

STORAGE NAME: h1381a.br.doc
DATE: February 13, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION
ANALYSIS**

BILL #: HB 1381
RELATING TO: Timeshares
SPONSOR(S): Representative(s) Mealor

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMITTEE ON BUSINESS REGULATION YEAS 10 NAYS 0
 - (2) SMARTER GOVERNMENT COUNCIL
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

Chapter 721, Florida Statutes, is the Florida Vacation Plan and Timesharing Act. This chapter gives statutory recognition to real property timesharing and personal property timesharing in the state. The chapter establishes procedures for the creation, sale, exchange, promotion, and operation of timeshare plans.

The bill amends the provisions relating to the application of outside rental income toward a delinquent account. It allows the managing entity of a timeshare facility to calculate a formula to apply to rental units and time periods when delinquent accounts are not tied to a particular unit or a particular period of time and may thus change over time based on purchase and rental contracts. The managing entity may make a determination of the order or priority of the rental schedule of units and rental periods in order to prioritize rental income that may be received from outside rental of the delinquent unit.

The bill amends provisions relating to the managing entity's right to reduce the rental amount or the reduction of the time period for rental of a delinquent unit to allow pricing of delinquent rentals at a "bulk rate" that may be below similar timeshare market rates. A floor of \$200 per delinquent unit per week is created for delinquent rentals under a bulk rate rental arrangement.

The bill amends delinquent assessment provisions to clarify that a delinquent purchaser is responsible for costs of collection of the delinquent account. It also clarifies that the managing entity must notify a purchaser that the purchaser may be liable for collection agency fees and the debt may create a lien on the timeshare interest.

It is not anticipated that the bill will have a fiscal impact on state or local government.

On February 12, 2002, the Committee on Business Regulation adopted two amendments that are traveling with the bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Chapter 721, Florida Statutes, is the Florida Vacation Plan and Timesharing Act. This chapter gives statutory recognition to real property timesharing and personal property timesharing in the state. The chapter establishes procedures for the creation, sale, exchange, promotion, and operation of timeshare plans.

Section 721.13, F.S., requires the developer of a timeshare plan to provide for a managing entity for the plan. The entity may either be the developer, a separate manager or management firm, or an owners' association. The managing entity is required to act in a fiduciary capacity with commensurate responsibilities of trust and honesty.

This section further requires specific duties to be performed by the managing entity for the benefit of the owners and operators of the timeshare plan. The managing entity is required to maintain communication with the Division of Florida Land Sales, Condominiums, and Mobile Homes (division) of the Department of Business and Professional Regulation (DBPR), manage and maintain the facilities, schedule and coordinate the occupancy of the timeshare units, maintain books and records, provide for the production of budget documents, arrange for auditing of accounts and revenues, escrow ad valorem tax accounts, invest operating and reserve funds, and address delinquent assessments for common expenses or real estate taxes, among other responsibilities.

The managing entity is statutorily required to follow specified procedures for notifying delinquent owners when delinquent payments are due and for processing delinquent accounts. Costs associated with the processing of delinquent accounts may be assessed against an owner in a manner similar to the assessment of common expenses. The statutes limit the amount of delinquency costs that may be assessed at any one time to 5 percent of the total amount of the delinquency or \$15 per timeshare unit, whichever is less.

Section 721 13(6)(f), F.S. specifies that a managing entity must provide timely notice to a delinquent purchaser of the delinquency. The managing entity is authorized but not required to provide notice of the managing entity's intent to rent the unit and apply the proceeds toward the balance of the delinquent account. Processing and costs associated with the re-rental of a unit are authorized to be deducted from the proceeds recognized from outside rental of the unit prior to application of any rental income toward the reduction of the delinquent account.

This section further allows certain flexibilities on the part of the managing entity in the effort to rent the unit. Among these allowances is the right to reduce the rental amount or the reduction of the time period for rental of a unit. The managing entity must still attempt to secure a rental agreement that is commensurate with other similar timeshare rentals.

Section 721.15, F.S., addresses procedures for a developer to allocate common expenses of a condominium timeshare plan among the unit purchasers. This section further provides that a delinquent assessment filed against a unit purchaser may be subject to the accrual of interest on the amount due, as well as, the imposition of an administrative late fee. Collection fees, including any attorney fees associated with the collection process, may also be imposed on the delinquent purchaser. To assist in the collection of these assessments, the managing entity may place a lien on the timeshare interest of the particular unit. However, the managing entity is first required to provide the purchaser with written notice of the delinquency, that the matter may be turned over to a collection agency, and that assessments that are due may be subject to a lien on the timeshare interest.

C. EFFECT OF PROPOSED CHANGES:

The bill amends the provisions relating to the application of rental income toward a delinquent account. It allows the managing entity to calculate a formula to apply to rental units and time periods when delinquent accounts are not tied to a particular unit or a particular period of time and may thus change or fluctuate over time based on purchase or rental contracts. The managing entity may make a determination of the order or priority of the rental schedule of units and rental periods in order to prioritize rental income associated with the rental of units that include delinquent accounts.

The bill amends the provisions relating to the managing entity's right to reduce the rental amount or the reduction of the time period for rental of a delinquent unit to allow pricing of delinquent rentals at a "bulk rate" that is below similar timeshare market rates. A floor of \$200 per week is created for delinquent rentals under a bulk rate rental arrangement.

The bill amends s. 721.15(3), F.S., to clarify that a delinquent purchaser is responsible for costs of collection of the delinquent account. It also clarifies that the managing entity must notify a purchaser (but is not required to provide the notice in writing) that the purchaser may be liable for collection agency fees and the debt may create a lien on the timeshare interest.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 721.13, F.S. to allow the managing entity of a timeshare unit to prescribe rental priorities for purposes of allocating income toward appropriate delinquent accounts. Allows the charging of a reduced delinquent bulk rate when renting delinquent timeshare units.

Section 2. Amends s. 721.15, F.S., to specify that a delinquent timeshare purchaser may be liable for collection agency fees and the debt may create a lien on the timeshare interest.

Section 3. Effective date - upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill is partially designed to benefit the non-delinquent and delinquent owners of timeshare projects by allowing additional rental revenue to be generated and to be used towards reducing the amount of delinquent assessments.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None noted.

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B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 12, 2002, the Committee on Business Regulation adopted two amendments that are traveling with the bill. The first amendment addresses contests of chance, such as drawings for timeshare promotions. It increases the number of allowable prizes to be offered from 10 prize awards to 26 awards annually.

The second amendment deletes the term developer to allow bulk rentals at reduced rates to be made to anyone and not limit rentals to just developers. This would allow the rental of a group of delinquent timeshare units at reduced rates.

VII. SIGNATURES:

COMMITTEE ON COMMITTEE ON BUSINESS GEGULATION:

Prepared by:

Staff Director:

Alan W. Livingston

Paul Liepshutz