shall be considered
15 given at the time of delivery at the place of business of the
16 developer.

17 (3) In the event of a timely preclosing cancellation,
18 ~~or in the event the plan is one in which timeshare licenses~~
19 ~~are sold and at any time the accommodations or facilities are~~
20 ~~no longer available,~~ the developer shall honor the right of
21 any purchaser to cancel the contract which granted the
22 timeshare purchaser rights in and to the plan. Upon such
23 cancellation, the developer shall refund to the purchaser the
24 total amount of all payments made by the purchaser under the
25 contract, reduced by the proportion of any contract benefits
26 the purchaser has actually received under the contract prior
27 to the effective date of the cancellation, as required by s.
28 721.06 ~~which exceed the proportionate amount of benefits made~~
29 ~~available under the plan, using the number of years of the~~
30 ~~plan as portrayed in the timeshare instrument as the base for~~
31 ~~plans of specific and limited duration, or using the fair~~

1 ~~market rental value of such benefits for plans without~~
2 ~~specific or limited duration.~~ Such refund shall be made within
3 20 days of demand therefor by the purchaser or within 5 days
4 after receipt of funds from the purchaser's cleared check,
5 whichever is later. ~~For purposes of this subsection, the term~~
6 ~~"benefits made available under the plan" shall not include~~
7 ~~public offering statements or other documentation or materials~~
8 ~~that must be furnished to a purchaser pursuant to statute or~~
9 ~~rule.~~

10 Section 17. Section 721.11, Florida Statutes, is
11 amended to read:

12 721.11 Advertising materials; oral statements.--

13 (1)(a) All Any advertising material must ~~relating to a~~
14 ~~timeshare plan, including prize and gift promotional offers,~~
15 ~~shall~~ be filed with the division by the developer ~~10 days~~
16 prior to use. At the request of the developer, the division
17 shall review the advertising material and notify the developer
18 of any deficiencies within 10 days after the filing. If the
19 developer corrects the deficiencies or if there are no
20 deficiencies, the division shall notify the developer of its
21 approval of the advertising materials. Notwithstanding
22 anything to the contrary contained in this subsection, so long
23 as the developer uses advertising materials approved by the
24 division, following the developer's request for a review, the
25 developer shall not be liable for any violation of this
26 section or s. 721.111 with respect to such advertising
27 materials.

28 (b) All ~~such~~ advertising materials must be
29 substantially in compliance with this chapter and in full
30 compliance with the mandatory provisions of this chapter. In
31 the event that any such material is not in substantial

1 compliance with this chapter, the division may file
2 administrative charges and an injunction against the developer
3 and exact such penalties or remedies as provided in s. 721.26,
4 or may require the developer to correct any ~~the~~ deficiency in
5 the materials by notifying the developer of the deficiency.†
6 ~~and~~, If the developer fails to correct the deficiency after
7 such notification, the division may file administrative
8 charges against the developer and exact such penalties or
9 remedies as provided in s. 721.26.

10 ~~(b) The director of the division shall have the~~
11 ~~discretion to accept other assurances from the developer to~~
12 ~~assure the developer will comply with the provisions of this~~
13 ~~chapter regarding all advertising materials, including prize~~
14 ~~and gift promotional offers, used by the developer. Such~~
15 ~~assurances shall include, but not be limited to, a surety bond~~
16 ~~issued by a company authorized and licensed to do business in~~
17 ~~this state as surety or an irrevocable letter of credit in the~~
18 ~~amount of \$10,000. Upon the acceptance by the director of~~
19 ~~such assurances from the developer, the developer shall be~~
20 ~~entitled to file and use advertising materials, including~~
21 ~~prize and gift promotional offers, in accordance with~~
22 ~~paragraph (c). In the event the developer intends to file and~~
23 ~~use any lodging or vacation certificates as advertising~~
24 ~~material pursuant to paragraph (c), the director shall have~~
25 ~~the discretion to increase the assurances to an amount deemed~~
26 ~~sufficient by the director to fully secure the performance of~~
27 ~~the certificate promoter, or to provide refunds to~~
28 ~~certificateholders in the event of nonperformance by the~~
29 ~~certificate promoter. The purpose of such other assurances,~~
30 ~~if accepted by the director, shall be to provide the division~~
31 ~~with a source of funds to secure the developer's promise in~~

1 ~~any prize and gift promotional offer to deliver the prize or~~
2 ~~gift represented in such offer to any prospective purchaser~~
3 ~~not receiving the represented prize or gift.~~

4 ~~(c) A developer from whom other assurances have been~~
5 ~~accepted by the director of the division pursuant to paragraph~~
6 ~~(b) shall file all advertising material, including prize and~~
7 ~~gift promotional offers with the division at the time of use.~~
8 ~~All such advertising materials must be substantially in~~
9 ~~compliance with this chapter and in full compliance with the~~
10 ~~mandatory provisions of this chapter. In the event that any~~
11 ~~such material is not in compliance with this chapter, the~~
12 ~~division may require the developer to correct the deficiency~~
13 ~~by notifying the developer of the deficiency; and, if the~~
14 ~~developer fails to correct the deficiency after receiving such~~
15 ~~notice, the division may file administrative charges against~~
16 ~~the developer and exact such penalties or remedies as provided~~
17 ~~in s. 721.26. So long as the developer prepares and~~
18 ~~disseminates the advertising material in good faith, the~~
19 ~~division shall not penalize the developer for any deficiencies~~
20 ~~which the division determines to exist in any advertising~~
21 ~~material which the developer uses prior to receipt of a notice~~
22 ~~of deficiency from the division regarding the advertising~~
23 ~~material. For purposes of this section, "good faith" shall~~
24 ~~mean that the developer has reasonably attempted to comply~~
25 ~~with the provisions of this chapter relating to advertising~~
26 ~~material, and that any deficiency determined to exist by the~~
27 ~~division is not material and adverse to a prospective~~
28 ~~purchaser.~~

29 (2) The term "advertising material" includes:
30
31

1 (a) Any promotional brochure, pamphlet, advertisement,
2 or other material to be disseminated to the public in
3 connection with the sale of a timeshare plan.

4 (b) ~~A transcript of~~ Any radio or television
5 advertisement.

6 (c) Any lodging or vacation certificate.

7 (d) ~~A transcript of~~ Any standard oral sales
8 presentation.

9 (e) Any billboard or other sign posted on or off the
10 premises, except that such billboard or sign shall not be
11 required to contain the disclosure set forth in paragraph
12 (5)(a) or paragraph (5)(b), unless it relates to a prize and
13 gift promotional offer. For purposes of this section, a
14 "sign" shall mean advertising which is affixed to real or
15 personal property and which is not disseminated by other than
16 visual means to prospective purchasers.

17 (f) Any photograph, drawing, or artist's
18 representation of accommodations or facilities of a timeshare
19 plan which exists or which will or may exist.

20 (g) Any paid publication relating to a timeshare plan
21 which exists or which will or may exist.

22 (h) Any other promotional device used, or statement
23 related to a timeshare plan, including any prize and gift
24 promotional offer as described in s. 721.111.

25 (3) The term "advertising material" does not include:

26 (a) Any stockholder communication such as an annual
27 report or interim financial report, proxy material,
28 registration statement, securities prospectus, registration,
29 property report, or other material required to be delivered to
30 a prospective purchaser by an agency of any other state or the
31 Federal Government.

1 (b) Any communication addressed to and relating to the
2 account of any person who has previously executed a contract
3 for the sale and purchase of a timeshare interest period in
4 the timeshare plan to which the communication relates, except
5 when directed to the sale of timeshare interests in a
6 different timeshare plan or in a different component site of a
7 multisite timeshare plan subject to part II ~~additional~~
8 ~~timeshare periods.~~

9 (c) Any audio, written, or visual publication or
10 material relating to an exchange company or exchange program.

11 (d) Any audio, written, or visual publication or
12 material relating to the promotion of the availability of any
13 accommodations or facilities, or both, for transient rental,
14 including any arrangement governed by part XI of chapter 559,
15 so long as a mandatory tour of a timeshare plan or attendance
16 at a mandatory sales presentation is not a term or condition
17 of the availability of such accommodations or facilities, or
18 both, and so long as the failure of any transient renter to
19 take a tour of a timeshare plan or attend a sales presentation
20 does not result in the transient renter receiving less than
21 what was promised to the transient renter in such materials
22 ~~any reduction in the level of services which would otherwise~~
23 ~~be available to such transient renter.~~

24 (e) Any oral or written statement disseminated by a
25 developer to broadcast or print media, other than paid
26 advertising or promotional material, regarding plans for the
27 acquisition or development of timeshare property, including
28 possible accommodations or facilities of a timeshare plan
29 pursuant to subsection (7) or subsection (8), or possible
30 component sites of a multisite timeshare plan pursuant to
31 subsection (9) ~~s. 721.553(1)~~. However, any rebroadcast or any

1 other dissemination of such oral statements to a prospective
2 purchaser by a seller in any manner, or any distribution of
3 copies of newspaper or magazine articles, press releases, or
4 any other dissemination of such written statements to a
5 prospective purchaser by a seller in any manner, shall
6 constitute advertising material.

7 (f) Any promotional materials relating to a timeshare
8 plan that are not directed specifically at residents of this
9 state, regardless of whether such materials relate to
10 accommodations or facilities located in this state, provided
11 that such materials do not contain any statements that would
12 be in violation of subsection (4). For purposes of this
13 paragraph, a rebuttable presumption exists that promotional
14 materials are not directed specifically at residents of this
15 state if the materials include a disclaimer in substantially
16 the following form:

17
18 This offer is not directed to residents in any state [or the
19 offer is void in any states] in which a registration of the
20 timeshare plan is required but in which registration
21 requirements have not yet been met.

22
23 (g) Any materials delivered to a purchaser after the
24 purchase contract is executed that are not delivered for the
25 purpose of soliciting the sale of a timeshare interest in a
26 different timeshare plan or a different component site in a
27 multisite timeshare plan subject to part II.

28 (h) Any materials shown, displayed, or presented in a
29 sales center or during a sales presentation provided that any
30 description of any facility that is not required to be built
31 or that has not been completed shall be conspicuously labeled

1 as "NEED NOT BE BUILT," "PROPOSED," or "UNDER CONSTRUCTION."
2 If the facility is labeled "NEED NOT BE BUILT" or "PROPOSED,"
3 the seller may indicate the estimated date that such facility
4 will be made part of the timeshare plan. If the facility is
5 labeled "UNDER CONSTRUCTION," the estimated date of completion
6 must be included.

7 (4) No advertising or oral statement made by any
8 seller shall:

9 (a) Misrepresent a fact or create a false or
10 misleading impression regarding the timeshare plan or
11 promotion thereof.

12 (b) Make a prediction of specific or immediate
13 increases in the price or value of timeshare interests
14 ~~periods.~~

15 (c) Contain a statement concerning future price
16 increases by a ~~the~~ seller which are nonspecific or not bona
17 fide.

18 (d) Contain any asterisk or other reference symbol as
19 a means of contradicting or substantially changing any
20 previously made statement or as a means of obscuring a
21 material fact.

22 (e) Describe any facility improvement ~~to the timeshare~~
23 ~~plan~~ that is not required to be built or that is uncompleted
24 unless the improvement is conspicuously labeled as "NEED NOT
25 BE BUILT," "PROPOSED," or "UNDER CONSTRUCTION." If the
26 facility is labeled "NEED NOT BE BUILT" or "PROPOSED," the
27 seller may indicate the estimated date that such facility will
28 be made part of the timeshare plan. If the facility is labeled
29 "UNDER CONSTRUCTION," the estimated date of completion must be
30 included ~~with the date of promised completion clearly~~
31 ~~indicated.~~

1 (f) Misrepresent the size, nature, extent, qualities,
2 or characteristics of the offered accommodations or
3 facilities.

4 (g) Misrepresent the amount or period of time during
5 which the accommodations or facilities will be available to
6 any purchaser.

7 (h) Misrepresent the nature or extent of any
8 incidental benefit.

9 (i) Make any misleading or deceptive representation
10 with respect to the contents of the public offering statement
11 and the contract or the rights, privileges, benefits, or
12 obligations of the purchaser under the contract or this
13 chapter.

14 (j) Misrepresent the conditions under which a
15 purchaser may exchange the right to use accommodations or
16 facilities in one location for the right to use accommodations
17 or facilities in another location.

18 (k) Misrepresent the availability of a resale or
19 rental program offered by or on behalf of the developer.

20 (l) Contain an offer or inducement to purchase which
21 purports to be limited as to quantity or restricted as to time
22 unless the numerical quantity or time limit applicable to the
23 offer or inducement is clearly stated.

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

27 (n) Purport to have resulted from a referral unless
28 the name of the person making the referral can be produced
29 upon demand of the division.

30 (o) Misrepresent the source of the advertising or
31 statement by leading a prospective purchaser to believe that

1 the advertising material is mailed by a governmental or
2 official agency, credit bureau, bank, or attorney, if that is
3 not the case.

4 (p) Misrepresent the value of any prize, gift, or
5 other item to be awarded in connection with any prize and gift
6 promotional offer, as described in s. 721.111, or any
7 incidental benefit.

8 (5)(a) No written advertising material, including any
9 lodging certificate, gift award, premium, discount, or display
10 booth, may be utilized without each prospective purchaser
11 being provided a disclosure ~~one of the following disclosures~~
12 in conspicuous type in substantially the following form: This
13 advertising material is being used for the purpose of
14 soliciting sales of timeshare interests ~~periods~~; or This
15 advertising material is being used for the purpose of
16 soliciting sales of a vacation (or vacation membership or
17 vacation ownership) plan. The division shall have the
18 discretion to approve the use of an alternate disclosure. The
19 conspicuous disclosure required in this subsection shall only
20 be required to be given to each prospective purchaser on one
21 piece of advertising for each advertising promotion or
22 marketing campaign, provided that if the promotion or campaign
23 contains terms and conditions, the conspicuous disclosure
24 required in this subsection shall be included on any piece
25 containing such terms and conditions. The conspicuous
26 disclosure required in this subsection shall be provided
27 before the purchaser is required to take any affirmative
28 action pursuant to the promotion. If the advertising material
29 containing the conspicuous disclosure is a display booth, the
30 disclosure required by this subsection must be conspicuously
31 displayed on or within the display booth. ~~If a filing of a~~

1 ~~timeshare plan containing accommodations and facilities~~
2 ~~located outside of this state has been approved by the situs~~
3 ~~jurisdiction and by the division, an alternate disclosure~~
4 ~~consistent with that required by the situs jurisdiction, or by~~
5 ~~such other jurisdiction or jurisdictions where the advertising~~
6 ~~material will be used, may be utilized with the prior approval~~
7 ~~of the director of the division so long as the alternate~~
8 ~~disclosure is substantially similar to that required by this~~
9 ~~paragraph.~~

10 (b) This subsection does not apply to any advertising
11 material which involves a project or development which
12 includes sales of real estate or other commodities or services
13 in addition to timeshare interests ~~periods~~, including, but not
14 limited to, lot sales, condominium or home sales, or the
15 rental of resort accommodations. However, if the sale of
16 timeshare interests ~~periods~~, as compared with such other sales
17 or rentals, is the primary purpose of the advertising
18 material, a disclosure shall be made in conspicuous type that:
19 This advertising material is being used for the purpose of
20 soliciting the sale of ...(Disclosure shall include timeshare
21 interests ~~periods~~ and may include other types of sales)....
22 Factors which the division may consider in determining whether
23 the primary purpose of the advertising material is the sale of
24 timeshare interests ~~periods~~ include:

25 1. The retail value of the timeshare interests ~~periods~~
26 compared to the retail value of the other real estate,
27 commodities, or services being offered in the advertising
28 material.

