



HB 1243

2003

1 A bill to be entitled

2 An act relating to timeshare plans; amending s. 721.02,
3 F.S.; revising language with respect to legislative
4 purpose under the Florida Vacation Plan and Timesharing
5 Act; amending s. 721.03, F.S.; revising language with
6 respect to the scope of the act to include reference to
7 personal property timeshare plans; amending s. 721.05,
8 F.S.; providing definitions; amending s. 721.06, F.S.;
9 revising language with respect to contracts for purchase
10 of timeshare interests to include provisions with respect
11 to personal property timeshare interests; amending s.
12 721.065, F.S.; revising language with respect to resale
13 purchase agreements to include reference to certain real
14 property and personal property timeshare plans; amending
15 s. 721.07, F.S.; revising language with respect to public
16 offering statements; amending s. 721.075, F.S.; revising
17 language with respect to incidental benefits, requiring
18 purchasers to execute a statement indicating the source of
19 the benefit; amending s. 721.08, F.S.; revising language
20 with respect to escrow accounts; amending s. 721.09, F.S.;
21 revising language with respect to reservation agreements;
22 amending s. 721.11, F.S.; revising language with respect
23 to advertising materials; correcting cross references;
24 amending s. 721.12, F.S.; providing for required
25 recordkeeping by the seller of a personal property
26 timeshare plan; amending s. 721.13, F.S.; revising
27 language with respect to management; amending s. 721.14,
28 F.S.; providing that a section of law governing the
29 discharge of the managing entity shall not apply with
30 respect to personal property timeshare plans; amending s.



HB 1243

2003

31 721.15, F.S.; revising language with respect to
32 assessments for common expenses; amending s. 721.16, F.S.;
33 providing that a section of law governing certain liens
34 does not apply to personal property timeshare plans;
35 amending s. 721.17, F.S.; revising language with respect
36 to transfer of interest; amending s. 721.18, F.S.;
37 revising language with respect to exchange programs;
38 amending s. 721.19, F.S.; including reference to personal
39 property timeshare interests; amending s. 721.20, F.S.,
40 relating to licensing requirements; providing for the
41 application of certain provisions to personal property
42 timeshare plans; amending s. 721.24, F.S.; exempting
43 accommodations and facilities of personal property
44 timeshare plans from a provision of law governing
45 firesafety; amending s. 721.26, F.S.; revising language
46 with respect to regulation by the division; amending s.
47 721.27, F.S.; reducing an annual fee for each timeshare
48 unit in a timeshare plan; amending s. 721.52, F.S.;
49 redefining the term "multisite timeshare plan" and
50 defining the terms "nonspecific multisite timeshare plan"
51 and "specific multisite timeshare plan"; amending s.
52 721.53, F.S.; revising language with respect to
53 subordination instruments; amending s. 721.54, F.S.;
54 deleting a cross reference; amending s. 721.55, F.S.;
55 providing reference to filed rather than registered public
56 offering statements; providing reference to multisite
57 timeshare plans; amending s. 721.551, F.S.; providing for
58 reference to filed rather than registered public offering
59 statements; amending s. 721.552, F.S.; providing reference
60 to multistate timeshare plans; amending s. 721.56, F.S.;



HB 1243

2003

61 providing reference to personal property timeshare plans;
 62 amending s. 721.57, F.S.; revising language with respect
 63 to timeshare estates in multisite timeshare plans;
 64 amending s. 721.84, F.S.; revising language with respect
 65 to appointment of a registered agent; amending ss. 721.96
 66 and 721.97, F.S.; including reference to personal property
 67 timeshare interests; providing an effective date.
 68

69 Be It Enacted by the Legislature of the State of Florida:
 70

71 Section 1. Subsections (1) and (5) of section 721.02,
 72 Florida Statutes, are amended to read:

73 721.02 Purposes.--The purposes of this chapter are to:

74 (1) Give statutory recognition to real property timeshare
 75 plans ~~timesharing~~ and personal property timeshare plans
 76 ~~timesharing~~ in this ~~the~~ state.

77 (5) Recognize that the tourism industry in this state is a
 78 vital part of the state's economy; that the sale, promotion, and
 79 use of timeshare plans is an emerging, dynamic segment of the
 80 tourism industry; that this segment of the tourism industry
 81 continues to grow, both in volume of sales and in complexity and
 82 variety of product structure; and that a uniform and consistent
 83 method of regulation is necessary in order to safeguard
 84 Florida's tourism industry and the state's economic well-being.
 85 In order to protect the quality of Florida timeshare plans and
 86 the consumers who purchase them, it is the intent of the
 87 Legislature that this chapter be interpreted broadly in order to
 88 encompass all forms of timeshare plans with a duration of at
 89 least 3 years that are created with respect to accommodations
 90 and facilities that are located in the state or that are offered



HB 1243

2003

91 for sale in the state as provided herein, including, but not
 92 limited to, condominiums, cooperatives, undivided interest
 93 campgrounds, cruise ships, vessels, houseboats, recreational
 94 vehicles and other motor vehicles, vacation clubs, multisite
 95 vacation plans, and multiyear vacation and lodging certificates.

97 Section 2. Paragraph (d) is added to subsection (1) of
 98 section 721.03, Florida Statutes, and subsection (8) of said
 99 section, is amended to read:

100 721.03 Scope of chapter.--

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

106 (d) For purposes of determining the term of the plan, the
 107 period of any automatic renewals shall be included, except as
 108 provided in s. 721.52(4)(b).

109 (8) With respect to any personal property accommodation or
 110 facility of a timeshare plan: ~~which is situated upon~~

111 (a) This chapter applies only to personal property
 112 timeshare plans that are offered in this state.

113 (b) The division shall have the authority to adopt rules
 114 interpreting and implementing the provisions of this chapter as
 115 they apply to any personal property timeshare plan or any such
 116 accommodation or facility that is part of a personal property
 117 timeshare plan offered in this state, or as the provisions of
 118 this chapter ~~they~~ apply to any other laws of this state, of the
 119 several states, or of the United States, or of any other
 120 jurisdiction with respect to any personal property timeshare



HB 1243

2003

121 plan or any ~~such~~ accommodation or facility that is part of a
 122 personal property timeshare plan offered in this state.

123 (c) Any developer and any managing entity of a personal
 124 property timeshare plan must submit to personal jurisdiction in
 125 this state in a form satisfactory to the division at the time of
 126 filing a public offering statement.

127 Section 3. Section 721.05, Florida Statutes, is amended to
 128 read:

129 721.05 Definitions.--As used in this chapter, the term:

130 (1) "Accommodation" means any apartment, ~~condominium~~ or
 131 cooperative unit, cabin, lodge, hotel or motel room, campground,
 132 cruise ship cabin, houseboat or other vessel, recreational or
 133 other motor vehicle, or any ~~or other~~ private or commercial
 134 structure which is ~~situated on~~ real or personal property and is
 135 designed for overnight occupancy ~~or use~~ by one or more
 136 individuals. The term does not include an incidental benefit as
 137 defined in this section.

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

145 (3) "Agreement for transfer" means any written contract
 146 utilized in the sale of personal property timeshare interests
 147 which provides that legal title will not be transferred to the
 148 purchaser until the contract price has been paid in full and the
 149 terms of payment of which extend for a period in excess of 180



HB 1243

2003

150 days after either the date of execution of the contract or
 151 completion of construction, whichever occurs later.

152 ~~(4)(3)~~ "Assessment" means the share of funds required for
 153 the payment of common expenses which is assessed from time to
 154 time against each purchaser by the managing entity.

155 ~~(5)(4)~~ "Closing" means:

156 (a) For any plan selling timeshare estates, conveyance of
 157 the legal or beneficial title to a timeshare estate as evidenced
 158 by the delivery of a deed for conveyance of legal title, or
 159 other instrument for conveyance of beneficial title, to the
 160 purchaser or to the clerk of the court for recording or
 161 conveyance of the equitable title to a timeshare estate as
 162 evidenced by the irretrievable delivery of an agreement for deed
 163 to the clerk of the court for recording.