29 2. The amount of space devoted to the timeshare
30 portion of the project in the advertising material compared to
31 the amount of space devoted to other portions of the project,

1 including, but not limited to, printed material, photographs,
2 or drawings.

3 (6) Failure to provide cancellation rights or
4 disclosures as required by this subsection in connection with
5 the sale of a regulated short-term product constitutes
6 misrepresentation in accordance with paragraph (4)(a). Any
7 agreement relating to the sale of a regulated short-term
8 product must be regulated as advertising material and is
9 subject to the following:

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

16 (b) A purchaser of a regulated short-term product has
17 the right to cancel the agreement until midnight of the 10th
18 calendar day following the execution date of the agreement.
19 The right of cancellation may not be waived by the prospective
20 purchaser or by any other person on behalf of the prospective
21 purchaser. Notice of cancellation must be given in the same
22 manner prescribed for giving notice of cancellation under s.
23 721.10(2). If the prospective purchaser gives a valid notice
24 of cancellation or is otherwise entitled to cancel the sale,
25 the funds or property received from or on behalf of the
26 prospective purchaser, or the proceeds thereof, must be
27 returned to the prospective purchaser. Such refund must be
28 made in the same manner prescribed for refunds under s.
29 721.10.

30
31

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

4 1. A statement that if the purchaser of a regulated
5 short-term product cancels the agreement during the 10-day
6 cancellation period, the seller will refund to the prospective
7 purchaser the total amount of all payments made by the
8 prospective purchaser under the agreement, reduced by the
9 proportion of any benefits the prospective purchaser has
10 actually received under the agreement prior to the effective
11 date of the cancellation; and

12 2. A statement that the specific value for each
13 benefit received by the prospective purchaser under the
14 agreement will be as agreed to between the prospective
15 purchaser and the seller.

16 (d) An agreement for purchase of a regulated
17 short-term product must contain substantially the following
18 statements in conspicuous type immediately above the space
19 reserved in the agreement for the signature of the prospective
20 purchaser:

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

31

1 If you execute a purchase contract for a timeshare
2 interest period, section 721.08, Florida Statutes (escrow
3 accounts), will apply to any funds or other property received
4 from you or on your behalf. Section 721.10, Florida Statutes
5 (cancellation), will apply to the purchase and you will not be
6 entitled to a cancellation refund of the short-term product
7 [or specify an alternate refund policy under these
8 circumstances].

9
10 (e) If the seller provides the purchaser with the
11 right to cancel the purchase of a regulated short-term product
12 at any time up to 7 days prior to the purchaser's reserved use
13 of the accommodations, but in no event less than 10 days, and
14 if the seller refunds the total amount of all payments made by
15 the purchaser reduced by the proportion of any benefits the
16 purchaser has actually received prior to the effective date of
17 the cancellation, the specific value of which has been agreed
18 to between the purchaser and the seller, the short-term
19 product offer shall be exempt from the requirements of
20 paragraphs (b), (c), and (d). An agreement relating to the
21 sale of the regulated short-term product made pursuant to this
22 paragraph must contain a statement setting forth the
23 cancellation and refund rights of the prospective purchaser in
24 a manner that is consistent with this section and s. 721.10,
25 including a description of the length of the cancellation
26 right, a statement that the purchaser's intent to cancel must
27 be in writing and sent to the seller at a specified address, a
28 statement that the notice of cancellation is effective upon
29 the date sent, and a statement that any attempt to waive the
30 cancellation right is unlawful. The right of cancellation
31 provided to the purchaser pursuant to this paragraph may not

1 be waived by the prospective purchaser or by any other person
2 on behalf of the prospective purchaser. Notice of cancellation
3 must be given in the same manner prescribed for giving notice
4 of cancellation pursuant to s. 721.10(2). If the prospective
5 purchaser gives a valid notice of cancellation, or is
6 otherwise entitled to cancel the sale, the funds or property
7 received from or on behalf of the prospective purchaser, or
8 the proceeds thereof, shall be returned to the prospective
9 purchaser. Such refund shall be made in the manner prescribed
10 for refunds under s. 721.10.

11 (7) Notwithstanding the provisions of s. 721.05(6)(b),
12 a seller may portray possible accommodations or facilities to
13 prospective purchasers in advertising material, or a purchaser
14 public offering statement, without such accommodations or
15 facilities being available for use by purchasers so long as
16 the advertising material or purchaser public offering
17 statement complies with the provisions of subsection (4).

18 (8) Notwithstanding the provisions of s. 721.05(6)(b),
19 a developer may portray possible accommodations or facilities
20 to prospective purchasers by disseminating oral or written
21 statements regarding same to broadcast or print media with no
22 obligation on the developer's part to actually construct such
23 accommodations or facilities or to file such accommodations or
24 facilities with the division, but only so long as such oral or
25 written statements are not considered advertising material
26 pursuant to paragraph (3)(e).

27 (9) Notwithstanding the provisions of s. 721.05(6)(b),
28 a seller of a multisite timeshare plan may portray a possible
29 component site to prospective purchasers with no
30 accommodations or facilities located at such component site
31

1 being available for use by purchasers so long as the seller
2 satisfies the following requirements:

3 (a) A developer of a multisite timeshare plan may
4 disseminate oral or written statements to broadcast or print
5 media describing a possible component site with no obligation
6 on the developer's part to actually add such component site to
7 the multisite timeshare plan or to amend the developer's
8 filing with the division, but only so long as such oral or
9 written statements are not considered advertising material
10 pursuant to paragraph (3)(e).

11 (b) A seller may make representations to purchasers in
12 advertising material or in a purchaser public offering
13 statement regarding the possible accommodations and facilities
14 of a possible component site without such accommodations or
15 facilities being available for use by purchasers so long as
16 the advertising material or purchaser public offering
17 statement complies with the provisions of subsection (4).

18 (c) In the event a seller makes any of the
19 representations permitted by paragraph (b), the purchase
20 agreement must contain the following conspicuous disclosure
21 unless and until such time as the developer has committed
22 itself in the timeshare instrument to adding the possible
23 component site to the multisite timeshare plan, at which time
24 the seller may portray the component site pursuant to the
25 timeshare instrument without restriction:

26
27 [Description of possible component site] is only a possible
28 component site which may never be added to the multisite
29 timeshare plan (or multisite vacation ownership plan or
30 multisite vacation plan or vacation club). Do not purchase an
31 interest in the multisite timeshare plan (or multisite

1 vacation ownership plan or multisite vacation plan or vacation
2 club) in reliance upon the addition of this component site.

3
4 (d) Notwithstanding anything contained in this chapter
5 to the contrary, a developer or managing entity may
6 communicate with existing purchasers regarding possible
7 component sites without restriction, so long as all oral and
8 written statements made to existing purchasers pursuant to
9 this subsection comply with the provisions of subsection (4).

10 (e) Any violation of this section by a developer,
11 seller, or managing entity shall constitute a violation of
12 this chapter. Any violation of this section with respect to a
13 purchaser whose purchase has not yet closed shall be deemed to
14 provide that purchaser with a new 10-day voidability period.

15 Section 18. Section 721.111, Florida Statutes, is
16 amended to read:

17 721.111 Prize and gift promotional offers.--

18 (1) As used herein, the term "prize and gift
19 promotional offer" means any advertising material wherein a
20 prospective purchaser may receive goods or services other than
21 the timeshare plan itself, either free or at a discount,
22 including, but not limited to, the use of any prize, gift,
23 award, premium, or lodging or vacation certificate.

24 (2) A game promotion, such as a contest of chance,
25 gift enterprise, or sweepstakes, in which the elements of
26 chance and prize are present may not be used in connection
27 with the offering or sale of timeshare interests ~~periods~~,
28 except for drawings, as that term is defined in s.
29 849.0935(1)(a), in which no more than 10 prizes are promoted
30 and in which all promoted prizes are actually awarded. All

31

1 such drawings must meet all requirements of this chapter and
2 of ss. 849.092 and 849.094(1), (2), and (7).

3 (3) Any prize, gift, or other item offered pursuant to
4 a prize and gift promotional offer must be delivered to the
5 prospective purchaser on the day she or he appears to claim
6 it, whether or not she or he purchases a timeshare interest
7 period.

8 (4) A separate filing for each prize and gift
9 promotional offer to be used in the sale of timeshare
10 interests periods shall be made with the division if required
11 by and pursuant to s. 721.11(1). One item of each prize or
12 gift, except cash, must be made available for inspection by
13 the division.

14 (5) Each filing of a prize and gift promotional offer
15 with the division shall include, when applicable:

16 (a) A copy of all advertising material to be used in
17 connection with the prize and gift promotional offer.

18 (b) The name, address, and telephone number (including
19 area code) of the supplier or manufacturer from whom each type
20 or variety of prize, gift, or other item is obtained.

21 (c) The manufacturer's model number or other
22 description of such item.

23 (d) The information on which the developer relies in
24 determining the verifiable retail value, if the value is in
25 excess of \$50.

26 (e) The name, address, and telephone number (including
27 area code) of the promotional entity responsible for
28 overseeing and operating the prize and gift promotional offer.

29 (f) The name and address of the registered agent in
30 this state of the promotional entity for service of process
31 purposes.

1 ~~(g) The number of anticipated recipients of each item~~
2 ~~of advertising material related to the prize and gift~~
3 ~~promotional offer.~~

4 (g)(h) Full disclosure of all pertinent information
5 concerning the use of lodging or vacation certificates,
6 including the terms and conditions of the campaign and the
7 fact and extent of participation in such campaign by the
8 developer. The developer shall provide to the division, upon
9 the request of the division, an affidavit, certification, or
10 other reasonable assurance ~~division may require reasonable~~
11 ~~assurances~~ that the obligation incurred by a seller or the
12 seller's agent in a lodging certificate program can be met.

13 ~~(6) Each developer shall pay to the division a fee of~~
14 ~~\$100 for the filing of each prize and gift promotional offer,~~
15 ~~at the time of filing. Those developers utilizing game~~
16 ~~promotions in which the elements of chance and prize are~~
17 ~~present shall pay an additional \$400 fee at the time of filing~~
18 ~~of the prize and gift promotional offer. No additional fee~~
19 ~~may be charged for the submission of corrected advertising~~
20 ~~material related to a prize and gift promotional offer or for~~
21 ~~the submission of additional material related to a prize and~~
22 ~~gift promotional offer for which a prior filing has been made.~~

23 (6)(7) All advertising material to be distributed in
24 connection with a prize and gift promotional offer shall
25 contain, in addition to the information required pursuant to
26 the provisions of s. 721.11, the following disclosures:

27 (a) A description of the prize, gift, or other item
28 that the prospective purchaser will actually receive,
29 including, if the price is in excess of \$50, the
30 manufacturer's suggested retail price or, if none is
31

1 available, the verifiable retail value. If the value is \$50 or
2 less, the description shall contain a statement of such.

3 (b) All rules, terms, requirements, and preconditions
4 which must be fulfilled or met before a prospective purchaser
5 may claim any prize, gift, or other item involved in the prize
6 and gift promotional plan, including whether the prospective
7 purchaser is required to attend a sales presentation in order
8 to receive the prize, gift, or other item.

9 (c) The date upon which the offer expires.

10 (d) If the number of prizes, gifts, or other items to
11 be awarded is limited, a statement of the number of items that
12 will be awarded.

13 (e) The method by which prizes, gifts, or other items
14 are to be awarded.

15 ~~(8) All developers shall file with the division by~~
16 ~~March 1st of each year the following information regarding~~
17 ~~each prize and gift promotional offer used during the prior~~
18 ~~calendar year:~~

19 ~~(a) The total number of each prize, gift, or other~~
20 ~~item actually awarded or given away.~~

21 ~~(b) The name and address of each person who actually~~
22 ~~received a prize, gift, or other item which had a verifiable~~
23 ~~retail value or manufacturer's suggested retail price in~~
24 ~~excess of \$200. This regulation does not apply to recipients~~
25 ~~of lodging or vacation certificates.~~

26 (7)~~(9)~~ All prizes, gifts, or other items represented
27 by the developer to be awarded in connection with any prize
28 and gift promotional offer shall be awarded by the date
29 referenced in the advertising material used in connection with
30 such offer.

31

1 Section 19. Subsection (1) of section 721.12, Florida
2 Statutes, is amended to read:

3 721.12 Recordkeeping by seller.--Each seller of a
4 timeshare plan shall maintain among its business records the
5 following:

6 (1) A copy of each contract for the sale of a
7 timeshare interest period, which contract has not been
8 canceled. If a timeshare estate is being sold, the seller is
9 required to retain a copy of the contract only until a deed of
10 conveyance, agreement for deed, or lease is recorded in the
11 office of the clerk of the circuit court in the county wherein
12 the plan is located.

13 Section 20. Section 721.13, Florida Statutes, is
14 amended to read:

15 721.13 Management.--

16 (1)(a) For each ~~Before the first sale of a~~ timeshare
17 plan period, the developer shall ~~create or~~ provide for a
18 managing entity, which shall be either the developer, a
19 separate manager or management firm, or the board of
20 ~~administration of an owners' association, or some combination~~
21 ~~thereof.~~ The owners' association shall be created prior to the
22 recording of the timeshare instrument.