164 (b) For any plan selling timeshare licenses, the final
 165 execution and delivery by all parties of the last document
 166 necessary for vesting in the purchaser the full rights available
 167 under the plan.

168 ~~(6)(5)~~ "Common expenses" means:

169 (a) Those expenses, fees, or taxes properly incurred for
 170 the maintenance, operation, and repair of the accommodations or
 171 facilities, or both, constituting the timeshare plan.

172 (b) Any other expenses, fees, or taxes designated as
 173 common expenses in a timeshare instrument.

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

176 ~~(7)(6)~~ "Completion of construction" means:

177 (a)1. That a certificate of occupancy has been issued for
 178 the entire building in which the timeshare unit being sold is
 179 located, or for the improvement, or that the equivalent



HB 1243

2003

180 authorization has been issued, by the governmental body having
 181 jurisdiction; ~~or~~

182 2. In a jurisdiction in which no certificate of occupancy
 183 or equivalent authorization is issued, that the construction,
 184 finishing, and equipping of the building or improvements
 185 according to the plans and specifications have been
 186 substantially completed; or

187 3. With respect to personal property timeshare plans, that
 188 all accommodations have been manufactured or built and acquired
 189 or leased by the developer, owners' association, managing
 190 entity, trustee, or other person for the use of purchasers as
 191 set forth in the timeshare instrument; and

192 (b) That all accommodations and facilities of the
 193 timeshare plan are available for use in a manner identical in
 194 all material respects to the manner portrayed by the promotional
 195 material, advertising, and registered public offering
 196 statements.

197 (8)(7) "Conspicuous type" means:

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

202 (b) Where the use of 10-point type would be impractical or
 203 impossible with respect to a particular piece of written
 204 advertising material, a different style of type or print may be
 205 used, so long as the print remains conspicuous under the
 206 circumstances.

207
 208 Where conspicuous type is required, it must be separated on all
 209 sides from other type and print. Conspicuous type may be



HB 1243

2003

210 utilized in contracts for purchase or public offering statements
 211 only where required by law or as authorized by the division.

212 ~~(9)(8)~~ "Contract" means any agreement conferring the
 213 rights and obligations of a timeshare plan on the purchaser.

214 ~~(10)(9)~~ "Developer" includes:

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

217 (b) A "successor developer," which means any person who
 218 succeeds to the interest of the persons in this subsection by
 219 sale, lease, assignment, mortgage, or other transfer, but the
 220 term includes only those persons who offer timeshare interests
 221 in the ordinary course of business; and

222 (c) A "concurrent developer," which means any person
 223 acting concurrently with the persons in this subsection with the
 224 purpose of offering timeshare interests in the ordinary course
 225 of business.

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

227 1. An owner of a timeshare interest who has acquired the
 228 timeshare interest for his or her own use and occupancy and who
 229 later offers it for resale; provided that a rebuttable
 230 presumption shall exist that an owner who has acquired more than
 231 seven timeshare interests did not acquire them for his or her
 232 own use and occupancy;

233 2. A managing entity, not otherwise a developer, that
 234 offers, or engages a third party to offer on its behalf,
 235 timeshare interests in a timeshare plan which it manages,
 236 provided that such offer complies with the provisions of s.
 237 721.065;

238 3. A person who owns or is conveyed, assigned, or
 239 transferred more than seven timeshare interests and who



HB 1243

2003

240 subsequently conveys, assigns, or transfers all acquired
241 timeshare interests to a single purchaser in a single
242 transaction, which transaction may occur in stages; or

243 4. A person who has acquired or has the right to acquire
244 more than seven timeshare interests from a developer or other
245 interestholder in connection with a loan, securitization,
246 conduit, or similar financing arrangement transaction and who
247 subsequently arranges for all or a portion of the timeshare
248 interests to be offered by one or more developers in the
249 ordinary course of business on their own behalves or on behalf
250 of such person.

251 (e) A successor or concurrent developer shall be exempt
252 from any liability inuring to a predecessor or concurrent
253 developer of the same timeshare plan, except as provided in s.
254 721.15(7), provided that this exemption shall not apply to any
255 of the successor or concurrent developer's responsibilities,
256 duties, or liabilities with respect to the timeshare plan that
257 accrue after the date the successor or concurrent developer
258 became a successor or concurrent developer, and provided that
259 such transfer does not constitute a fraudulent transfer. In
260 addition to other provisions of law, a transfer by a predecessor
261 developer to a successor or concurrent developer shall be deemed
262 fraudulent if the predecessor developer made the transfer:

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

265 2. To a person that would constitute an insider under s.
266 726.102(7).

267
268 The provisions of this paragraph shall not be construed to
269 relieve any successor or concurrent developer from the



HB 1243

2003

270 obligation to comply with the provisions of any applicable
271 timeshare instrument.

272 (11)~~(10)~~ "Division" means the Division of Florida Land
273 Sales, Condominiums, and Mobile Homes of the Department of
274 Business and Professional Regulation.

275 (12)~~(11)~~ "Enrolled" means paid membership in an exchange
276 program or membership in an exchange program evidenced by
277 written acceptance or confirmation of membership.

278 (13)~~(12)~~ "Escrow account" means an account established
279 solely for the purposes set forth in this chapter with a
280 financial institution located within this state.

281 (14)~~(13)~~ "Escrow agent" includes only:

282 (a) A savings and loan association, bank, trust company,
283 or other financial institution, any of which must be located in
284 this state and any of which must have a net worth in excess of
285 \$5 million;

286 (b) An attorney who is a member of The Florida Bar or his
287 or her law firm;

288 (c) A real estate broker who is licensed pursuant to
289 chapter 475 or his or her brokerage firm; or

290 (d) A title insurance agent that is licensed pursuant to
291 s. 626.8417, a title insurance agency that is licensed pursuant
292 to s. 626.8418, or a title insurer authorized to transact
293 business in this state pursuant to s. 624.401.

294 (15)~~(14)~~ "Exchange company" means any person owning or
295 operating, or owning and operating, an exchange program.

296 (16)~~(15)~~ "Exchange program" means any method, arrangement,
297 or procedure for the voluntary exchange of the right to use and
298 occupy accommodations and facilities among purchasers. The term
299 does not include the assignment of the right to use and occupy



HB 1243

2003

300 accommodations and facilities to purchasers pursuant to a
 301 particular multisite timeshare plan's reservation system. Any
 302 method, arrangement, or procedure that otherwise meets this
 303 definition, wherein the purchaser's total contractual financial
 304 obligation exceeds \$3,000 per any individual, recurring
 305 timeshare period, shall be regulated as a multisite timeshare
 306 plan in accordance with part II.

307 (17)~~(16)~~ "Facility" means any amenity, including any
 308 structure, furnishing, fixture, equipment, service, improvement,
 309 or real or personal property, improved or unimproved, other than
 310 the accommodation of the timeshare plan, which is made available
 311 to the purchasers of a timeshare plan. The term does not include
 312 an incidental benefit as defined in this section.

313 (18) "Filed public offering statement" means a public
 314 offering statement that has been filed with the division
 315 pursuant to s. 721.07(5) or s. 721.55.

316 (19)~~(17)~~ "Incidental benefit" means an accommodation,
 317 product, service, discount, or other benefit which is offered to
 318 a prospective purchaser of a timeshare plan or to a purchaser of
 319 a timeshare plan prior to the expiration of his or her initial
 320 10-day voidability period pursuant to s. 721.10; which is not an
 321 exchange program as defined in subsection (15); and which
 322 complies with the provisions of s. 721.075. The term shall not
 323 include an offer of the use of the accommodations and facilities
 324 of the timeshare plan on a free or discounted one-time basis.