23 (b)1. With respect to a timeshare plan which is also
24 regulated under chapter 718 or chapter 719, or which contains
25 a mandatory owners' association, the board of administration
26 of the association shall be considered the managing entity of
27 the timeshare plan.

28 2. During any period of time in which such association
29 has entered into a contract with a manager or management firm
30 to provide some or all of the management services to the
31 timeshare plan, both the board of administration and the

1 manager or management firm shall be considered the managing
2 entity of the timeshare plan and shall be jointly and
3 severally responsible for the faithful discharge of the duties
4 of the managing entity.

5 (c) With respect to any timeshare plan other than one
6 described in paragraph (b), any developer shall be considered
7 the managing entity of the timeshare plan unless and until
8 such developer clearly provides in the timeshare instrument
9 that a different party will serve as managing entity, which
10 party has acknowledged in writing that it has accepted the
11 duties and obligations of serving as managing entity. In the
12 event such other party subsequently resigns or otherwise
13 ceases to perform its duties as managing entity, any developer
14 shall again be considered the managing entity until the
15 developer arranges for a new managing entity pursuant to this
16 paragraph.

17 (d) In the event no one described in paragraph (b) or
18 paragraph (c) is operating and maintaining the timeshare plan,
19 anyone who operates or maintains the timeshare plan shall be
20 considered the managing entity of the timeshare plan.

21 (e) Any managing entity performing community
22 association management must comply with part VIII of chapter
23 468.

24 (2)(a) The managing entity shall act in the capacity
25 of a fiduciary to the purchasers of the timeshare plan. No
26 penalty imposed by the division pursuant to s. 721.26 against
27 any managing entity for breach of fiduciary duty shall be
28 assessed as a common expense of any timeshare plan.

29 (b) The managing entity shall invest the operating and
30 reserve funds of the timeshare plan in accordance with s.
31 518.11(1); however, the managing entity shall give safety of

1 capital greater weight than production of income. In no event
2 shall the managing entity invest timeshare plan funds with a
3 developer or with any entity that is not independent of any
4 developer or any managing entity within the meaning of s.
5 721.05(18), and in no event shall the managing entity invest
6 timeshare plan funds in notes and mortgages related in any way
7 to the timeshare plan.

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

10 (a) Management and maintenance of all accommodations
11 and facilities constituting the timeshare plan.

12 (b) Collection of all assessments for common expenses.

13 (c)1. Providing each year to all purchasers an
14 itemized annual budget which shall include all estimated
15 revenues and expenses. The budget shall be in the form
16 required by s. 721.07(5)(u)~~(x)~~ and shall be the final budget
17 adopted by the managing entity for the current fiscal year.
18 The budget shall contain, as a footnote or otherwise, any
19 related party transaction disclosures or notes which appear in
20 the audited financial statements of the managing entity for
21 the previous budget year as required by paragraph (e). A copy
22 of the final budget shall be filed with the division within 30
23 days after the beginning of each fiscal year ~~its adoption by~~
24 ~~the managing entity~~ 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

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)(u)~~(x)~~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.

16 (d)1. Maintenance of all books and records concerning
17 the timeshare plan so that all such books and records are
18 reasonably available for inspection by any purchaser or the
19 authorized agent of such purchaser. For purposes of this
20 subparagraph, the books and records of the timeshare plan
21 shall be considered "reasonably available" if copies of the
22 requested portions are delivered to the purchaser or the
23 purchaser's agent within 7 days of the date the managing
24 entity receives a written request for the records signed by
25 the purchaser. The managing entity may charge the purchaser a
26 reasonable fee for copying the requested information not to
27 exceed 25 cents per page. However, any purchaser or agent of
28 such purchaser shall be permitted to personally inspect and
29 examine the books and records wherever located at any
30 reasonable time, under reasonable conditions, and under the
31 supervision of the custodian of those records. The custodian

1 shall supply copies of the records where requested and upon
2 payment of the copying fee. No fees other than those set forth
3 in this section may be charged for the providing of,
4 inspection, or examination of books and records. All books and
5 financial records of the timeshare plan must be maintained in
6 accordance with generally accepted accounting practices.

7 2. If the books and records of the timeshare plan are
8 not maintained on the premises of the accommodations and
9 facilities of the timeshare plan, the managing entity shall
10 inform the division in writing of the location of the books
11 and records and the name and address of the person who acts as
12 custodian of the books and records at that location. In the
13 event that the location of the books and records changes, the
14 managing entity shall notify the division of the change in
15 location and the name and address of the new custodian within
16 30 days of the date the books and records are moved. The
17 purchasers shall be notified of the location of the books and
18 records and the name and address of the custodian in the copy
19 of the annual budget provided to them pursuant to paragraph
20 (c).

21 3. The division is authorized to adopt rules which
22 specify those items and matters that shall be included in the
23 books and records of the timeshare plan and which specify
24 procedures to be followed in requesting and delivering copies
25 of the books and records.

26 4. Notwithstanding any provision of chapter 718 or
27 chapter 719 to the contrary, the managing entity may not
28 furnish the name or address of any purchaser to any other
29 purchaser or authorized agent thereof unless the purchaser
30 whose name and address are requested first approves the
31 disclosure in writing.

1 (e) Arranging for an annual audit of the financial
2 statements of the timeshare plan by a certified public
3 accountant licensed by the Board of Accountancy of the
4 Department of Business and Professional Regulation, in
5 accordance with generally accepted auditing standards as
6 defined by the rules of the Board of Accountancy of the
7 Department of Business and Professional Regulation. The
8 financial statements required by this section must be prepared
9 on an accrual basis using fund accounting, and must be
10 presented in accordance with generally accepted accounting
11 principles. A copy of the audited financial statements must be
12 filed with the division and forwarded to the board of
13 directors and officers of the owners' association, if one
14 exists, no later than 5 calendar months after the end of the
15 timeshare plan's fiscal year. If no owners' association
16 exists, each purchaser must be notified, no later than 5
17 months after the end of the timeshare plan's fiscal year, that
18 a copy of the audited financial statements is available upon
19 request to the managing entity. Notwithstanding any
20 requirement of s. 718.111(13) or (14) or s. 719.104(4), the
21 audited financial statements required by this section are the
22 only annual financial reporting requirements for timeshare
23 condominiums.

24 (f) Making available for inspection by the division
25 any books and records of the timeshare plan upon the request
26 of the division. The division may enforce this paragraph by
27 making direct application to the circuit court.

28 (g) Scheduling occupancy of the timeshare units, when
29 purchasers are not entitled to use specific timeshare periods,
30 so that all purchasers will be provided the use and possession
31

1 of the accommodations and facilities of the timeshare plan
2 which they have purchased.

3 (h) Performing any other functions and duties which
4 are necessary and proper to maintain the accommodations or
5 facilities, as provided in the contract and as advertised.

6 (i) 1. Entering into an ad valorem tax escrow agreement
7 prior to the receipt of any ad valorem tax escrow payments
8 into the ad valorem tax escrow account, as long as an
9 independent escrow agent is required by s. 192.037(6)(e).

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

22 (j) Notwithstanding anything contained in chapter 718
23 or chapter 719 to the contrary, purchasers shall not have the
24 power to cancel contracts entered into by the managing entity
25 relating to a master or community antenna television system, a
26 franchised cable television service, or any similar paid
27 television programming service or bulk rate services
28 agreement.

29 (4) The managing entity shall maintain among its
30 records and provide to the division upon request a complete
31 list of the names and addresses of all purchasers and owners

1 of timeshare units in the timeshare plan. The managing entity
2 shall update this list no less frequently than quarterly. The
3 use of the managing entity's owners' list for the commercial
4 benefit of any entity other than the association or managing
5 entity shall be a violation of this chapter.Pursuant to
6 paragraph (3)(d), the managing entity may not publish this
7 owner's list or provide a copy of it to any purchaser or to
8 any third party other than the division. However, the
9 managing entity shall initiate a mailing to those persons
10 listed on the owner's list upon the written request of any
11 purchaser if the purpose of the mailing is to advance
12 legitimate owners' association business, including, but not
13 limited to, such as a proxy solicitation for any purpose,
14 communications relating to ~~including~~ the recall of one or more
15 board members, communications relating to ~~or~~ the discharge of
16 the manager or management firm, communications relating to the
17 performance of the board of administration or the manager or
18 management firm, and other communications with purchasers of
19 timeshare interests in the timeshare plan relating to the
20 timeshare plan, provided that such communications are not
21 intended for the commercial benefit of any purchaser or any
22 entity other than the association or managing entity. The use
23 of any proxies solicited in this manner must comply with the
24 provisions of the timeshare instrument and this chapter. The
25 board of administration of the association shall be
26 responsible for determining the appropriateness of any mailing
27 requested pursuant to this subsection, and it shall be a
28 violation of this chapter and of part VIII of chapter 468 for
29 the board of administration or ~~and/or~~ the manager or
30 management firm to refuse to initiate any mailing requested
31 for the purpose of advancing legitimate owners' association

1 business. The purchaser who requests the mailing must
2 reimburse the owners' association in advance for the owners'
3 association's actual costs in performing the mailing.

4 (5) Any managing entity, or individual officer,
5 director, employee, or agent thereof, who willfully
6 misappropriates the property or funds of a timeshare plan
7 commits a felony of the third degree, punishable as provided
8 in s. 775.082, s. 775.083, or s. 775.084, or the successor
9 thereof.

10 (6)(a) The managing entity of any timeshare plan
11 located in this state, including, but not limited to, those
12 plans created with respect to a condominium pursuant to
13 chapter 718 or a cooperative pursuant to chapter 719, may deny
14 the use of the accommodations and facilities of the timeshare
15 plan, including the denial of the right to make a reservation
16 or the cancellation of a confirmed reservation for timeshare
17 periods in a floating reservation timeshare plan,to any
18 purchaser who is delinquent in the payment of any assessments
19 made by the managing entity against such purchaser for common
20 expenses or for ad valorem real estate taxes pursuant to this
21 chapter or pursuant to s. 192.037. Such denial of use shall
22 also extend to those parties claiming under the delinquent
23 purchaser described in paragraphs (b) and (c). For purposes
24 of this subsection, a purchaser shall be considered delinquent
25 in the payment of a given assessment only upon the expiration
26 of 60 days after the date the assessment is billed to the
27 purchaser or upon the expiration of 60 days after the date the
28 assessment is due, whichever is later. For purposes of this
29 subsection, an affiliated exchange program shall be any
30 exchange program which has a contractual relationship with the
31 creating developer or the managing entity of the timeshare

1 plan, or any exchange program that notifies the managing
2 entity in writing that it has members that are purchasers of
3 the timeshare plan, and the exchange companies operating such
4 affiliated exchange programs shall be affiliated exchange
5 companies. Any denial of use for failure to pay assessments
6 shall be implemented only pursuant to this subsection.

7 (b) A managing entity desiring to deny the use of the
8 accommodations and facilities of the timeshare plan to a
9 delinquent purchaser and to those claiming under the
10 purchaser, including his or her guests, lessees, and third
11 parties receiving use rights in the timeshare period in
12 question through a nonaffiliated exchange program, shall, no
13 less than 30 days after the date the assessment is due in
14 accordance with the timeshare instrument ~~prior to the first~~
15 ~~day of the purchaser's use period~~, notify the purchaser in
16 writing of the total amount of any delinquency which then
17 exists ~~or which will exist as of the first day of such use~~
18 ~~period~~, including any accrued interest and late charges
19 permitted to be imposed under the terms of ~~the public offering~~
20 ~~statement for~~ the timeshare plan or by law and including a per
21 diem amount, if any, to account for further accrual of
22 interest and late charges between the stated effective date of
23 the notice and the first date of use. The notice shall also
24 clearly state that the purchaser will not be permitted to use
25 his or her timeshare period, that the purchaser will not be
26 permitted to make a reservation in a floating reservation
27 system, or that any confirmed reservation may be cancelled, as
28 applicable, until the total amount of such delinquency is
29 satisfied in full or until the purchaser produces satisfactory
30 evidence that the delinquency does not exist. The notice
31 shall be mailed to the purchaser at his or her last known

1 address as recorded in the books and records of the timeshare
2 plan, and the notice shall be effective to bar the use of the
3 purchaser and those claiming use rights under the purchaser,
4 including his or her guests, lessees, and third parties
5 receiving use rights in the timeshare period in question
6 through a nonaffiliated exchange program, until such time as
7 the purchaser is no longer delinquent. The notice shall not be
8 effective to bar the use of third parties receiving use rights
9 in the timeshare period in question through an affiliated
10 exchange program without the additional notice to the
11 affiliated exchange program required by paragraph (c).

12 (c) In addition to giving notice to the delinquent
13 purchaser as required by paragraph (b), a managing entity
14 desiring to deny the use of the accommodations and facilities
15 of the timeshare plan to third parties receiving use rights in
16 the delinquent purchaser's timeshare period through any
17 affiliated exchange program shall notify the affiliated
18 exchange company in writing of the denial of use. The receipt
19 of such written notice by the affiliated exchange company
20 shall be effective to bar the use of all third parties
21 claiming through the affiliated exchange program, and such
22 notice shall be binding upon the affiliated exchange company
23 and all third parties claiming through the affiliated exchange
24 program until such time as the affiliated exchange company
25 receives notice from the managing entity that the purchaser is
26 no longer delinquent. However, any third party claiming
27 through the affiliated exchange program who has received a
28 confirmed assignment of the delinquent purchaser's use rights
29 from the affiliated exchange company prior to the expiration
30 of 48 hours after the receipt by the affiliated exchange
31 company of such written notice from the managing entity shall

1 | be permitted by the managing entity to use the accommodations
2 | and facilities of the timeshare plan to the same extent that
3 | he or she would be allowed to use such accommodations and
4 | facilities if the delinquent purchaser were not delinquent.

5 | (d) Any costs reasonably incurred by the managing
6 | entity in connection with its compliance with the requirements
7 | of paragraphs (b) and (c), together with any costs reasonably
8 | incurred by an affiliated exchange company in connection with
9 | its compliance with the requirements of paragraph (c), may be
10 | assessed by the managing entity against the delinquent
11 | purchaser and collected in the same manner as if such costs
12 | were common expenses of the timeshare plan allocable solely to
13 | the delinquent purchaser. The costs incurred by the affiliated
14 | exchange company shall be collected by the managing entity as
15 | the agent for the affiliated exchange company. In no event
16 | shall the total costs to be assessed against the delinquent
17 | purchaser pursuant to this paragraph at any one time exceed 5
18 | percent of the total amount of delinquency contained in the
19 | notice given to the delinquent purchaser pursuant to paragraph
20 | (b) per timeshare period or \$15 per timeshare period,
21 | whichever is less.

22 | (e) An exchange company may elect to deny exchange
23 | privileges to any member whose use of the accommodations and
24 | facilities of the member's timeshare plan is denied pursuant
25 | to paragraph (b), and no exchange program or exchange company
26 | shall be liable to any of its members or third parties on
27 | account of any such denial of exchange privileges.

28 | (f)1. Provided that the managing entity has properly
29 | and timely given notice to a delinquent purchaser pursuant to
30 | paragraph (b) and to any affiliated exchange program pursuant
31 | to paragraph (c), the managing entity may give further notice

1 to the delinquent purchaser that it may ~~intends to~~ rent the
2 delinquent purchaser's timeshare period, or any use rights
3 appurtenant thereto, and will ~~to~~ apply the proceeds of such
4 rental, net of any rental commissions, cleaning charges,
5 travel agent commissions, or any other commercially reasonable
6 charges reasonably and usually incurred by the managing entity
7 in securing rentals, to the delinquent purchaser's account.
8 Such further notice of intent to rent must be given at least
9 30 days prior to the first day of the purchaser's use period,
10 and must be delivered to the purchaser in the manner required
11 for notices under paragraph (b).

12 2. The notice of intent to rent, which may be included
13 in the notice required by paragraph (b), must state in
14 conspicuous type that:

15 a. The managing entity's efforts to secure a rental
16 will not commence on a date ~~certain, which date may not be~~
17 earlier than 10 days after the date of the notice of intent to
18 rent.

19 b. Unless the purchaser satisfies the delinquency in
20 full, or unless the purchaser produces satisfactory evidence
21 that the delinquency does not exist pursuant to paragraph (b),
22 ~~prior to the date designated in the notice for commencement of~~
23 ~~rental solicitation by the managing entity,~~ the purchaser will
24 be bound by the terms of any rental contract entered into by
25 the managing entity with respect to the purchaser's timeshare
26 period or appurtenant use rights.

27 c. The purchaser will remain liable for any difference
28 between the amount of the delinquency and the net amount
29 produced by the rental contract and applied against the
30 delinquency pursuant to this paragraph, and the managing
31 entity shall not be required to provide any further notice to

1 the purchaser regarding any residual delinquency pursuant to
2 this paragraph.

3 3. In securing a rental pursuant to this paragraph,
4 the managing entity shall not be required to obtain the
5 highest nightly rental rate available, nor any particular
6 rental rate, and the managing entity shall not be required to
7 rent the entire timeshare period; however, the managing entity
8 must use reasonable efforts to secure a rental that is
9 commensurate with other rentals of similar timeshare periods
10 or use rights generally secured at that time.

11 (g) A managing entity shall have breached its
12 fiduciary duty described in subsection (2) in the event it
13 enforces the denial of use pursuant to paragraph (b) against
14 any one purchaser or group of purchasers without similarly
15 enforcing it against all purchasers, including all developers
16 and owners of the underlying fee; however, a managing entity
17 shall not be required to solicit rentals pursuant to paragraph
18 (f) for every delinquent purchaser. A managing entity shall
19 also have breached its fiduciary duty in the event an error in
20 the books and records of the timeshare plan results in a
21 denial of use pursuant to this subsection of any purchaser who
22 is not, in fact, delinquent. In addition to any remedies
23 otherwise available to purchasers of the timeshare plan
24 arising from such breaches of fiduciary duty, such breach
25 shall also constitute a violation of this chapter. In
26 addition, any purchaser receiving a notice of delinquency
27 pursuant to paragraph (b), or any third party claiming under
28 such purchaser pursuant to paragraph (b), may immediately
29 bring an action for injunctive or declaratory relief against
30 the managing entity seeking to have the notice invalidated on
31 the grounds that the purchaser is not, in fact, delinquent,

1 that the managing entity failed to follow the procedures
2 prescribed by this section, or on any other available grounds.
3 The prevailing party in any such action shall be entitled to
4 recover his or her reasonable attorney's fees from the losing
5 party.

6 (7) Unless the articles of incorporation, the bylaws,
7 or the provisions of this chapter provide for a higher quorum
8 requirement, the percentage of voting interests required to
9 make decisions and to constitute a quorum at a meeting of the
10 members of a timeshare condominium or owners' association
11 shall be 15 percent of the voting interests. If a quorum is
12 not present at any meeting of the owners'association at which
13 members of the board of administration are to be elected, the
14 meeting may be adjourned and reconvened within 90 days for the
15 sole purpose of electing members of the board of
16 administration, and the quorum for such adjourned meeting
17 shall be 15 percent of the voting interests. This provision
18 shall apply notwithstanding any provision of chapter 718 or
19 chapter 719 to the contrary.

20 (8) Notwithstanding anything to the contrary contained
21 in s. 718.110, s. 718.113, s. 718.114, or s. 719.1055, the
22 board of administration of the owners' association shall have
23 the power to make material alterations or substantial
24 additions to the accommodations or facilities of the timeshare
25 plan, without a vote of the members of the owners'
26 association. Unless otherwise provided in the timeshare
27 instrument as originally recorded, no such amendment may
28 change the configuration or size of any accommodation in any
29 material fashion, or change the proportion or percentage by
30 which the owner of a timeshare interest shares the common
31 expenses, unless the record owner of the affected timeshare

1 interests and all record owners of liens on the affected
2 timeshare interests join in the execution of the amendment.

3 (9)~~(8)~~ Any failure of the managing entity to
4 faithfully discharge the fiduciary duty to purchasers imposed
5 by this section or to otherwise comply with the provisions of
6 this section shall be a violation of this chapter and of part
7 VIII of chapter 468.

8 Section 21. Subsection (2) of section 721.14, Florida
9 Statutes, is amended to read:

10 721.14 Discharge of managing entity.--

11 (2) In the event the manager or management firm is
12 discharged, the board of administration of the owners'
13 association shall remain responsible for operating and
14 maintaining the timeshare plan pursuant to the timeshare
15 instrument and s. 721.13(1). If the board of administration
16 fails to do so, any timeshare owner may apply to the circuit
17 court within the jurisdiction of which the accommodations and
18 facilities lie for the appointment of a receiver to manage the
19 affairs of the owners'association and the timeshare plan. At
20 least 30 days before applying to the circuit court, the
21 timeshare owner shall mail to the owners'association and post
22 in a conspicuous place on the timeshare property a notice
23 describing the intended action. If a receiver is appointed,
24 the owners'association shall be responsible as a common
25 expense of the timeshare plan, for payment of the salary and
26 expenses of the receiver, relating to the discharge of her or
27 his duties and obligations as receiver, together with the
28 receiver's court costs, and reasonable attorney's fees. The
29 receiver shall have all powers and duties of a duly
30 constituted board of administration and shall serve until
31 discharged by the circuit court.

1 Section 22. Section 721.15, Florida Statutes, is
2 amended to read:

3 721.15 Assessments for common expenses.--

4 (1)(a) Until a managing entity is created or provided
5 pursuant to s. 721.13, the developer shall pay all common
6 expenses. The timeshare instrument shall provide for the
7 allocation of common expenses among all timeshare units or
8 timeshare interests ~~periods~~ on a reasonable basis, including
9 timeshare interests ~~periods~~ owned or not yet sold by the
10 developer. The timeshare instrument may provide that the
11 common expenses allocated may differ between those timeshare
12 units that are part of the timeshare plan and those units that
13 are not part of the timeshare plan; however, the different
14 proportion of expenses must be based upon reasonable
15 differences in the benefit provided to each. The timeshare
16 instrument shall allocate common expenses to timeshare
17 interests ~~periods~~ owned or not yet sold by the developer on
18 the same basis that common expenses are allocated to similar
19 or equivalent timeshare interests ~~periods~~ sold to purchasers.

20 (b) Notwithstanding any provision of chapter 718 or
21 chapter 719 to the contrary, the allocation of total common
22 expenses for a condominium or a cooperative timeshare plan may
23 vary on any reasonable basis, including, but not limited to,
24 timeshare unit size, timeshare unit type, timeshare unit
25 location, specific identification, or a combination of these
26 factors, ~~if the percentage interest in the common elements~~
27 ~~attributable to each timeshare condominium parcel or timeshare~~
28 ~~cooperative parcel equals the share of the total common~~
29 ~~expenses allocable to that parcel.~~ The share of a timeshare
30 interest in the common expenses allocable to the timeshare
31 condominium parcel or the timeshare cooperative parcel

1 containing such interest may vary on any reasonable basis,
2 provided that the allocation of common expenses to timeshare
3 interests owned or not yet sold by the developer is made on
4 the same basis that common expenses are allocated to similar
5 or equivalent timeshare interests sold to purchasers ~~if the~~
6 ~~timeshare interest's share of its parcel's common expense~~
7 ~~allocation is equal to that timeshare interest's share of the~~
8 ~~percentage interest in common elements attributable to such~~
9 ~~parcel.~~

10 (2)(a) After the creation or provision of a managing
11 entity, the managing entity shall make an annual assessment
12 against each purchaser for the payment of common expenses,
13 based on the projected annual budget, in the amount specified
14 by the contract between the seller and the purchaser or in the
15 timeshare instrument.

16 (b) No owner of a timeshare interests ~~period~~ may be
17 excused from the payment of her or his share of the common
18 expenses unless all owners are likewise excused from payment,
19 except that the developer may be excused from the payment of
20 her or his share of the common expenses which would have been
21 assessed against her or his timeshare interests ~~periods~~ during
22 a stated period of time during which the developer has
23 guaranteed to each purchaser in the timeshare instrument, or
24 by agreement between the developer and a majority of the
25 owners of timeshare interests ~~periods~~ other than the
26 developer, that the assessment for common expenses imposed
27 upon the owners would not increase over a stated dollar
28 amount. In the event of such a guarantee, the developer is
29 obligated to pay all common expenses incurred during the
30 guarantee period in excess of the total revenues of the
31 timeshare plan. Notwithstanding this limitation, if a

1 developer-controlled owners' association has maintained all
2 insurance coverages required by s. 721.165, the common
3 expenses incurred during the guarantee period resulting from a
4 natural disaster or an act of God, which are not covered by
5 insurance proceeds from the insurance maintained by the
6 owners' association, may be assessed against all purchasers
7 owning timeshare interests on the date of such natural
8 disaster or act of God, and their successors and assigns,
9 including the developer with respect to timeshare interests
10 owned by the developer. In the event of such an assessment,
11 all timeshare interests shall be assessed in accordance with
12 their ownership interest in the common elements as required by
13 paragraph (1)(a).

14 (c) For the purpose of calculating the obligation of a
15 developer under a guarantee pursuant to paragraph (b),
16 depreciation expenses related to real property shall be
17 excluded from common expenses incurred during the guarantee
18 period.

19 (d) A guarantee pursuant to paragraph (b) may provide
20 that the developer may extend or increase the guarantee for
21 one or more additional stated periods.

22 (3) Delinquent assessments may bear interest at the
23 highest rate permitted by law or at some lesser rate
24 established by the managing entity. In addition to such
25 interest, the managing entity may charge an administrative
26 late fee in an amount not to exceed \$25 for each delinquent
27 assessment. Provided that a purchaser has been advised in
28 writing at least 60 days prior to turning the matter over to a
29 collection agency that the purchaser may be liable for the
30 fees of the collection agency and a lien may result therefrom,
31 any costs of collection, including reasonable collection

1 agency fees and reasonable attorney's fees, incurred in the
2 collection of a delinquent assessment shall be paid by the
3 purchaser and shall be secured by a lien in favor of the
4 managing entity upon the timeshare interest period with
5 respect to which the delinquent assessment has been incurred.

6 (4) Unless otherwise specified in the contract between
7 the seller and the purchaser, any common expenses benefiting
8 fewer than all purchasers shall be assessed only against those
9 purchasers benefited.

10 (5) Any assessments for common expenses which have not
11 been spent for common expenses during the year for which such
12 assessments were made shall be shown as an item on the annual
13 budget.

14 (6) Notwithstanding any contrary requirements of s.
15 718.112(2)(g) or s. 719.106(1)(g), for timeshare plans subject
16 to this chapter, assessments against purchasers need not be
17 made more frequently than annually.

18 (7) A purchaser, regardless of how her or his
19 timeshare estate or timeshare license has been acquired,
20 including a purchaser at a judicial sale, is personally liable
21 for all assessments for common expenses which come due while
22 the purchaser is the owner of such interest. A successor in
23 interest is jointly and severally liable with her or his
24 predecessor in interest for all unpaid assessments against
25 such predecessor up to the time of transfer of the timeshare
26 interest to such successor without prejudice to any right a
27 successor in interest may have to recover from her or his
28 predecessor in interest any amounts assessed against such
29 predecessor and paid by such successor. The predecessor in
30 interest shall provide the managing entity with a copy of the
31 recorded deed of conveyance if the interest is a timeshare

1 estate or a copy of the instrument of transfer if the interest
2 is a timeshare license, containing the name and mailing
3 address of the successor in interest within 15 days after the
4 date of transfer. The managing entity shall not be liable to
5 any person for any inaccuracy in the books and records of the
6 timeshare plan arising from the failure of the predecessor in
7 interest to timely and correctly notify the managing entity of
8 the name and mailing address of the successor in interest.
9 ~~Nothing in this subsection shall be construed to impair the~~
10 ~~operation of s. 718.116 for timeshare condominiums.~~

11 (8) Notwithstanding the provisions of subsection (7),
12 a first mortgagee or its successor or assignee who acquires
13 title to a timeshare interest as a result of the foreclosure
14 of the mortgage or by deed in lieu of foreclosure of the
15 mortgage shall be exempt from liability for all unpaid
16 assessments attributable to the timeshare interest or
17 chargeable to the previous owner which came due prior to
18 acquisition of title by the first mortgage.

19 (9)(8)(a) Anything contained in chapter 718 or chapter
20 719 to the contrary notwithstanding, the managing entity of a
21 timeshare plan shall not commingle operating funds with
22 reserve funds; however, the managing entity may maintain
23 operating and reserve funds within a single account for a
24 period not to exceed 30 days after the date on which the
25 managing entity received payment of such funds.