325 (20)~~(18)~~ "Independent," for purposes of determining
 326 eligibility of escrow agents and trustees pursuant to s.
 327 721.03(7), means that:

328 (a) The escrow agent or trustee is not a relative, as
 329 described in s. 112.3135(1)(d), or an employee of the developer,



HB 1243

2003

330 seller, or managing entity, or of any officer, director,
 331 affiliate, or subsidiary thereof.

332 (b) There is no financial relationship, other than the
 333 payment of fiduciary fees or as otherwise provided in this
 334 subsection, between the escrow agent or trustee and the
 335 developer, seller, or managing entity, or any officer, director,
 336 affiliate, or subsidiary thereof.

337 (c) Compensation paid by the developer to an escrow agent
 338 or trustee for services rendered shall not be paid from funds in
 339 the escrow or trust account unless and until the developer is
 340 otherwise entitled to receive the disbursement of such funds
 341 from the escrow or trust account pursuant to this chapter.

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

- 344 1. A nonemployee, attorney-client relationship exists
 345 between the developer and the escrow agent or trustee;
- 346 2. The escrow agent or trustee provides brokerage services
 347 as defined by chapter 475 for the developer;
- 348 3. The escrow agent or trustee provides the developer with
 349 routine banking services which do not include construction or
 350 receivables financing or any other lending activities; or
- 351 4. The escrow agent or trustee performs closings for the
 352 developer or seller or issues owner's or lender's title
 353 insurance commitments or policies in connection with such
 354 closings.

355 (21)~~(19)~~ "Interestholder" means a developer, an owner of
 356 the underlying fee or owner of the underlying property, a
 357 mortgagee, judgment creditor, or other lienor, or any other
 358 person having an interest in or lien or encumbrance against the
 359 accommodations or facilities of the timeshare plan.



HB 1243

2003

360 (22)~~(20)~~ "Managing entity" means the person who operates
 361 or maintains the timeshare plan pursuant to s. 721.13(1).

362 (23)~~(21)~~ "Memorandum of agreement" means a written
 363 document, in a ~~recordable~~ sufficient to permit the document
 364 to be recorded or otherwise filed in the appropriate public
 365 records and to provide constructive notice of its contents under
 366 applicable law, which includes the names of the seller and the
 367 purchasers, a legal description of the timeshare property, or
 368 other sufficient description for a personal property timeshare
 369 plan, and all timeshare interests to be included in such
 370 document, and a description of the type of timeshare license
 371 sold by the seller.

372 (24)~~(22)~~ "Offer to sell," "offer for sale," "offered for
 373 sale," or "offer" means the solicitation, advertisement, or
 374 inducement, or any other method or attempt, to encourage any
 375 person to acquire the opportunity to participate in a timeshare
 376 plan.

377 (25)~~(23)~~ "One-to-one purchaser to accommodation ratio"
 378 means the ratio of the number of purchasers eligible to use the
 379 accommodations of a timeshare plan on a given day to the number
 380 of accommodations available for use within the plan on that day,
 381 such that the total number of purchasers eligible to use the
 382 accommodations of the timeshare plan during a given calendar
 383 year never exceeds the total number of accommodations available
 384 for use in the timeshare plan during that year. For purposes of
 385 calculation under this subsection, each purchaser must be
 386 counted at least once, and no individual timeshare unit may be
 387 counted more than 365 times per calendar year (or more than 366
 388 times per leap year). A purchaser who is delinquent in the
 389 payment of timeshare plan assessments shall continue to be



HB 1243

2003

390 considered eligible to use the accommodations of the timeshare
391 plan for purposes of this subsection notwithstanding any
392 application of s. 721.13(6).

393 ~~(26)~~(24) "Owner of the underlying fee" or "owner of the
394 underlying personal property" means any person having an
395 interest in the real property or personal property comprising or
396 underlying the accommodations or facilities of a ~~the~~ timeshare
397 plan at or subsequent to the time of creation of the timeshare
398 plan.

399 ~~(27)~~(25) "Owners' association" means an ~~the~~ association
400 made up of all owners of timeshare interests in a timeshare
401 plan, including developers and purchasers of such a timeshare
402 plan who have purchased timeshare estates.

403 ~~(28)~~ "Personal property timeshare interest" means a right
404 to occupy an accommodation located on or in or comprised of
405 personal property that is not permanently affixed to real
406 property, whether or not coupled with a beneficial or ownership
407 interest in the accommodations or personal property.

408 ~~(29)~~(26) "Public offering statement" means the written
409 materials describing a single-site timeshare plan or a multisite
410 timeshare plan, including a text and any exhibits attached
411 thereto as required by ss. 721.07, 721.55, and 721.551. The term
412 "public offering statement" shall refer to both a filed
413 ~~registered~~ public offering statement and a purchaser public
414 offering statement.

415 ~~(30)~~(27) "Purchaser" means any person, other than a
416 developer, who by means of a voluntary transfer acquires a legal
417 or equitable interest in a timeshare plan other than as security
418 for an obligation.



HB 1243

2003

419 (31)~~(28)~~ "Purchaser public offering statement" means that
 420 portion of the filed ~~registered~~ public offering statement which
 421 must be delivered to purchasers pursuant to s. 721.07(6) or s.
 422 721.551.

423 ~~(29) "Registered public offering statement" means a public~~
 424 ~~offering statement which has been filed with the division~~
 425 ~~pursuant to s. 721.07(5) or s. 721.55.~~

426 (32)~~(30)~~ "Regulated short-term product" means a
 427 contractual right, offered by the seller, to use accommodations
 428 of a timeshare plan or other accommodations, provided that:

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

434 (b) The acquisition of the right to use includes an
 435 agreement that all or a portion of the consideration paid by the
 436 prospective purchaser for the right to use will be applied to or
 437 credited against the price of a future purchase of a timeshare
 438 interest, or that the cost of a future purchase of a timeshare
 439 interest will be fixed or locked in at a specified price.

440 (33)~~(31)~~ "Seller" means any developer or any other person,
 441 or any agent or employee thereof, who offers timeshare interests
 442 in the ordinary course of business. The term "seller" does not
 443 include:

444 (a) An owner of a timeshare interest who has acquired the
 445 timeshare interest for his or her own use and occupancy and who
 446 later offers it for resale; provided that a rebuttable
 447 presumption shall exist that an owner who has acquired more than



HB 1243

2003

448 seven timeshare interests did not acquire them for his or her
 449 own use and occupancy;

450 (b) A managing entity, not otherwise a seller, that
 451 offers, or engages a third party to offer on its behalf,
 452 timeshare interests in a timeshare plan which it manages,
 453 provided that such offer complies with the provisions of s.
 454 721.065;

455 (c) A person who owns or is conveyed, assigned, or
 456 transferred more than seven timeshare interests and who
 457 subsequently conveys, assigns, or transfers all acquired
 458 timeshare interests to a single purchaser in a single
 459 transaction, which transaction may occur in stages; or

460 (d) A person who has acquired or has the right to acquire
 461 more than seven timeshare interests from a developer or other
 462 interestholder in connection with a loan, securitization,
 463 conduit, or similar financing arrangement and who subsequently
 464 arranges for all or a portion of the timeshare interests to be
 465 offered by one or more developers in the ordinary course of
 466 business on their own behalves or on behalf of such person.

467 ~~(34)(32)~~ "Timeshare estate" means a right to occupy a
 468 timeshare unit, coupled with a freehold estate or an estate for
 469 years with a future interest in a timeshare property or a
 470 specified portion thereof. The term shall also mean an interest
 471 in a condominium unit pursuant to s. 718.103, an interest in a
 472 cooperative unit pursuant to s. 719.103, or an interest in a
 473 trust that complies in all respects with the provisions of s.
 474 721.08(2)(c)4., provided that the trust does not contain any
 475 personal property timeshare interests. A timeshare estate is a
 476 parcel of real property under the laws of this state 3.