26 (b) Anything contained in chapter 718 or chapter 719
27 to the contrary notwithstanding, a managing entity which
28 serves as managing entity of more than one timeshare plan, or
29 of more than one component site pursuant to part II, shall not
30 commingle the common expense funds of any one timeshare plan
31 or component site with the common expense funds of any other

1 timeshare plan or component site. However, the managing
2 entity may maintain common expense funds of multiple timeshare
3 plans or multiple component sites within a single account for
4 a period not to exceed 30 days after the date on which the
5 managing entity received payment of such funds.

6 Section 23. Section 721.16, Florida Statutes, is
7 amended to read:

8 721.16 Liens for overdue assessments; liens for labor
9 performed on, or materials furnished to, a timeshare unit.--

10 (1) The managing entity has a lien on a timeshare
11 interest period for any assessment levied against that
12 timeshare interest period from the date such assessment
13 becomes due.

14 (2) The managing entity may bring an action in its
15 name to foreclose a lien for assessments in the manner a
16 mortgage of real property is foreclosed and may also bring an
17 action to recover a money judgment for the unpaid assessments
18 without waiving any claim of lien. ~~However, in the case of a~~
19 ~~timeshare plan in which no interest in real property is~~
20 ~~conveyed, the managing entity may bring an action under the~~
21 ~~Uniform Commercial Code.~~

22 (3) The lien is effective from the date of recording a
23 claim of lien in the public records of the county or counties
24 in which the accommodations and ~~or~~ facilities constituting the
25 timeshare plan are located. The claim of lien shall state the
26 name of the timeshare plan and identify the timeshare interest
27 period for which the lien is effective, state the name of the
28 purchaser, state the assessment amount due, and state the due
29 dates. Notwithstanding any provision of s. 718.116(5)(a) or s.
30 719.108(4) to the contrary, the lien is effective until
31 satisfied or until 5 years have expired after the date the

1 claim of lien is recorded unless, within that time, an action
2 to enforce the lien is commenced pursuant to subsection (2).
3 The claim of lien may include only assessments which are due
4 when the claim is recorded. A claim of lien shall be signed
5 and acknowledged by an officer or agent of the managing
6 entity. Upon full payment, the person making the payment is
7 entitled to receive a satisfaction of the lien.

8 (4) A judgment in any action or suit brought under
9 this section shall include costs and reasonable attorney's
10 fees for the prevailing party.

11 (5) Labor performed on a timeshare unit, or materials
12 furnished to a timeshare unit, shall not be the basis for the
13 filing of a lien pursuant to part I of chapter 713, the
14 Construction Lien Law, against the timeshare unit of any
15 timeshare-period owner not expressly consenting to or
16 requesting the labor or materials.

17 (6) The managing entity has a lien on a timeshare
18 interest of any owner for the cost of any maintenance,
19 repairs, or replacement resulting from an act of such owner or
20 owner's guest that results in damage to the timeshare property
21 or facilities made available to the purchasers.

22 Section 24. Section 721.17, Florida Statutes, is
23 amended to read:

24 721.17 Transfer of interest.--Except in the case of a
25 timeshare plan subject to the provisions of chapter 718 or
26 chapter 719, no developer or owner of the underlying fee shall
27 sell, lease, assign, mortgage, or otherwise transfer his or
28 her interest in the accommodations and ~~or~~ facilities of the
29 timeshare plan except by an instrument evidencing the transfer
30 recorded in the public records of the county in which such ~~the~~
31 accommodations and ~~or~~ facilities are located. The instrument

1 shall be executed by both the transferor and transferee and
2 shall state:

3 (1) That its provisions are intended to protect the
4 rights of all purchasers of the plan.

5 (2) That its terms may be enforced by any prior or
6 subsequent timeshare purchaser so long as that purchaser is
7 not in default of his or her obligations.

8 (3) That the transferee will fully honor the rights of
9 the purchasers to occupy and use the accommodations and
10 facilities as provided in their original contracts and the
11 timeshare instruments.

12 ~~(4) That the transferee will fully honor all rights of~~
13 ~~timeshare purchasers to cancel their contracts and receive~~
14 ~~appropriate refunds.~~

15 (4)~~(5)~~ That the obligations of the transferee under
16 such instrument will continue to exist despite any
17 cancellation or rejection of the contracts between the
18 developer and purchaser arising out of bankruptcy proceedings.

19
20 Should any transfer of the interest of the developer or owner
21 of the underlying fee occur in a manner which is not in
22 compliance with this section, the terms set forth in this
23 section shall be presumed to be a part of the transfer and
24 shall be deemed to be included in the instrument of transfer.
25 Notice shall be mailed to each purchaser of record within 30
26 days of the transfer unless such transfer does not affect the
27 purchaser's rights in or use of the timeshare plan. Persons
28 who hold mortgages on the property constituting a timeshare
29 plan before the filed public offering statement of such plan
30 is approved by the division shall not be considered
31 transferees for the purposes of this section.

1 Section 25. Section 721.18, Florida Statutes, is
2 amended to read:

3 721.18 Exchange programs; filing of information and
4 other materials; filing fees; unlawful acts in connection with
5 an exchange program.--

6 (1) If a purchaser is offered the opportunity to
7 subscribe to an exchange program, the seller shall deliver to
8 the purchaser, together with the purchaser public offering
9 statement, and prior to the offering or execution of any
10 contract between the purchaser and the company offering the
11 exchange program, written information regarding such exchange
12 program; or, if the exchange company is dealing directly with
13 the purchaser, the exchange company shall deliver to the
14 purchaser, prior to the initial offering or execution of any
15 contract between the purchaser and the company offering the
16 exchange program, written information regarding such exchange
17 program. In either case, the purchaser shall certify in
18 writing to the receipt of such information. Such information
19 shall include, but is not limited to, the following
20 information, the form and substance of which shall first be
21 approved by the division in accordance with subsection (2):

22 (a) The name and address of the exchange company.

23 (b) The names of all officers, directors, and
24 shareholders of the exchange company.

25 (c) Whether the exchange company or any of its
26 officers or directors has any legal or beneficial interest in
27 any developer, seller, or managing entity for any timeshare
28 plan participating in the exchange program and, if so, the
29 name and location of the timeshare plan and the nature of the
30 interest.

31

1 (d) Unless otherwise stated, a statement that the
2 purchaser's contract with the exchange company is a contract
3 separate and distinct from the purchaser's contract with the
4 seller of the timeshare plan.

5 (e) Whether the purchaser's participation in the
6 exchange program is dependent upon the continued affiliation
7 of the timeshare plan with the exchange program.

8 (f) A statement that the purchaser's participation in
9 the exchange program is voluntary.

10 (g) A complete and accurate description of the terms
11 and conditions of the purchaser's contractual relationship
12 with the exchange program and the procedure by which changes
13 thereto may be made.

14 (h) A complete and accurate description of the
15 procedure to qualify for and effectuate exchanges.

16 (i) A complete and accurate description of all
17 limitations, restrictions, or priorities employed in the
18 operation of the exchange program, including, but not limited
19 to, limitations on exchanges based on seasonality, timeshare
20 unit size, or levels of occupancy, expressed in boldfaced
21 type, and, in the event that such limitations, restrictions,
22 or priorities are not uniformly applied by the exchange
23 program, a clear description of the manner in which they are
24 applied.

25 (j) Whether exchanges are arranged on a
26 space-available basis and whether any guarantees of
27 fulfillment of specific requests for exchanges are made by the
28 exchange program.

29 (k) Whether and under what circumstances a purchaser,
30 in dealing with the exchange program, may lose the use and
31 occupancy of her or his timeshare period in any properly

1 applied for exchange without her or his being provided with
2 substitute accommodations by the exchange program.

3 (l) The fees or range of fees for participation by
4 purchasers in the exchange program, a statement whether any
5 such fees may be altered by the exchange company, and the
6 circumstances under which alterations may be made.

7 (m) The name and address of the site of each
8 accommodation or facility included in the timeshare plans
9 participating in the exchange program.

10 (n) The number of the timeshare units in each
11 timeshare plan which are available for occupancy and which
12 qualify for participation in the exchange program, expressed
13 within the following numerical groupings: 1-5; 6-10; 11-20;
14 21-50; and 51 and over.

15 (o) The number of currently enrolled purchasers for
16 each timeshare plan participating in the exchange program,
17 expressed within the following numerical groupings: 1-100;
18 101-249; 250-499; 500-999; and 1,000 and over; and a statement
19 of the criteria used to determine those purchasers who are
20 currently enrolled with the exchange program.

21 (p) The disposition made by the exchange company of
22 timeshare periods deposited with the exchange program by
23 purchasers enrolled in the exchange program and not used by
24 the exchange company in effecting exchanges.

25 (q) The following information, which shall be
26 independently audited by a certified public accountant or
27 accounting firm in accordance with the standards of the
28 Accounting Standards Board of the American Institute of
29 Certified Public Accountants and reported annually beginning
30 no later than July 1, 1982:

31

1 1. The number of purchasers currently enrolled in the
2 exchange program.

3 2. The number of accommodations and facilities that
4 have current affiliation agreements with the exchange program.

5 3. The percentage of confirmed exchanges, which is the
6 number of exchanges confirmed by the exchange program divided
7 by the number of exchanges properly applied for, together with
8 a complete and accurate statement of the criteria used to
9 determine whether an exchange request was properly applied
10 for.

11 4. The number of timeshare periods for which the
12 exchange program has an outstanding obligation to provide an
13 exchange to a purchaser who relinquished a timeshare period
14 during the year in exchange for a timeshare period in any
15 future year.

16 5. The number of exchanges confirmed by the exchange
17 program during the year.

18 (r) A statement in boldfaced type to the effect that
19 the percentage described in subparagraph (q)3. is a summary of
20 the exchange requests entered with the exchange program in the
21 period reported and that the percentage does not indicate the
22 probabilities of a purchaser's being confirmed to any specific
23 choice or range of choices.

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 of each year. However, an
28 exchange company shall make its initial filing at least 20
29 days prior to offering an exchange program to any purchaser in
30 this state. Each filing shall be accompanied by an annual
31 filing fee of \$500. Within 20 days of receipt of such filing,

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

17 (3) No developer shall have any liability with respect
18 to any violation of this chapter arising out of the
19 publication by the developer of information provided to it by
20 an exchange company pursuant to this section. No exchange
21 company shall have any liability with respect to any violation
22 of this chapter arising out of the use by a developer of
23 information relating to an exchange program other than that
24 provided to the developer by the exchange company.

25 ~~(4) Audio, written, or visual publications or~~
26 ~~materials relating to an exchange company or an exchange~~
27 ~~program shall be filed with the division within 3 days of~~
28 ~~their use.~~

29 (4)(5) The failure of an exchange company to observe
30 the requirements of this section, or the use of any unfair or
31

1 deceptive act or practice in connection with the operation of
2 an exchange program, is a violation of this chapter.

3 Section 26. Section 721.19, Florida Statutes, is
4 amended to read:

5 721.19 Provisions requiring purchase or lease of
6 timeshare property by owners' association or purchasers unit
7 ~~owners~~; validity.--In any timeshare plan in which timeshare
8 estates are sold, no grant or reservation made by a
9 declaration, lease, or other document, nor any contract made
10 by the developer, managing entity, or owners' association,
11 which requires the owners' association or purchasers unit
12 ~~owners~~ to purchase or lease any portion of the timeshare
13 property shall be valid unless approved by a majority of the
14 purchasers other than the developer, after more than 50
15 percent of the timeshare periods have been sold.

16 Section 27. Section 721.20, Florida Statutes, is
17 amended to read:

18 721.20 Licensing requirements; suspension or
19 revocation of license; exceptions to applicability; collection
20 of advance fees for listings unlawful.--

21 (1) Any seller of a timeshare plan must be a licensed
22 real estate salesperson, broker, or broker-salesperson as
23 defined in s. 475.01, except as provided in s. 475.011.

24 (2) Solicitors licensed under the provisions of
25 ~~paragraph (2)(a) who engage only in the solicitation of~~
26 ~~prospective purchasers, and purchasers engaging in~~
27 ~~solicitation activities as described in paragraph (2)(e), and~~
28 any purchaser who refers no more than 20 people to a developer
29 per year or who otherwise provides testimonials on behalf of a
30 developer are exempt from the provisions of chapter 475.

31

1 ~~(2)(a) Pursuant to rules adopted by the division, each~~
2 ~~off-premises solicitor or other person who engages in the~~
3 ~~solicitation of prospective purchasers of units in a timeshare~~
4 ~~plan must purchase a timeshare occupational license for a fee~~
5 ~~of \$100. The license shall be issued to the solicitor for a~~
6 ~~2-year period and shall expire on the second anniversary of~~
7 ~~the date of issuance. Sellers of a timeshare plan who are~~
8 ~~licensed and in good standing under chapter 475 shall be~~
9 ~~exempt from licensure under this subsection upon filing proof~~
10 ~~of such licensure and good standing with the division prior to~~
11 ~~engaging in any solicitation activity. However, the division~~
12 ~~may deny, suspend, or revoke the exemption of such seller when~~
13 ~~the license issued under chapter 475 has been suspended or~~
14 ~~revoked.~~

15 ~~(b) It is unlawful for any person to solicit~~
16 ~~prospective purchasers of a timeshare plan without first~~
17 ~~having secured a timeshare occupational license and having~~
18 ~~paid the occupational license fee; however, an applicant who~~
19 ~~has completed and filed an application for a timeshare~~
20 ~~occupational license and who has paid the required~~
21 ~~occupational license fee may solicit prospective purchasers of~~
22 ~~a timeshare plan pursuant to this section pending approval or~~
23 ~~denial of his or her application by the division.~~

24 ~~(c) Prior to issuing an occupational license to an~~
25 ~~applicant, the division shall receive an application, on forms~~
26 ~~designed by the division, containing such pertinent background~~
27 ~~information as is necessary to properly identify the~~
28 ~~applicant; however, the fingerprinting of applicants is not~~
29 ~~required.~~

30 ~~(d) The division may deny, suspend, or revoke any~~
31 ~~occupational license when the applicant or holder thereof~~

1 ~~(3) A solicitor who~~ has violated the provisions of
2 chapter 468, chapter 718, chapter 719, this chapter, or the
3 rules of the division governing timesharing, ~~or when the~~
4 ~~holder of a license issued pursuant to chapter 475 has had his~~
5 ~~or her license suspended or revoked. If any occupational~~
6 ~~license expires by division rule while administrative charges~~
7 ~~are pending against the license, the proceedings against the~~
8 ~~license shall continue to conclusion as if the license were~~
9 ~~still in effect. In addition to those remedies available~~
10 ~~against the developer, the division may impose against an~~
11 ~~applicant or licensed solicitor a civil fine of up to \$500 in~~
12 ~~addition to, or in lieu of, a suspension or revocation~~
13 ~~provided for in this section for violation of the rules of the~~
14 ~~division.~~

15 ~~(e) Any purchaser who refers no more than 20 people to~~
16 ~~a developer per year or who otherwise provides testimonials on~~
17 ~~behalf of a developer shall not shall be subject to licensure~~
18 ~~under the provisions of paragraph (a).s. 721.26. Any~~
19 ~~developer or other person who supervises, directs, or engages~~
20 ~~the services of a solicitor shall be liable for any violation~~
21 ~~committed by such solicitor.~~

22 ~~(f) The division may require up to 2 hours of~~
23 ~~continuing education annually as a condition of renewal of an~~
24 ~~occupational license.~~

25 ~~(4)(3)~~ This section does not apply to those
26 individuals who offer for sale only timeshare interests
27 ~~periods~~ in timeshare property located outside this state and
28 who do not engage in any sales activity within this state or
29 to timeshare plans which are registered with the Securities
30 and Exchange Commission. For the purposes of this section,
31

1 both timeshare licenses and timeshare estates are considered
2 to be interests in real property.

3 (5)~~(4)~~ Notwithstanding the provisions of s. 475.452,
4 it is unlawful for any broker, salesperson, or
5 broker-salesperson to collect any advance fee for the listing
6 of any timeshare estate or timeshare license.

7 Section 28. Section 721.21, Florida Statutes, is
8 amended to read:

9 721.21 Purchasers' remedies.--An action for damages or
10 for injunctive or declaratory relief for a violation of this
11 chapter may be brought by any purchaser or owners'association
12 ~~of purchasers~~ against the developer, a seller, an escrow
13 agent, or the managing entity. The prevailing party in any
14 such action, or in any action in which the purchaser claims a
15 right of voidability based upon either a closing before the
16 expiration of the cancellation period or an amendment which
17 materially alters or modifies the offering in a manner adverse
18 to the purchaser, may be entitled to reasonable attorney's
19 fees. Relief under this section does not exclude other
20 remedies provided by law.

21 Section 29. Subsections (1) and (2) of section 721.24,
22 Florida Statutes, are amended to read:

23 721.24 Firesafety.--

24 (1) Any:

25 (a) Facility or accommodation of a timeshare plan, as
26 defined in this chapter, ~~and~~ chapter 718, or chapter 719,
27 which is of three stories or more and for which the
28 construction contract has been let after September 30, 1983,
29 with interior corridors which do not have direct access from
30 the timeshare unit to exterior means of egress, or

31

1 (b) Building over 75 feet in height that has direct
2 access from the timeshare unit to exterior means of egress and
3 for which the construction contract has been let after
4 September 30, 1983,
5
6 shall be equipped with an automatic sprinkler system installed
7 in compliance with the provisions prescribed in the National
8 Fire Protection Association publication NFPA No. 13 (1985),
9 "Standards for the Installation of Sprinkler Systems." The
10 sprinkler installation may be omitted in closets which are not
11 over 24 square feet in area and in bathrooms which are not
12 over 55 square feet in area, which closets and bathrooms are
13 located in timeshare units. Each timeshare unit shall be
14 equipped with an approved listed single-station smoke detector
15 meeting the minimum requirements of NFPA-74 (1984), "Standards
16 for the Installation, Maintenance and Use of Household Fire
17 Warning Equipment," powered from the building electrical
18 service, notwithstanding the number of stories in the
19 structure, if the contract for construction is let after
20 September 30, 1983. Single-station smoke detection is not
21 required when a timeshare unit's smoke detectors are connected
22 to a central alarm system which also alarms locally.

23 (2) Any timeshare unit of a timeshare plan, as defined
24 in this chapter, ~~and~~ chapter 718, or chapter 719 which is of
25 three stories or more and for which the construction contract
26 was let before October 1, 1983, shall be equipped with:

27 (a) A system which complies with subsection (1); or

28 (b) An approved sprinkler system for all interior
29 corridors, public areas, storage rooms, closets, kitchen
30 areas, and laundry rooms, less individual timeshare units, if
31 the following conditions are met:

1 1. There is a minimum 1-hour separation between each
2 timeshare unit and between each timeshare unit and a corridor.

3 2. The building is constructed of noncombustible
4 materials.

5 3. The egress conditions meet the requirements of s.
6 5-3 of the Life Safety Code, NFPA 101 (1985).

7 4. The building has a complete automatic fire
8 detection system which meets the requirements of NFPA-72A
9 (1987) and NFPA-72E (1984), including smoke detectors in each
10 timeshare unit individually annunciating to a panel at a
11 supervised location.

12 Section 30. Paragraphs (a), (d), and (e) of subsection
13 (5) of section 721.26, Florida Statutes, are amended to read:

14 721.26 Regulation by division.--The division has the
15 power to enforce and ensure compliance with the provisions of
16 this chapter, except for parts III and IV, using the powers
17 provided in this chapter, as well as the powers prescribed in
18 chapters 498, 718, and 719. In performing its duties, the
19 division shall have the following powers and duties:

20 (5) Notwithstanding any remedies available to
21 purchasers, if the division has reasonable cause to believe
22 that a violation of this chapter, or of any division rule or
23 order promulgated or issued pursuant to this chapter, has
24 occurred, the division may institute enforcement proceedings
25 in its own name against any regulated party, as such term is
26 defined in this subsection:

27 (a)1. "Regulated party," for purposes of this section,
28 means any developer, exchange company, seller, managing
29 entity, owners' association, owners' association director,
30 owners' association officer, manager, management firm, escrow
31 agent, trustee, any respective assignees or agents, or any

1 other person having duties or obligations pursuant to this
2 chapter.

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

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

22 2. The division shall have broad authority and
23 discretion to petition the circuit court to appoint a receiver
24 with respect to any managing entity which fails to perform its
25 duties and obligations under this chapter with respect to the
26 operation of a timeshare plan. The circumstances giving rise
27 to an appropriate petition for receivership under this
28 subparagraph include, but are not limited to:

29 a. Damage to or destruction of any of the
30 accommodations or facilities of a timeshare plan, where the
31 managing entity has failed to repair or reconstruct same.

1 b. A breach of fiduciary duty by the managing entity,
2 including, but not limited to, undisclosed self-dealing or
3 failure to timely assess, collect, or disburse the common
4 expenses of the timeshare plan.

5 c. Failure of the managing entity to operate the
6 timeshare plan in accordance with the timeshare instrument and
7 this chapter.

8
9 If, under the circumstances, it appears that the events giving
10 rise to the petition for receivership cannot be reasonably and
11 timely corrected in a cost-effective manner consistent with
12 the timeshare instrument, the receiver may petition the
13 circuit court to implement such amendments or revisions to the
14 timeshare instrument as may be necessary to enable the
15 managing entity to resume effective operation of the timeshare
16 plan, or to enter an order terminating the timeshare plan, or
17 to enter such further orders regarding the disposition of the
18 timeshare property as the court deems appropriate including
19 the disposition and sale of the timeshare property held by the
20 association or the purchasers. In the event of a receiver's
21 sale, all rights, title, and interest held by the association
22 or any purchaser shall be extinguished and title shall vest in
23 the buyer. This provision applies to timeshare estates and
24 timeshare licenses. All reasonable costs and fees of the
25 receiver relating to the receivership shall become common
26 expenses of the timeshare plan upon order of the court.

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

30 (e)1. The division may impose a penalty against any
31 regulated party for a violation of this chapter or any rule

1 adopted thereunder. A penalty may be imposed on the basis of
2 each day of continuing violation, but in no event may the
3 penalty for any offense exceed \$10,000. All accounts
4 collected shall be deposited with the Treasurer to the credit
5 of the Division of Florida Land Sales, Condominiums, and
6 Mobile Homes Trust Fund.

7 2.a. If a regulated party fails to pay a penalty, the
8 division shall thereupon issue an order directing that such
9 regulated party cease and desist from further operation until
10 such time as the penalty is paid; or the division may pursue
11 enforcement of the penalty in a court of competent
12 jurisdiction.

13 b. If an owners'association or managing entity fails
14 to pay a civil penalty, the division may pursue enforcement in
15 a court of competent jurisdiction.

16 Section 31. Section 721.27, Florida Statutes, is
17 amended to read:

18 721.27 Annual fee for each timeshare unit period in
19 plan.--On January 1 of each year, each managing entity of a
20 timeshare plan located in this state shall collect as a common
21 expense and pay to the division an annual fee equal to the
22 aggregate filing fee calculated pursuant to s. 721.07(4)(a) or
23 s. 721.58, whichever is applicable, based upon the total
24 number of timeshare units or timeshare interests located in
25 this state ~~periods of 7-day annual use availability~~ that exist
26 within the timeshare plan at that time. ~~Each developer of a~~
27 ~~phased timeshare plan shall remit to the managing entity that~~
28 ~~portion of the annual fee that relates to those timeshare~~
29 ~~units filed for sale by the developer but not yet declared as~~
30 ~~part of the condominium or cooperative regime or otherwise~~
31 ~~committed to the timeshare plan before January 1. If any~~

1 portion of the annual fee is not paid by March 1, the managing
2 entity may be assessed a penalty pursuant to s. 721.26 ~~shall~~
3 ~~be assessed a late fee of 10 percent of the amount due or~~
4 ~~\$250, whichever is greater.~~

5 Section 32. Section 721.29, Florida Statutes, is
6 created to read:

7 721.29 Recording.--If any timeshare plan
8 accommodations or facilities are located in any jurisdiction
9 that does not have recording laws or will not record any
10 document or instrument required to be recorded pursuant to
11 this chapter, the director shall have the discretion to accept
12 an alternative method of protecting purchasers' rights that
13 will be effective under the laws of the other jurisdiction.

14 Section 33. Section 721.51, Florida Statutes, is
15 amended to read:

16 721.51 Legislative purpose; scope.--

17 (1) The purpose of this part is to advance the
18 purposes of this chapter as set forth in s. 721.02 with
19 respect to multisite vacation and timeshare plans, also known
20 as vacation clubs.

21 (2) All multisite timeshare plans shall be governed by
22 both part I and this part except where otherwise provided in
23 this part. In the event of a conflict between the provisions
24 of part I and this part, the provisions of this part shall
25 prevail.

26 ~~(3)(a) A multisite timeshare plan which includes~~
27 ~~accommodations located in this state, but which is offered~~
28 ~~exclusively outside of the jurisdictional limits of the United~~
29 ~~States shall be exempt from all other requirements of this~~
30 ~~part if it complies with paragraph (b).~~

31

1 ~~(b) In order to claim exemption from regulation under~~
2 ~~this part pursuant to paragraph (a), the person claiming~~
3 ~~exemption shall register the following minimum information~~
4 ~~with the division pertaining to the multisite timeshare plan:~~

- 5 ~~1. The name and address of the multisite timeshare~~
6 ~~plan;~~
7 ~~2. The name and address of the developer or seller;~~
8 ~~3. The location and a brief description of the~~
9 ~~accommodations and facilities of the multisite timeshare plan;~~
10 ~~4. The number of timeshare periods to be offered;~~
11 ~~5. The term of the multisite timeshare plan; and~~
12 ~~6. A copy of the form purchase contract to be utilized~~
13 ~~in offering the multisite timeshare plan, which contract must~~
14 ~~contain the disclosure required by paragraph (c).~~

15
16 ~~The division is authorized to adopt rules requiring additional~~
17 ~~information to be furnished to the division or in the purchase~~
18 ~~contract in connection with the registration for exemption.~~
19 ~~The initial exemption registration fee shall be \$100; however,~~
20 ~~the division may provide by rule for an exemption registration~~
21 ~~fee of up to \$500. No person shall be entitled to claim~~
22 ~~exemption pursuant to paragraph (a) until that person has~~
23 ~~fully registered pursuant to this paragraph.~~

24 ~~(c) Each purchase contract utilized in offering a~~
25 ~~multisite timeshare plan for which an exemption is claimed~~
26 ~~pursuant to this subsection shall contain the following~~
27 ~~disclosure in conspicuous type immediately above the space~~
28 ~~provided for the purchaser's signature:~~

29
30 ~~The offering of this timeshare plan outside the~~
31 ~~jurisdictional limits of the United States of America is~~

1 ~~exempt from regulation under Florida law, and any purchase~~
2 ~~resulting from such an offer is not protected by the State of~~
3 ~~Florida. However, the management and operation of any~~
4 ~~accommodations or facilities located in Florida is subject to~~
5 ~~Florida law and may give rise to enforcement action regardless~~
6 ~~of the location of any offer.~~

7 Section 34. Subsection (4) of section 721.52, Florida
8 Statutes, is amended to read:

9 721.52 Definitions.--As used in this part, the term:

10 (4) "Multisite timeshare plan" means any method,
11 arrangement, or procedure with respect to which a purchaser
12 obtains, by any means, a recurring right to use and occupy
13 accommodations or facilities of more than one component site,
14 only through use of a reservation system, whether or not the
15 purchaser is able to elect to cease participating in the plan.
16 However, the term "multisite timeshare plan" shall not include
17 any method, arrangement, or procedure wherein:

18 (a) The contractually specified maximum total
19 financial obligation on the purchaser's part is \$3,000 or
20 less, during the entire term of the plan ~~\$1,500 or less,~~
21 ~~excluding the aggregate amount of any common expense~~
22 ~~assessments and special assessments levied by an owners'~~
23 ~~association or other person who is not an affiliate of the~~
24 ~~seller or the developer, provided that any such assessment~~
25 ~~obligations are fully described as accurately as possible in~~
26 ~~the purchaser's purchase contract, but including all other~~
27 ~~amounts paid by such purchaser for any purpose whatsoever,~~
28 ~~regardless of the term of such use and occupancy rights; or~~

29 (b) The term is for a period of 3 years or less,
30 regardless of the purchaser's contractually specified maximum
31 total financial obligation, if any. For purposes of

1 determining the term of such use and occupancy rights, the
2 period of any optional renewals which a purchaser, in his or
3 her sole discretion, may elect to exercise, whether or not for
4 additional consideration, shall be included.

5
6 Multisite timeshare plan does not mean an exchange program as
7 defined in s. 721.05. Timeshare estates may only be offered
8 in a multisite timeshare plan pursuant to s. 721.57.