HB 1243

2003

477 ~~(35)~~~~(33)~~ "Timeshare instrument" means one or more
478 documents, by whatever name denominated, creating or governing
479 the operation of a timeshare plan.

480 ~~(36)~~~~(34)~~ "Timeshare interest" means a timeshare estate, a
481 personal property timeshare interest, or a timeshare license.

482 ~~(37)~~~~(35)~~ "Timeshare license" means a right to occupy a
483 timeshare unit, which right is not a personal property timeshare
484 ~~neither coupled with a freehold interest or a timeshare, nor~~
485 ~~coupled with an estate for years with a future interest, in a~~
486 ~~timeshare property.~~

487 ~~(38)~~~~(36)~~ "Timeshare period" means the period or periods of
488 time when a purchaser of a timeshare interest is afforded the
489 opportunity to use the accommodations ~~or facilities, or both,~~ of
490 a timeshare plan.

491 ~~(39)~~~~(37)~~ "Timeshare plan" means any arrangement, plan,
492 scheme, or similar device, other than an exchange program,
493 whether by membership, agreement, tenancy in common, sale,
494 lease, deed, rental agreement, license, or right-to-use
495 agreement or by any other means, whereby a purchaser, for
496 consideration, receives ownership rights in or a right to use
497 accommodations, and facilities, if any, for a period of time
498 less than a full year during any given year, but not necessarily
499 for consecutive years. The term "timeshare plan" includes:

500 (a) A "personal property timeshare plan," which means a
501 timeshare plan in which the accommodations are comprised of
502 personal property that is not permanently affixed to real
503 property; and

504 (b) A "real property timeshare plan," which means a
505 timeshare plan in which the accommodations of the timeshare plan
506 are comprised of or permanently affixed to real property.



HB 1243

2003

507 (40)~~(38)~~ "Timeshare property" means one or more timeshare
 508 units subject to the same timeshare instrument, together with
 509 any other property or rights to property appurtenant to those
 510 timeshare units. Notwithstanding anything to the contrary
 511 contained in chapter 718 or chapter 719, the timeshare
 512 instrument for a timeshare condominium or cooperative may
 513 designate personal property, contractual rights, affiliation
 514 agreements of component sites of vacation clubs, exchange
 515 companies, or reservation systems, or any other agreements or
 516 personal property, as common elements or limited common elements
 517 of the timeshare condominium or cooperative.

518 (41)~~(39)~~ "Timeshare unit" means an accommodation of a
 519 timeshare plan which is divided into timeshare periods. Any
 520 timeshare unit in which a door or doors connecting two or more
 521 separate rooms are capable of being locked to create two or more
 522 private dwellings shall only constitute one timeshare unit for
 523 purposes of this chapter, unless the timeshare instrument
 524 provides that timeshare interests may be separately conveyed in
 525 such locked-off portions.

526 ~~(40) "Vacation ownership plan" means any timeshare plan
 527 consisting exclusively of timeshare estates.~~

528 ~~(41) "Vacation plan" or "vacation membership plan" means
 529 any timeshare plan consisting exclusively of timeshare licenses
 530 or consisting of a combination of timeshare licenses and
 531 timeshare estates.~~

532 Section 4. Section 721.06, Florida Statutes, is amended to
 533 read:

534 721.06 Contracts for purchase of timeshare interests.--

535 (1) Each seller shall utilize and furnish each purchaser a
 536 fully completed and executed copy of a contract pertaining to



HB 1243

2003

537 the sale, which contract shall include the following
538 information:

539 (a) The actual date the contract is executed by each
540 party.

541 (b) The names and addresses of the developer and the
542 timeshare plan.

543 (c) The initial purchase price and any additional charges
544 to which the purchaser may be subject in connection with the
545 purchase of the timeshare interest, such as financing, or which
546 will be collected from the purchaser on or before closing, such
547 as the current year's annual assessment for common expenses.

548 (d)1. For real property timeshare plans, an estimate of
549 any anticipated annual assessment stated on an ~~Any~~ annually
550 recurring basis for any use charges, fees, charge and the next
551 year's estimated annual assessment for common expenses, or and
552 ~~for~~ ad valorem taxes or, if an estimate for next year's
553 ~~assessment~~ is unavailable, the current year's actual annual
554 assessment for any use charges, fees, common expenses, or and
555 ~~for~~ ad valorem taxes.

556 2. For personal property timeshare plans, an estimate of
557 any anticipated annual assessment stated on an annually
558 recurring basis for any use charges, fees, common expenses, or
559 taxes or, if an estimate is unavailable, the current year's
560 actual annual assessment for any use charges, fees, common
561 expenses or taxes.

562 (e) The estimated date of completion of construction of
563 each accommodation or facility promised to be completed which is
564 not completed at the time the contract is executed and the
565 estimated date of closing.



HB 1243

2003

566 (f) A brief description of the nature and duration of the
 567 timeshare interest being sold, including whether any interest in
 568 real property or personal property is being conveyed and the
 569 specific number of years constituting the term of the timeshare
 570 plan.

571 (g) Immediately prior to the space reserved in the
 572 contract for the signature of the purchaser, in conspicuous
 573 type, substantially the following statements:

574 1. If the purchaser will receive a personal property
 575 timeshare interest: This personal property timeshare plan is
 576 governed only by limited sections of the timeshare management
 577 provisions of Florida law.

578 2. You may cancel this contract without any penalty or
 579 obligation within 10 calendar days after the date you sign this
 580 contract or the date on which you receive the last of all
 581 documents required to be given to you pursuant to s. 721.07(6),
 582 Florida Statutes. If you decide to cancel this contract, you
 583 must notify the seller in writing of your intent to cancel. Your
 584 notice of cancellation shall be effective upon the date sent and
 585 shall be sent to ... (Name of Seller) ... at ... (Address of
 586 Seller) Any attempt to obtain a waiver of your
 587 ~~cancellation right is void and of no effect. While you may~~
 588 ~~execute all closing documents in advance, the closing, as~~
 589 ~~evidenced by delivery of the deed or other document, before~~
 590 ~~expiration of your 10-day cancellation period, is prohibited.~~

591 (h) If a timeshare estate is being conveyed, the following
 592 statement in conspicuous type:

593
 594 *For the purpose of ad valorem assessment, taxation and*
 595 *special assessments, the managing entity will be considered the*



HB 1243

2003

596 *taxpayer as your agent pursuant to section 192.037, Florida*
 597 *Statutes.*

598
 599 (i) A statement that, in the event the purchaser cancels
 600 the contract during a 10-day cancellation period, the developer
 601 will refund to the purchaser the total amount of all payments
 602 made by the purchaser under the contract, reduced by the
 603 proportion of any contract benefits the purchaser has actually
 604 received under the contract prior to the effective date of the
 605 cancellation. The statement shall further provide that the
 606 refund will be made within 20 days after receipt of notice of
 607 cancellation or within 5 days after receipt of funds from the
 608 purchaser's cleared check, whichever is later. A seller and a
 609 purchaser shall agree in writing on a specific value for each
 610 contract benefit received by the purchaser for purposes of this
 611 paragraph. The term "contract benefit" shall not include
 612 purchaser public offering statements or other documentation or
 613 materials that must be furnished to a purchaser pursuant to
 614 statute or rule.

615 (j) If the timeshare interest is being sold pursuant to an
 616 agreement for deed or an agreement for transfer, a statement
 617 that the signing of the agreement for deed or agreement for
 618 transfer does not entitle the purchaser to receive the
 619 conveyance or transfer of his or her timeshare estate or
 620 personal property timeshare interest ~~a deed~~ until all payments
 621 under the agreement have been made.

622 (k) Unless the developer is, at the time of offering the
 623 plan, the owner ~~in fee simple absolute~~ of the accommodations and
 624 facilities of the timeshare plan, free and clear of all liens,
 625 ~~and~~ encumbrances, and claims of other interestholders, a



HB 1243

2003

626 statement that the developer is not the sole owner of the
 627 underlying fee or owner of the underlying personal property or
 628 that the such accommodations or facilities are subject to
 629 ~~without~~ liens or encumbrances, which statement shall include:

630 1. The names and addresses of all interestholders ~~persons~~
 631 ~~or entities having an ownership interest or other interest in~~
 632 ~~the accommodations or facilities;~~ and

633 2. The actual interest of the developer in the
 634 accommodations or facilities. As an alternative to including the
 635 statement in the purchase contract, a seller may include a
 636 reference in the purchase contract to the location in the
 637 purchaser public offering statement text of such information.

638 (1) If the purchaser will receive an interest in a
 639 multisite timeshare plan pursuant to part II, a statement shall
 640 be provided in conspicuous type in substantially the following
 641 form:

642
 643 *The developer is required to provide the managing entity of*
 644 *the multisite timeshare plan with a copy of the approved public*
 645 *offering statement text and exhibits filed with the division and*
 646 *any approved amendments thereto, and any other component site*
 647 *documents as described in section 721.07 or section 721.55,*
 648 *Florida Statutes, that are not required to be filed with the*
 649 *division, to be maintained by the managing entity for inspection*
 650 *as part of the books and records of the plan.*

651
 652 (m) The following statement in conspicuous type:
 653



HB 1243

2003

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

657
658 (n) A description of any rights reserved by the developer
659 to alter or modify the offering prior to closing.

660 (2)(a) An agreement for deed shall be recorded by the
661 developer within 30 days after the day it is executed by the
662 purchaser. The developer shall pay all recording costs
663 associated therewith. A form copy of such instrument must be
664 filed with the division for review pursuant to s. 721.07.

665 (b) An agreement for transfer shall be filed with the
666 Secretary of State or other appropriate official responsible for
667 maintaining such records in the appropriate jurisdiction within
668 30 days after the day it is executed by the purchaser. The
669 developer shall pay all filing costs associated therewith. A
670 form copy of such instrument must be filed with the division for
671 review pursuant to s. 721.07.

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

675 Section 5. Paragraph (b) of subsection (2) of section
676 721.065, Florida Statutes, is amended to read:

677 721.065 Resale purchase agreements.--

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

680 (b) One of the following statements in conspicuous type
681 located immediately prior to the disclosure required by
682 paragraph (c):



HB 1243

2003

683 1. If the resale purchase agreement pertains to a real
 684 property timeshare plan:

685
 686 *The current year's assessment for common expenses allocable to*
 687 *the timeshare interest you are purchasing is \$____. This*
 688 *assessment, which may be increased from time to time by the*
 689 *managing entity of the timeshare plan, is payable in full each*
 690 *year on or before _____. This assessment (includes/does not*
 691 *include) yearly ad valorem real estate taxes, which (are/are*
 692 *not) billed and collected separately. (If ad valorem real*
 693 *property taxes are not included in the current year's assessment*
 694 *for common expenses, the following statement must be included:*
 695 *The most recent annual assessment for ad valorem real estate*
 696 *taxes for the timeshare interest you are purchasing is \$____.)*
 697 *(If there are any delinquent assessments for common expenses or*
 698 *ad valorem taxes outstanding with respect to the timeshare*
 699 *interest in question, the following statement must be included:*
 700 *A delinquency in the amount of \$_____ for unpaid common expenses*
 701 *or ad valorem taxes currently exists with respect to the*
 702 *timeshare interest you are purchasing, together with a per diem*
 703 *charge of \$_____ for interest and late charges.) For the purpose*
 704 *of ad valorem assessment, taxation, and special assessments, the*
 705 *managing entity will be considered the taxpayer as your agent*
 706 *pursuant to section 192.037, Florida Statutes. Each owner is*
 707 *personally liable for the payment of her or his assessments for*
 708 *common expenses, and failure to timely pay these assessments may*
 709 *result in restriction or loss of your use and/or ownership*
 710 *rights.*

711



HB 1243

2003

712 *There are many important documents relating to the timeshare*
 713 *plan which you should review prior to purchasing a timeshare*
 714 *interest, including the declaration of condominium or covenants*
 715 *and restrictions; the owners' association articles and bylaws;*
 716 *the current year's operating and reserve budgets; and any rules*
 717 *and regulations affecting the use of timeshare plan*
 718 *accommodations and facilities.*

719 2. If the resale purchase agreement pertains to a personal
 720 property timeshare plan:

721
 722 The current year's assessment for any common expenses, use
 723 charges, fees, or taxes allocable to the timeshare interest you
 724 are purchasing is \$_____. This assessment, which may be
 725 increased from time to time by the managing entity of the
 726 timeshare plan, is payable in full each year on or before
 727 _____. (If there are any delinquent assessments for common
 728 expenses, use charges, fees, or taxes outstanding with respect
 729 to the timeshare interest in question, the following statement
 730 must be included: A delinquency in the amount of \$_____ for
 731 unpaid common expenses, use charges, fees, or taxes currently
 732 exists with respect to the timeshare interest you are
 733 purchasing, together with a per diem charge of \$_____ for
 734 interest and late charges.) Each owner is personally liable for
 735 the payment of her or his assessments for common expenses, and
 736 failure to timely pay these assessments may result in
 737 restriction or loss of your use and/or ownership rights.

738
 739 There are many important documents relating to the timeshare
 740 plan which you should review prior to purchasing a timeshare
 741 interest, including any owners' association articles and bylaws;



HB 1243

2003

742 the current year's operating and reserve budgets; and any rules
743 and regulations affecting the use of timeshare plan
744 accommodations and facilities.

745

746 Section 6. Section 721.07, Florida Statutes, is amended to
747 read:

748 721.07 Public offering statement.--Prior to offering any
749 timeshare plan, the developer must submit a filed ~~registered~~
750 public offering statement to the division for approval as
751 prescribed by s. 721.03, s. 721.55, or this section. Until the
752 division approves such filing, any contract regarding the sale
753 of that timeshare plan is subject to cancellation ~~voidable~~ by
754 the purchaser pursuant to s. 721.10.

755 (1) The division shall, upon receiving a filed ~~registered~~
756 public offering statement from a developer, mail to the
757 developer an acknowledgment of receipt. The failure of the
758 division to send such acknowledgment will not, however, relieve
759 the developer from the duty of complying with this section.

760 (2)(a) Within 45 days after receipt of a filed ~~registered~~
761 public offering statement which is subject only to this part and
762 is submitted in proper form as prescribed by rule, or within 120
763 days after receipt of a filed ~~registered~~ public offering
764 statement which is subject to part II and is submitted in proper
765 form as prescribed by rule, the division shall determine whether
766 the proposed filed ~~registered~~ public offering statement is
767 adequate to meet the requirements of this section and shall
768 notify the developer by mail that the division has either
769 approved the statement or found specified deficiencies in the
770 statement. If the division fails to approve the statement or



HB 1243

2003

771 specify deficiencies in the statement within the period
772 specified in this paragraph, the filing will be deemed approved.

773 (b) If the developer fails to respond to any cited
774 deficiencies within 20 days after receipt of the division's
775 deficiency notice, the division may reject the filing.
776 Subsequent to such rejection, a new filing fee pursuant to
777 subsection (4) and a new division initial review period pursuant
778 to paragraph (a) shall apply to any refiling or further review
779 of the rejected filing.

780 (c) Within 20 days after receipt of the developer's timely
781 and complete response to any deficiency notice, the division
782 shall notify the developer by mail that the division has either
783 approved the filing, found additional specified deficiencies in
784 it, or determined that any previously specified deficiency has
785 not been corrected. If the division fails to approve or specify
786 additional deficiencies within 20 days after receipt of the
787 developer's timely and complete response, the filing will be
788 deemed approved.