9 Section 35. Paragraph (e) is added to subsection (1)
10 of section 721.53, Florida Statutes, to read:

11 721.53 Subordination instruments; alternate security
12 arrangements.--

13 (1) With respect to each accommodation or facility of
14 a multisite timeshare plan, the developer shall provide the
15 division with satisfactory evidence that one of the following
16 has occurred with respect to each interestholder prior to
17 offering the accommodation or facility as a part of the
18 multisite timeshare plan:

19 (e) The interestholder has transferred the subject
20 accommodation or facility or all use rights therein to a trust
21 that complies with this paragraph. Prior to such transfer, any
22 lien or other encumbrance against such accommodation or
23 facility shall be made subject to a nondisturbance and notice
24 to creditors instrument pursuant to paragraph (a) or a
25 subordination and notice to creditors instrument pursuant to
26 paragraph (b). No transfer pursuant to this paragraph shall
27 become effective until the trust accepts such transfer and the
28 responsibilities set forth herein. A trust established
29 pursuant to this paragraph shall comply with the following
30 provisions:

1 1. The trustee shall be an individual or a business
2 entity authorized and qualified to conduct trust business in
3 this state. Any corporation authorized to do business in this
4 state may act as trustee in connection with a timeshare plan
5 pursuant to this chapter. The trustee must be independent from
6 any developer or managing entity of the timeshare plan or any
7 interestholder of any accommodation or facility of such plan.

8 2. The trust shall be irrevocable so long as any
9 purchaser has a right to occupy any portion of the timeshare
10 property.

11 3. The trustee shall not convey, hypothecate,
12 mortgage, assign, or otherwise transfer or encumber in any
13 fashion any portion of the timeshare property with respect to
14 which any purchaser has a right of use or occupancy unless the
15 timeshare plan is terminated pursuant to the timeshare
16 instrument, or the timeshare property held in trust is deleted
17 from a multisite timeshare plan pursuant to s. 721.552(3), or
18 a majority of the total purchasers of the timeshare plan
19 approved such conveyance, hypothecation, mortgage, assignment,
20 transfer, or encumbrance.

21 4. All purchasers of the timeshare plan and the
22 managing entity of the timeshare plan shall be express
23 beneficiaries of the trust. The trustee shall act as a
24 fiduciary to the beneficiaries of the trust. The personal
25 liability of the trustee shall be governed by s. 737.306. All
26 expenses reasonably incurred by the trustee in the performance
27 of its duties, together with any reasonable compensation of
28 the trustee, shall be common expenses of the timeshare plan.

29 5. The trustee shall not resign upon less than 30
30 days' prior written notice to the managing entity and the
31 division. No resignation shall become effective until a

1 substitute trustee, approved by the division, is appointed by
2 the managing entity and accepts the appointment.

3 6. The documents establishing the trust arrangement
4 shall constitute a part of the timeshare instrument.

5 7. The trustee shall constitute an interestholder.

6 Section 36. Section 721.55, Florida Statutes, is
7 amended to read:

8 721.55 Multisite timeshare plan public offering
9 statement.--Each filed public offering statement ~~filed with~~
10 ~~the division~~ for a multisite timeshare plan shall contain the
11 information required by this section and shall comply with the
12 provisions of s. 721.07. The division is authorized to
13 provide by rule the method by which a developer must provide
14 such information to the division. Each multisite timeshare
15 plan filed public offering statement shall contain the
16 following information and disclosures:

- 17 (1) A cover page containing:
18 (a) The name of the multisite timeshare plan.
19 (b) The following statement in conspicuous type:
20

21 This public offering statement contains important
22 matters to be considered in acquiring an interest in a
23 multisite timeshare plan (or multisite vacation ownership plan
24 or multisite vacation plan or vacation club). The statements
25 contained herein are only summary in nature. A prospective
26 purchaser should refer to all references, accompanying
27 exhibits ~~hereto~~, contract documents, and sales materials. The
28 prospective purchaser should not rely upon oral
29 representations as being correct and should refer to this
30 document and accompanying exhibits for correct
31 representations.

1
2 (2) A summary containing all statements required to be
3 in conspicuous type in the public offering statement and in
4 all exhibits thereto.

5 (3) A separate index for the contents and exhibits of
6 the public offering statement.

7 (4) A text, which shall include, where applicable, the
8 information and disclosures set forth in paragraphs (a)-(1)
9 ~~below together with cross-references to the location in the~~
10 ~~public offering statement of each exhibit, if applicable.~~

11 (a) A description of the multisite timeshare plan,
12 including its term, legal structure, and form of ownership.
13 For multisite timeshare plans in which the purchaser will
14 receive a timeshare estate pursuant to s. 721.57 or a specific
15 timeshare license as defined in s. 721.552(4), the description
16 must also include the term of each component site within the
17 multisite timeshare plan.

18 (b) A description of the structure and ownership of
19 the reservation system together with a disclosure of the
20 entity responsible for the operation of the reservation
21 system. The description shall include the financial terms of
22 any lease of the reservation system, if applicable. The
23 developer shall not be required to disclose the financial
24 terms of any such lease if such lease is prepaid in full for
25 the term of the multisite timeshare plan or to any extent that
26 neither purchasers nor the managing entity will be required to
27 make payments for the continued use of the system following
28 default by the developer or termination of the managing
29 entity.

30 (c)1. A description of the manner in which the
31 reservation system operates. The description shall include a

1 disclosure in compliance with the demand balancing standard
2 set forth in s. 721.56(6) and shall describe the developer's
3 efforts to comply with same in creating the reservation
4 system. The description shall also include a summary of the
5 rules and regulations governing access to and use of the
6 reservation system.

7 2. In lieu of describing the rules and regulations of
8 the reservation system in the public offering statement text,
9 the developer may attach the rules and regulations as a
10 separate public offering statement exhibit, together with a
11 cross-reference in the public offering statement text to such
12 exhibit.

13 ~~3. For each component site for which occupancy~~
14 ~~information is available, the developer shall disclose the~~
15 ~~average level of occupancy calculated by category of quarter~~
16 ~~or season for the calendar year including the date 2 years~~
17 ~~prior to the date on which the multisite timeshare plan is~~
18 ~~first offered. Every 2 years such averages must be revised~~
19 ~~and updated. In lieu of providing such information in the~~
20 ~~public offering statement text, the developer may provide the~~
21 ~~information in a public offering statement exhibit, together~~
22 ~~with a cross-reference in the public offering statement text~~
23 ~~to such exhibit.~~

24 (d) The existence of and an explanation regarding any
25 priority reservation features that affect a purchaser's
26 ability to make reservations for the use of a given
27 accommodation or facility on a first come, first served basis,
28 including, if applicable, the following statement in
29 conspicuous type:

30
31

1 Component sites contained in the multisite timeshare
2 plan (or multisite vacation ownership plan or multisite
3 vacation plan or vacation club) are subject to priority
4 reservation features which may affect your ability to obtain a
5 reservation.

6
7 (e) A summary of the material rules and regulations,
8 if any, other than the reservation system rules and
9 regulations, affecting the purchaser's use of each
10 accommodation and facility at each component site.

11 (f) If the provisions of s. 721.552 and the timeshare
12 instrument permit additions, substitutions, or deletions of
13 accommodations or facilities, the public offering statement
14 must include substantially the following information:

15 1. Additions.--

16 a. A description of the basis upon which new
17 accommodations and facilities may be added to the multisite
18 timeshare plan; by whom additions may be made; and the
19 anticipated effect of the addition of new accommodations and
20 facilities upon the reservation system, its priorities, its
21 rules and regulations, and the availability of existing
22 accommodations and facilities.

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

27 c. The developer shall also disclose any extent to
28 which the purchasers of the multisite timeshare plan will have
29 the right to consent to any proposed additions; if the
30 purchasers do not have the right to consent, the developer
31 must include the following disclosure in conspicuous type:

1
2 Accommodations and facilities may be added to this
3 multisite timeshare plan (or multisite vacation ownership plan
4 or multisite vacation plan or vacation club) without the
5 consent of the purchasers. The addition of accommodations and
6 facilities to the plan may result in the addition of new
7 purchasers who will compete with existing purchasers in making
8 reservations for the use of available accommodations and
9 facilities within the plan, and may also result in an increase
10 in the annual assessment against purchasers for common
11 expenses.

12
13 2. Substitutions.--

14 a. A description of the basis upon which new
15 accommodations and facilities may be substituted for existing
16 accommodations and facilities of the multisite timeshare plan;
17 by whom substitutions may be made; the basis upon which the
18 determination may be made to cause such substitutions to
19 occur; and any limitations upon the ability to cause
20 substitutions to occur.

21 b. The developer shall also disclose any extent to
22 which purchasers will have the right to consent to any
23 proposed substitutions; if the purchasers do not have the
24 right to consent, the developer must include the following
25 disclosure in conspicuous type:

26
27 New accommodations and facilities may be substituted
28 for existing accommodations and facilities of this multisite
29 timeshare plan (or multisite vacation ownership plan or
30 multisite vacation plan or vacation club) without the consent
31 of the purchasers. The replacement accommodations and

1 facilities may be located at a different place or may be of a
2 different type or quality than the replaced accommodations and
3 facilities. The substitution of accommodations and facilities
4 may also result in an increase in the annual assessment
5 against purchasers for common expenses.

6
7 3. Deletions.--A description of any provision of the
8 timeshare instrument governing deletion of accommodations or
9 ~~and~~ facilities from the multisite timeshare plan. If the
10 timeshare instrument does not provide for business
11 interruption insurance in the event of a casualty, or if it is
12 unavailable, or if the instrument permits the developer, the
13 managing entity, or the purchasers to elect not to reconstruct
14 after casualty under certain circumstances or to secure
15 replacement accommodations or facilities in lieu of
16 reconstruction, the public offering statement must contain a
17 disclosure that during the reconstruction, replacement, or
18 acquisition period, or as a result of a decision not to
19 reconstruct, purchasers of the plan may temporarily compete
20 for available accommodations on a greater than one-to-one
21 purchaser to accommodation ratio.

22 (g) A description of the developer and the managing
23 entity of the multisite timeshare plan, including:

24 1. The identity of the developer; the developer's
25 business address; the number of years of experience the
26 developer has in the timeshare, hotel, motel, travel, resort,
27 or leisure industries; and a description of any pending
28 lawsuit or judgment against the developer which is material to
29 the plan. If there are no such pending lawsuits or judgments,
30 there shall be a statement to that effect.

31

1 2. The identity of the managing entity of the
2 multisite timeshare plan; the managing entity's business
3 address; the number of years of experience the managing entity
4 has in the timeshare, hotel, motel, travel, resort, or leisure
5 industries; and a description of any lawsuit or judgment
6 against the managing entity which is material to the plan. If
7 there are no pending lawsuits or judgments, there shall be a
8 statement to that effect. The description of the managing
9 entity shall also include a description of the relationship
10 among the managing entity of the multisite timeshare plan and
11 the various component site managing entities.

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

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

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

28 3. A description of the entity responsible for the
29 determination of the common expenses of the multisite
30 timeshare plan, as well as any entity which may increase the
31

1 level of common expenses assessed against the purchaser at the
2 multisite timeshare plan level.

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

11 5. If the purchaser will receive a nonspecific
12 timeshare license as defined in s. 721.552(4), a statement
13 that a multisite timeshare plan budget is attached to the
14 public offering statement as an exhibit pursuant to paragraph
15 (7)(c). The multisite timeshare plan budget shall comply with
16 the provisions of s. 721.07(5)(u)~~(x)~~.

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

22 a. The specific time period, measured in one or more
23 calendar or fiscal years, during which the guarantee will be
24 in effect.

25 b. A statement that the developer will pay all common
26 expenses incurred in excess of the total revenues of the
27 multisite timeshare plan, if the developer is to be excused
28 from the payment of assessments during the guarantee period.

29 c. The level, expressed in total dollars, at which the
30 developer guarantees the assessments. If the developer has
31

1 reserved the right to extend or increase the guarantee level,
2 a disclosure must be included to that effect.

3 7. If ~~As~~ required under applicable law, the developer
4 shall also disclose the following matters for each component
5 site:

6 a. Any limitation upon annual increases in common
7 expenses;

8 b. The existence of any bad debt or working capital
9 reserve; and

10 c. The existence of any replacement or deferred
11 maintenance reserve.

12 (i) If there are any restrictions upon the sale,
13 transfer, conveyance, or leasing of an interest in a multisite
14 timeshare plan, a description of the restrictions together
15 with a statement in conspicuous type in substantially the
16 following form:

17

18 The sale, lease, or transfer of interests in this
19 multisite timeshare plan is restricted or controlled.

20

21 (j) The following statement in conspicuous type in
22 substantially the following form:

23

24 The purchase of an interest in a multisite timeshare
25 plan (or multisite vacation ownership plan or multisite
26 vacation plan or vacation club) should be based upon its value
27 as a vacation experience or for spending leisure time, and not
28 considered for purposes of acquiring an appreciating
29 investment or with an expectation that the interest may be
30 resold.

31

1 (k) If the multisite timeshare plan provides
2 purchasers with the opportunity to participate in an exchange
3 program, a description of the name and address of the exchange
4 company and the method by which a purchaser accesses the
5 exchange program. In lieu of this requirement, the public
6 offering statement text may contain a cross-reference to other
7 provisions in the public offering statement or in an exhibit
8 containing this information.

9 (1) A description of each component site, which
10 description may be disclosed in a written, graphic, tabular,
11 or other form approved by the division. The description of
12 each component site shall include the following information:

13 1. The name and address of each component site.
14 2. The number of accommodations, timeshare interests,
15 and timeshare periods, expressed in periods of 7-day use
16 availability, committed to the multisite timeshare plan and
17 available for use by purchasers.

18 3. Each type of accommodation in terms of the number
19 of bedrooms, bathrooms, sleeping capacity, and whether or not
20 the accommodation contains a full kitchen. For purposes of
21 this description, a full kitchen shall mean a kitchen having a
22 minimum of a dishwasher, range, sink, oven, and refrigerator.

23 4. A description of facilities available for use by
24 the purchaser at each component site, including the following:

25 a. The intended use of the facility, if not apparent
26 from the description.

27 ~~b. The capacity of the facility in terms of the number~~
28 ~~of people who can use it at any one time.~~

29 ~~c. If the facility is a swimming pool, a statement as~~
30 ~~to whether or not the pool is heated.~~

31

1 **b.d.** Any user fees associated with a purchaser's use
2 of the facility.