789 (d) A developer shall have the authority to deliver to
790 purchasers any purchaser public offering statement that is not
791 yet approved by the division, provided that the following shall
792 apply:

793 1. At the time the developer delivers an unapproved
794 purchaser public offering statement to a purchaser pursuant to
795 this paragraph, the developer shall deliver a fully completed
796 and executed copy of the purchase contract required by s. 721.06
797 that contains the following statement in conspicuous type in
798 substantially the following form which shall replace the
799 statements required by s. 721.06(1)(g):

800



HB 1243

2003

801 The developer is delivering to you a public offering statement
802 that has been filed with but not yet approved by the Division of
803 Florida Land Sales, Condominiums, and Mobile Homes. Any
804 revisions to the unapproved public offering statement you have
805 received must be delivered to you, but only if the revisions
806 materially alter or modify the offering in a manner adverse to
807 you. After the division approves the public offering statement,
808 you will receive notice of the approval from the developer and
809 the required revisions, if any.

810

811 Your statutory right to cancel this transaction without any
812 penalty or obligation expires 10 calendar days after the date
813 you signed your purchase contract or the date on which you
814 receive the last of all documents required to be given to you
815 pursuant to section 721.07(6), Florida Statutes, or 10 calendar
816 days after you receive revisions required to be delivered to
817 you, if any, whichever is later. If you decide to cancel this
818 contract, you must notify the seller in writing of your intent
819 to cancel. Your notice of cancellation shall be effective upon
820 the date sent and shall be sent to (Name of Seller) at (Address
821 of Seller). Any attempt to obtain a waiver of your cancellation
822 right is void and of no effect. While you may execute all
823 closing documents in advance, the closing, as evidenced by
824 delivery of the deed or other document, before expiration of
825 your 10-day cancellation period, is prohibited.

826

827 2. After receipt of approval from the division and prior
828 to closing, if any revisions made to the documents contained in
829 the purchaser public offering statement materially alter or
830 modify the offering in a manner adverse to a purchaser, the



HB 1243

2003

831 developer shall send the purchaser such revisions together with
832 a notice containing a statement in conspicuous type in
833 substantially the following form:

834
835 *The unapproved public offering statement previously delivered to*
836 *you, together with the enclosed revisions, has been approved by*
837 *the Division of Florida Land Sales, Condominiums, and Mobile*
838 *Homes. Accordingly, your cancellation right expires 10 calendar*
839 *days after you sign your purchase contract or 10 calendar days*
840 *after you receive these revisions, whichever is later. If you*
841 *have any questions regarding your cancellation rights, you may*
842 *contact the division at [insert division's current address].*

843
844 3. After receipt of approval from the division and prior
845 to closing, if no revisions have been made to the documents
846 contained in the unapproved purchaser public offering statement,
847 or if such revisions do not materially alter or modify the
848 offering in a manner adverse to a purchaser, the developer shall
849 send the purchaser a notice containing a statement in
850 conspicuous type in substantially the following form:

851
852 *The unapproved public offering statement previously delivered to*
853 *you has been approved by the Division of Florida Land Sales,*
854 *Condominiums, and Mobile Homes. Revisions made to the unapproved*
855 *public offering statement, if any, are either not required to be*
856 *delivered to you or are not deemed by the developer, in its*
857 *opinion, to materially alter or modify the offering in a manner*
858 *that is adverse to you. Accordingly, your cancellation right*
859 *expired 10 days after you signed your purchase contract. A*
860 *complete copy of the approved public offering statement is*



HB 1243

2003

861 available through the managing entity for inspection as part of
862 the books and records of the plan. If you have any questions
863 regarding your cancellation rights, you may contact the division
864 at [insert division's current address].

865 (3)(a)1. Any change to an approved public offering
866 statement filing shall be filed with the division for approval
867 as an amendment prior to becoming effective. The division shall
868 have 20 days after receipt of a proposed amendment to approve or
869 cite deficiencies in the proposed amendment. If the division
870 fails to act within 20 days, the amendment will be deemed
871 approved. If the proposed amendment adds a new component site to
872 an approved multisite timeshare plan, the division's initial
873 period in which to approve or cite deficiencies is 45 days. If
874 the developer fails to adequately respond to any deficiency
875 notice within 30 days, the division may reject the amendment.
876 Subsequent to such rejection, a new filing fee pursuant to
877 subsection (4) and a new division initial review period pursuant
878 to this paragraph shall apply to any refiling or further review
879 of the rejected amendment.

880 2. For filings only subject to this part, each approved
881 amendment to the approved purchaser public offering statement,
882 other than an amendment made only for the purpose of the
883 addition of a phase or phases to the timeshare plan in the
884 manner described in the timeshare instrument or any amendment
885 that does not materially alter or modify the offering in a
886 manner that is adverse to a purchaser, shall be delivered to a
887 purchaser no later than 10 days prior to closing. For filings
888 made under part II, each approved amendment to the multisite
889 timeshare plan purchaser public offering statement, other than
890 an amendment made only for the purpose of the addition,



HB 1243

2003

891 substitution, or deletion of a component site pursuant to part
892 II or the addition of a phase or phases to a component site of a
893 multisite timeshare plan in the manner described in the
894 timeshare instrument or any amendment that does not materially
895 alter or modify the offering in a manner that is adverse to a
896 purchaser, shall be delivered to a purchaser no later than 10
897 days prior to closing.

898 3. Amendments made to a timeshare instrument for a
899 component site located in this state are not required to be
900 delivered to purchasers who do not receive a timeshare estate or
901 an interest in a specific multisite timeshare plan ~~license~~ in
902 that component site. Amendments made to a timeshare instrument
903 for a component site not located in this state are not required
904 to be delivered to purchasers.

905 (b) At the time that any amendments required to be
906 delivered to purchasers, as provided in paragraph (a), are
907 delivered to purchasers, the developer shall provide to those
908 purchasers who have not closed a written statement that the
909 purchaser or lessee will have a 10-day voidability period.

910 (4)(a) Upon the filing of a filed ~~registered~~ public
911 offering statement, the developer shall pay a filing fee of \$2
912 for each 7 days of annual use availability in each timeshare
913 unit that may be offered as a part of the proposed timeshare
914 plan pursuant to the filing.

915 (b) Upon the filing of an amendment to an approved filed
916 ~~registered~~ public offering statement, ~~other than an amendment~~
917 ~~adding a phase to the timeshare plan~~, the developer shall pay a
918 filing fee of \$100.

919 (5) Every filed ~~registered~~ public offering statement for a
920 timeshare plan which is not a multisite timeshare plan shall



HB 1243

2003

921 contain the information required by this subsection. The
922 division is authorized to provide by rule the method by which a
923 developer must provide such information to the division.

924 (a) A cover page stating only:

925 1. The name of the timeshare plan; and

926 2. The following statement, in conspicuous type: *This*
927 *public offering statement contains important matters to be*
928 *considered in acquiring a timeshare interest. The statements*
929 *contained in this public offering statement are only summary in*
930 *nature. A prospective purchaser should refer to all references,*
931 *accompanying exhibits, contract documents, and sales materials.*
932 *You should not rely upon oral representations as being correct.*
933 *Refer to this document and accompanying exhibits for correct*
934 *representations. The seller is prohibited from making any*
935 *representations other than those contained in the contract and*
936 *this public offering statement.*

937 (b) A listing of all statements required to be in
938 conspicuous type in the public offering statement and in all
939 exhibits thereto.

940 (c) A separate index of the contents and exhibits of the
941 public offering statement.

942 (d) A text which shall include, where applicable, the
943 disclosures set forth in paragraphs (e)-(hh).

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

946 1. Its name and location.

947 2. An explanation of the form of timeshare ownership that
948 is being offered, including a statement as to whether any
949 interest in the underlying real property will be conveyed to the
950 purchaser. If the plan is being created or being sold on a



HB 1243

2003

951 leasehold, a description of the material terms of the lease
952 shall be included. If the plan is a plan in which timeshare
953 estates or personal property timeshare interests are sold as
954 interests in a trust pursuant to the requirements of this
955 chapter, a full and accurate description of the trust
956 arrangement and the trustee's duties shall be included. If the
957 plan is a personal property timeshare plan, a description of the
958 material terms of the arrangement for the ownership or use of
959 the personal property shall be included.

960 3. An explanation of the manner in which the apportionment
961 of common expenses and ownership of the common elements has been
962 determined.

963 4. If ownership or use of the timeshare plan is based on a
964 point system, a statement indicating the circumstances by which
965 the point values may change, the extent of such changes, and the
966 person or entity responsible for the changes.

967 (f) A description of the accommodations, including, but
968 not limited to:

969 1. The number of timeshare units in each building, the
970 total number of timeshare periods declared as part of the
971 timeshare plan and filed with the division, and the number of
972 bathrooms and bedrooms in each type of timeshare unit.

973 2. The latest date estimated for completion of
974 constructing, finishing, and equipping the timeshare units
975 declared as part of the timeshare plan and filed with the
976 division.

977 3. The estimated maximum number of units and timeshare
978 periods that will use the accommodations and facilities. If the
979 maximum number of timeshare units or timeshare periods will
980 vary, a description of the basis for variation.



HB 1243

2003

981 4. The duration, in years, of the timeshare plan.

982 5. If any of the accommodations are part of a personal
 983 property timeshare plan, the name, vehicle registration number,
 984 title certificate number, or any other identifying registration
 985 number assigned to the accommodation of a personal property
 986 timeshare plan by a state, federal, or international
 987 governmental agency.

988 6. If any of the accommodations are part of a personal
 989 property timeshare plan, the fire detection system and fire
 990 safety equipment and description of method of compliance with
 991 any applicable firesafety or fire detection regulations.

992 (g) A description of any ~~the~~ facilities that will be used
 993 by purchasers of the plan, including, but not limited to:

994 1. The intended purpose, if not apparent from the
 995 description.

996 2. The estimated date when each facility will be available
 997 for use by the purchaser.

998 3. A statement as to whether the facilities will be used
 999 exclusively by purchasers of the timeshare plan, and, if not, a
 1000 statement as to whether the purchasers of the timeshare plan are
 1001 required to pay any portion of the maintenance and expenses of
 1002 such facilities.

1003 (h)1. If any facilities offered by the developer for use
 1004 by purchasers are to be leased or have club memberships
 1005 associated with them, other than participation in a vacation
 1006 club, one of the following statements in conspicuous type: *There*
 1007 *is a lease associated with one or more facilities of the*
 1008 *timeshare plan; or, There is a club membership associated with*
 1009 *one or more facilities of the timeshare plan.*



HB 1243

2003

1010 2. If it is mandatory that purchasers pay fees, rent,
1011 dues, or other charges under a facilities lease or club
1012 membership for the use of the facilities, other than
1013 participation in a vacation club, the applicable statement in
1014 conspicuous type in substantially the following form:

1015 a. *Membership in a facilities club is mandatory for*
1016 *purchasers;*

1017 b. *Purchasers or the owners' association(s) are required,*
1018 *as a condition of ownership, to be lessees under the facilities*
1019 *lease;*

1020 c. *Purchasers or the owners' association(s) are required*
1021 *to pay their share of the rent or costs and expenses of*
1022 *maintenance, management, upkeep, and replacement under the*
1023 *facilities lease (or the other instruments providing the*
1024 *facilities); or*

1025 d. A similar statement of the nature of the organization
1026 or the manner in which the use rights are created, and that
1027 purchasers are required to pay.

1028

1029 Immediately following the applicable statement, a description of
1030 the lease or other instrument shall be stated, including a
1031 description of terms of the payment of rent or costs and
1032 expenses of maintenance, management, upkeep, and replacement of
1033 the facilities.

1034 3. If the purchasers are required to pay a use fee, or
1035 other payment for the use of the facilities, not including the
1036 rent or maintenance, management, upkeep, or replacement costs
1037 and expenses, the following statement in conspicuous type: *The*
1038 *purchasers or the owners' association(s) must pay use fees for*



HB 1243

2003

1039 *one or more facilities.* Immediately following this statement, a
 1040 description of the use fees shall be included.

1041 4. If any person other than the owners' association has
 1042 the right to a lien on the timeshare interests to secure the
 1043 payment of assessments, rent, or other exactions, a statement in
 1044 conspicuous type in substantially the following form:

1045 a. *There is a lien or lien right against each timeshare*
 1046 *interest to secure the payment of rent and other exactions under*
 1047 *the facilities lease. A purchaser's failure to make these*
 1048 *payments may result in foreclosure of the lien; or*

1049 b. *There is a lien or lien right against each timeshare*
 1050 *interest to secure the payment of assessments or other exactions*
 1051 *coming due for the use, maintenance, upkeep, or repair of one or*
 1052 *more facilities. A purchaser's failure to make these payments*
 1053 *may result in foreclosure of the lien.*

1054
 1055 Immediately following the applicable statement, a description of
 1056 the lien right shall be included.

1057 (i) If the developer or any other person has the right to
 1058 increase or add to the facilities at any time after the
 1059 establishment of the timeshare plan, without the consent of the
 1060 purchasers or owners' association being required, a statement in
 1061 conspicuous type in substantially the following form: *Facilities*
 1062 *may be expanded or added without consent of the purchasers or*
 1063 *the owners' association(s).* Immediately following this
 1064 statement, a description of such reserved rights shall be
 1065 included.

1066 (j)1. For a real property timeshare plan, an explanation
 1067 of the status of the title to the real property underlying the
 1068 timeshare plan, including a statement of the existence of any



HB 1243

2003

1069 lien, defect, judgment, mortgage, or other encumbrance affecting
 1070 the title to the property, and how such lien, defect, judgment,
 1071 mortgage, or other encumbrance will be removed or satisfied
 1072 prior to closing.

1073 2. For a personal property timeshare plan, an explanation
 1074 of the status of title to the personal property underlying the
 1075 timeshare plan, including a statement of the existence of any
 1076 lien, defect, judgment, or other encumbrance affecting the title
 1077 to the personal property, and how such lien, defect, judgment,
 1078 or other encumbrance will be removed or satisfied prior to
 1079 closing.

1080 (k) A description of any judgment against the developer,
 1081 the managing entity, owner of the underlying fee, or owner of
 1082 the underlying personal property fee, which judgment is material
 1083 to the timeshare plan; the status of any pending suit to which
 1084 the developer, the managing entity, owner of the underlying fee,
 1085 or owner of the underlying personal property fee is a party,
 1086 which suit is material to the timeshare plan; and any other suit
 1087 which is material to the timeshare plan of which the developer,
 1088 managing entity, owner of the underlying fee, or owner of the
 1089 underlying personal property fee has actual knowledge. If no
 1090 judgments or pending suits exist, there shall be a statement of
 1091 such fact.

1092 (l) A description of all unusual and material
 1093 circumstances, features, and characteristics of the real
 1094 property or personal property underlying or comprising the
 1095 timeshare plan.

1096 (m) A description of any financing to be offered to
 1097 purchasers by the developer or any person or entity in which the
 1098 developer has a financial interest, together with a disclosure



HB 1243

2003

1099 that the description of such financing may be changed by the
 1100 developer and that any change in the financing offered to
 1101 prospective purchasers will not be deemed to be a material
 1102 change.

1103 (n) A detailed explanation of any financial arrangements
 1104 which have been provided for completion of all promised
 1105 improvements.