3 5. A cross-reference to the location in the public
4 offering statement of the description of any priority
5 reservation features which may affect a purchaser's ability to
6 obtain a reservation in the component site.

7 (5) Such other information as the division determines
8 is necessary to fairly, meaningfully, and effectively disclose
9 all aspects of the multisite timeshare plan, including, but
10 not limited to, any disclosures made necessary by the
11 operation of s. 721.03(8)~~(9)~~. However, if a developer has, in
12 good faith, attempted to comply with the requirements of this
13 section, and if, in fact, the developer has substantially
14 complied with the disclosure requirements of this chapter,
15 nonmaterial errors or omissions shall not be actionable.

16 (6) Any other information that the developer, with the
17 approval of the division, desires to include in the public
18 offering statement text.

19 (7) The following documents shall be included as
20 exhibits to the filed public offering statement ~~filed with the~~
21 ~~division~~, if applicable:

22 (a) The timeshare instrument.

23 (b) The reservation system rules and regulations.

24 (c) The multisite timeshare plan budget pursuant to
25 subparagraph (4)(h)5.

26 (d) Any document containing the material rules and
27 regulations described in paragraph (4)(e).

28 (e) Any contract, agreement, or other document through
29 which component sites are affiliated with the multisite
30 timeshare plan.

31

1 (f) Any escrow agreement required pursuant to s.
2 721.08 or s. 721.56(3).

3 (g) The form agreement for sale or lease of an
4 interest in the multisite timeshare plan.

5 (h) The form receipt for multisite timeshare plan
6 documents required to be given to the purchaser pursuant to s.
7 721.551(2)(b).

8 (i) The description of documents list required to be
9 given to the purchaser by s. 721.551(2)(b).

10 (j) The component site managing entity affidavit or
11 statement required by s. 721.56(1).

12 (k) Any subordination instrument required by s.
13 721.53.

14 (l)1. If the multisite timeshare plan contains any
15 component sites located in this state, the information
16 required by s. 721.07(5) pertaining to each such component
17 site unless exempt pursuant to s. 721.03.

18 2. If the purchaser will receive a timeshare estate
19 pursuant to s. 721.57 or a specific timeshare license as
20 defined in s. 721.552(4) in a component site located outside
21 of this state but which is offered in this state, the
22 information required by s. 721.07(5) pertaining to that
23 component site provided, however, that the provisions of s.
24 721.07(5)(u) shall only require disclosure of information
25 related to the estimated budget for the timeshare plan and
26 purchaser's expenses as required by the jurisdiction in which
27 the component site is located.

28 (8)(a) A timeshare plan containing only one component
29 site must be filed with the division as a multisite timeshare
30 plan if the timeshare instrument reserves the right for the
31 developer to add future component sites. However, if the

1 developer fails to add at least one additional component site
2 to a timeshare plan described in this paragraph within 3 years
3 after the date the plan is initially filed with the division,
4 the multisite filing for such plan shall thereupon terminate,
5 and the developer may not thereafter offer any further
6 interests in such plan unless and until he or she refiles such
7 plan with the division pursuant to this chapter.

8 (b) The public offering statement for any timeshare
9 plan described in paragraph (a) must include the following
10 disclosure in conspicuous type:

11

12 This timeshare plan has been filed as a multisite
13 timeshare plan (or multisite vacation ownership plan or
14 multisite vacation plan or vacation club); however, this plan
15 currently contains only one component site. The developer is
16 not required to add any additional component sites to the
17 plan. Do not purchase an interest in this plan in reliance
18 upon the addition of any other component sites.

19 Section 37. Subsection (2) of section 721.551, Florida
20 Statutes, is amended to read:

21 721.551 Delivery of multisite timeshare plan public
22 offering statement.--

23 (2) The developer shall furnish each purchaser with
24 the following:

25 (a) A copy of the approved multisite timeshare plan
26 public offering statement text ~~filed with the division~~
27 containing the information required by s. 721.55(1)-(6).

28 (b) A receipt for multisite timeshare plan documents
29 and a list describing any exhibit to the filed public offering
30 statement ~~filed with the division~~ which is not delivered to
31 the purchaser. The division is authorized to prescribe by rule

1 the form of the receipt for multisite timeshare plan documents
2 and the description of exhibits list that must be furnished to
3 the purchaser pursuant to this section.

4 (c) If the purchaser will receive a timeshare estate
5 pursuant to s. 721.57 or a specific timeshare license as
6 defined in s. 721.552(4) in a component site located in this
7 state, the developer shall also furnish the purchaser with the
8 information required to be delivered pursuant to s.
9 721.07(6)(a) and (b) for the component site in which the
10 purchaser will receive an estate or license.

11 (d) Any other exhibit that the developer elects to
12 include as part of the purchasers public offering statement ~~to~~
13 ~~be furnished to purchasers~~, provided that the developer first
14 files the exhibit with the division.

15 (e) An executed copy of any document which the
16 purchaser signs.

17 (f) The developer shall be required to provide the
18 managing entity of the multisite timeshare plan with a copy of
19 the approved filed public offering statement ~~text and exhibits~~
20 ~~filed with the division~~ and any approved amendments thereto to
21 be maintained by the managing entity as part of the books and
22 records of the timeshare plan pursuant to s. 721.13(3)(d).

23 Section 38. Paragraph (a) of subsection (3) of section
24 721.552, Florida Statutes, is amended to read:

25 721.552 Additions, substitutions, or deletions of
26 component site accommodations or facilities; purchaser
27 remedies for violations.--Additions, substitutions, or
28 deletions of component site accommodations or facilities may
29 be made only in accordance with the following:

30 (3) DELETIONS.--

31 (a) Deletion by casualty.--

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 ~~the~~ accommodations or facilities.
6 The timeshare instrument must also provide that in the event
7 of a casualty that results in accommodations or facilities
8 being unavailable for use by purchasers, the managing entity
9 shall notify all affected purchasers of such unavailability of
10 use 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 purchaser to accommodation ratio.

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

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

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

3 Section 39. Subsection (2) and paragraphs (a) and (c)
4 of subsection (5) of section 721.56, Florida Statutes, are
5 amended to read:

6 721.56 Management of multisite timeshare plans;
7 reservation systems; demand balancing.--

8 (2) In the event that the developer files an affidavit
9 or other evidence with the division pursuant to subsection (1)
10 and subsequently determines that the status of the component
11 site has materially changed such that any portion of the
12 affidavit or other evidence is consequently materially
13 changed, the developer shall immediately notify the division
14 of the change. ~~In any event, the affidavit required by~~
15 ~~subsection (1) shall be renewed at least annually.~~

16 (5)(a)1. The reservation system is a facility of any
17 nonspecific timeshare license multisite timeshare plan as
18 defined in s. 721.552(4). The reservation system is not a
19 facility of any specific timeshare license multisite timeshare
20 plan as defined in s. 721.552(4), nor is it a facility of any
21 multisite timeshare plan in which timeshare estates are
22 offered pursuant to s. 721.57.

23 2. The reservation system of any multisite timeshare
24 plan shall include any computer software and hardware employed
25 for the purpose of enabling or facilitating the operation of
26 the reservation system. Nothing contained in this part shall
27 preclude a manager or management firm ~~company that is serving~~
28 ~~as managing entity~~ of a multisite timeshare plan from
29 providing in its contract with the purchasers or owners'
30 association of the multisite timeshare plan or in the
31 timeshare instrument that the manager or management firm

1 ~~company~~ owns the reservation system and that the managing
2 entity shall continue to own the reservation system in the
3 event the purchasers discharge the managing entity pursuant to
4 s. 721.14.

5 (c) In the event of a termination of a managing entity
6 of a timeshare estate or specific license multisite timeshare
7 plan as defined in s. 721.552(4), which managing entity owns
8 the reservation system, irrespective of whether the
9 termination is voluntary or involuntary and irrespective of
10 the cause of such termination, in addition to any other
11 remedies available to purchasers in this part, the terminated
12 managing entity shall, prior to such termination, promptly
13 transfer to each component site managing entity all relevant
14 data contained in the reservation system with respect to that
15 component site, including, but not limited to:

16 1. The names, addresses, and reservation status of
17 component site accommodations.

18 2. The names and addresses of all purchasers of
19 timeshare interests ~~periods~~ at that component site.

20 3. All outstanding confirmed reservations and
21 reservation requests for that component site.

22 4. Such other component site records and information
23 as are necessary, in the reasonable discretion of the
24 component site managing entity, to permit the uninterrupted
25 operation and administration of the component site, provided
26 that a given component site managing entity shall not be
27 entitled to any information regarding other component sites or
28 regarding the terminated multisite timeshare plan managing
29 entity.

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31

1 All reasonable costs incurred by the terminated managing
2 entity in effecting the transfer of information required by
3 this paragraph shall be reimbursed to the terminated managing
4 entity on a pro rata basis by each component site, and the
5 amount of such reimbursement shall constitute a common expense
6 of each component site.

7 Section 40. Section 721.58, Florida Statutes, is
8 amended to read:

9 721.58 Filing fee; annual fee.--

10 ~~(1)~~ The developer of the multisite timeshare plan
11 shall pay the filing fee required by s. 721.07(4)(a); however,
12 the maximum amount of such filing fee shall be \$25,000 or the
13 total filing fee due with respect to the timeshare units in
14 the multisite timeshare plan that are located in this state
15 pursuant to s. 721.07(4)(a), whichever is greater.

16 ~~(2) The managing entity of the multisite timeshare~~
17 ~~plan shall pay the annual fee required by s. 721.27; provided,~~
18 ~~however, that the maximum amount of such annual fee shall be~~
19 ~~\$25,000 or the total annual fee due with respect to the~~
20 ~~timeshare units in the multisite timeshare plan that are~~
21 ~~located in this state calculated pursuant to s. 721.07(4)(a),~~
22 ~~whichever is greater.~~

23 Section 41. Subsection (3) of section 721.81, Florida
24 Statutes, is amended to read:

25 721.81 Legislative purpose.--The purposes of this part
26 are to:

27 (3) Recognize the need to assist ~~vacation ownership~~
28 ~~resort~~ owners' associations and mortgagees by simplifying and
29 expediting the process of foreclosure of assessment liens and
30 mortgage liens against timeshare estates.

31

1 Section 42. Subsection (1) of section 721.82, Florida
2 Statutes, is amended to read:

3 721.82 Definitions.--As used in this part, the term:

4 (1) "Assessment lien" means:

5 (a) A lien for delinquent assessments as provided in
6 ss. 721.16, ~~and~~ 718.116, and 719.108 as to timeshare
7 condominiums; or

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

10 Section 43. Subsection (5) of section 721.84, Florida
11 Statutes, is amended to read:

12 721.84 Appointment of a registered agent; duties.--

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

16 (a) The resigning registered agent executes a written
17 statement of resignation that identifies himself or herself
18 and the street address of his or her registered office, and
19 identifies the obligors affected by his or her resignation;

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

1 (c) Copies of the statement of resignation and
2 acceptance of appointment as successor registered agent are
3 promptly mailed to the affected obligors at the obligors' last
4 designated address shown on the records of the resigning
5 registered agent and to the affected lienholders. The agency
6 and registered office of the resigning registered agent are
7 terminated and the agency and registered office of the
8 successor registered agent are effective as of the 10th day
9 after the date on which the statement of resignation and
10 acceptance of appointment as successor registered agent are
11 received by the lienholder, unless a longer period is provided
12 in the statement of resignation and acceptance of appointment
13 as successor registered agent.

14 Section 44. Subsection (2) of section 721.85, Florida
15 Statutes, is amended to read:

16 721.85 Service to notice address or on registered
17 agent.--

18 (2) The current owner and the mortgagor of a timeshare
19 estate must promptly notify the owners' association ~~of the~~
20 ~~timeshare plan~~ and the mortgagee of any change of address.

21 Section 45. Subsection (1) of section 721.86, Florida
22 Statutes, is amended to read:

23 721.86 Miscellaneous provisions.--

24 (1) The procedures in this part must be given effect
25 in the context of any foreclosure proceedings against
26 timeshare estates governed by this chapter, chapter 702, ~~or~~
27 chapter 718, or chapter 719.

28 Section 46. Subsection (22) of section 718.103,
29 Florida Statutes, is amended to read:

30 718.103 Definitions.--As used in this chapter, the
31 term:

1 (22) "Residential condominium" means a condominium
2 consisting of condominium units, any of which are intended for
3 use as a private temporary or permanent residence, except that
4 a condominium is not a residential condominium if the use for
5 which the units are intended is primarily commercial or
6 industrial and not more than three units are intended to be
7 used for private residence, and are intended to be used as
8 housing for maintenance, managerial, janitorial, or other
9 operational staff of the condominium. With respect to a
10 condominium that is not a timeshare condominium, a residential
11 unit includes a unit intended as a private temporary or
12 permanent residence as well as a unit not intended for
13 commercial or industrial use. With respect to a timeshare
14 condominium, the timeshare instrument as defined in s.
15 721.05(33)~~(30)~~ shall govern the intended use of each unit in
16 the condominium. If a condominium is a residential condominium
17 but contains units intended to be used for commercial or
18 industrial purposes, then, with respect to those units which
19 are not intended for or used as private residences, the
20 condominium is not a residential condominium. A condominium
21 which contains both commercial and residential units is a
22 mixed-use condominium subject to the requirements of s.
23 718.404.

24 Section 47. If any provision of this act or the
25 application thereof to any person or circumstance is held
26 invalid, the invalidity does not affect other provisions or
27 applications of the act which can be given effect without the
28 invalid provision or application, and to this end the
29 provisions of this act are declared severable.

30 Section 48. This act shall take effect upon becoming a
31 law; however, all documents filed and approved in accordance

1 with chapter 721, Florida Statutes, prior to the effective
2 date of this act, or any amendments to such documents made
3 subsequent to the date this act becomes a law that are
4 otherwise in compliance with that chapter prior to the
5 effective date of this act, shall be deemed to be in
6 compliance with the filing requirements of this act.

7
8 *****

9 LEGISLATIVE SUMMARY

10 Revises certain provisions governing timeshare
11 cooperatives in ch. 719, F.S., to conform to similar
12 provisions governing timeshare condominiums in ch. 718,
13 F.S. Generally revises the provisions of the Florida
14 Vacation Plan and Timesharing Act, which includes the
15 McAllister Act, the Timeshare Lien Foreclosure Act, and
16 provisions relating to commissioners of deeds. Provides
17 consistent language throughout ch. 721, F.S. (See bill
18 for details.)
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