1106 (o) The name and address of the managing entity; a
 1107 statement whether the seller may change the managing entity or
 1108 its control and, if so, the manner by which the seller may
 1109 change the managing entity; a statement of the arrangements for
 1110 management, maintenance, and operation of the accommodations and
 1111 facilities and of other property that will serve the purchasers;
 1112 and a description of the management arrangement and any
 1113 contracts for these purposes having a term in excess of 1 year,
 1114 including the names of the contracting parties, the term of the
 1115 contract, the nature of the services included, and the
 1116 compensation, stated for a month and for a year, and provisions
 1117 for increases in the compensation.

1118 (p) If any person other than the purchasers has the right
 1119 to retain control of the board of administration of the owners'
 1120 association, if any, for a period of time which may exceed 1
 1121 year after the closing of the sale of a majority of the
 1122 timeshare interests in that timeshare plan to persons other than
 1123 successors or concurrent developers and the plan is one in which
 1124 all purchasers automatically become members of the owners'
 1125 association, a statement in conspicuous type in substantially
 1126 the following form: *The developer (or other person) has the*
 1127 *right to retain control of the owners' association after a*
 1128 *majority of the timeshare interests have been sold. Immediately*



HB 1243

2003

1129 following this statement, a description of the applicable
 1130 transfer of control provisions of the timeshare plan shall be
 1131 included.

1132 (q)1. If there are any restrictions upon the sale,
 1133 transfer, conveyance, or leasing of a timeshare interest, a
 1134 statement in conspicuous type in substantially the following
 1135 form: *The sale, lease, or transfer of timeshare interests is*
 1136 *restricted or controlled.* Immediately following this statement,
 1137 a description of the nature of the restriction, limitation, or
 1138 control on the sale, lease, or transfer of timeshare interests
 1139 shall be included.

1140 2. The following statement in conspicuous type in
 1141 substantially the following form: *The purchase of a timeshare*
 1142 *interest should be based upon its value as a vacation experience*
 1143 *or for spending leisure time, and not considered for purposes of*
 1144 *acquiring an appreciating investment or with an expectation that*
 1145 *the timeshare interest may be resold.*

1146 (r) If the timeshare plan is part of a phase project, a
 1147 statement to that effect and a complete description of the
 1148 phasing. Notwithstanding any provisions of s. 718.110 or s.
 1149 719.1055, a developer may develop a timeshare condominium or a
 1150 timeshare cooperative in phases if the original declaration of
 1151 condominium or cooperative documents submitting the initial
 1152 phase to condominium ownership or cooperative ownership or an
 1153 amendment to the declaration of condominium or cooperative
 1154 documents which has been approved by all of the unit owners and
 1155 unit mortgagees provides for phasing. Notwithstanding any
 1156 provisions of s. 718.403 or s. 719.403 to the contrary, the
 1157 original declaration of condominium or cooperative documents, or
 1158 an amendment to the declaration of condominium or cooperative



HB 1243

2003

1159 documents adopted pursuant to this subsection, need only
1160 generally describe the developer's phasing plan and the land
1161 which may become part of the condominium or cooperative, and, in
1162 conjunction therewith, the developer may also reserve all rights
1163 to vary his or her phasing plan as to phase boundaries, plot
1164 plans and floor plans, timeshare unit types, timeshare unit
1165 sizes and timeshare unit type mixes, numbers of timeshare units,
1166 and facilities with respect to each subsequent phase. There
1167 shall be no time limit during which a developer of a timeshare
1168 condominium or timeshare cooperative must complete his or her
1169 phasing plan, and the developer shall not be required to notify
1170 owners of existing timeshare estates of his or her decision not
1171 to add one or more proposed phases.

1172 (s) A description of the material restrictions, if any, to
1173 be imposed on timeshare interests concerning the use of any of
1174 the accommodations or facilities, including statements as to
1175 whether there are restrictions upon children and pets or a
1176 reference to a copy of the documents containing the restrictions
1177 which shall be attached as an exhibit. If there are no
1178 restrictions, there shall be a statement of such fact.

1179 (t) If there is any land or personal property that is
1180 offered by the developer for use by the purchasers and which is
1181 neither owned by them nor leased to them, the owners'
1182 association, or any entity controlled by the purchasers, a
1183 statement describing the land or personal property, how it will
1184 serve the timeshare plan, and the nature and term of service.

1185 (u) An estimated operating budget for the timeshare plan
1186 and a schedule of the purchaser's expenses shall be attached as
1187 an exhibit and shall contain the following information:



HB 1243

2003

1188 1. The estimated annual expenses of the timeshare plan
 1189 collectible from purchasers by assessments. The estimated
 1190 payments by the purchaser for assessments shall also be stated
 1191 in the estimated amounts for the times when they will be due.
 1192 Expenses shall also be shown for the shortest timeshare period
 1193 offered for sale by the developer. If the timeshare plan
 1194 provides for the offer and sale of units to be used on a
 1195 nontimeshare basis, the estimated monthly and annual expenses of
 1196 such units shall be set forth in a separate schedule.

1197 2. The estimated weekly, monthly, and annual expenses of
 1198 the purchaser of each timeshare interest, other than assessments
 1199 payable to the managing entity. Expenses which are personal to
 1200 purchasers that are not uniformly incurred by all purchasers or
 1201 that are not provided for or contemplated by the timeshare plan
 1202 documents may be excluded from this estimate.

1203 3. The estimated items of expenses of the timeshare plan
 1204 and the managing entity, except as excluded under subparagraph
 1205 2., including, but not limited to, if applicable, the following
 1206 items, which shall be stated either as management expenses
 1207 collectible by assessments or as expenses of the purchaser
 1208 payable to persons other than the managing entity:

- 1209 a. Expenses for the managing entity:
- 1210 (I) Administration of the managing entity.
- 1211 (II) Management fees.
- 1212 (III) Maintenance.
- 1213 (IV) Rent for facilities.
- 1214 (V) Taxes upon timeshare property.
- 1215 (VI) Taxes upon leased areas.
- 1216 (VII) Insurance.
- 1217 (VIII) Security provisions.



HB 1243

2003

1218 (IX) Other expenses.

1219 (X) Operating capital.

1220 (XI) Reserves for deferred maintenance and reserves for
1221 capital expenditures.

1222 (A) All reserves for any accommodations and facilities of
1223 real property timeshare plans located in this state shall be
1224 calculated by a formula which is based upon estimated life and
1225 replacement cost of each reserve item. Reserves for deferred
1226 maintenance for such accommodations and facilities shall include
1227 accounts for roof replacement, building painting, pavement
1228 resurfacing, replacement of timeshare unit furnishings and
1229 equipment, and any other component, the useful life of which is
1230 less than the useful life of the overall structure. For any
1231 accommodations and facilities of real property timeshare plans
1232 located outside of this state, the developer shall disclose the
1233 amount of reserves for deferred maintenance or capital
1234 expenditures required by the law of the situs state, if
1235 applicable, and maintained for such accommodations and
1236 facilities.

1237 (B) Reserves for deferred maintenance or capital
1238 expenditures of accommodations and facilities of a personal
1239 property timeshare plan, if any. If such reserves are
1240 maintained, the estimated operating budget shall disclose the
1241 methodology of how the reserves are calculated. If a personal
1242 property timeshare plan does not require reserves, the following
1243 statement, in conspicuous type, shall appear in both the budget
1244 and the public offering statement:

1245
1246 The estimated operating budget for this personal property
1247 timeshare plan does not include reserves for deferred



HB 1243

2003

1248 maintenance or capital expenditures; each timeshare interest may
 1249 be subject to substantial special assessments from time to time
 1250 because no such reserves exist.

1251

1252 (XII) Fees payable to the division.

1253 b. Expenses for a purchaser:

1254 (I) Rent for the timeshare unit, if subject to a lease.

1255 (II) Rent payable by the purchaser directly to the lessor
 1256 or agent under any lease for the use of facilities, which use
 1257 and payment is a mandatory condition of ownership and is not
 1258 included in the common expenses or assessments for common
 1259 maintenance paid by the purchasers to the managing entity.

1260 4. The estimated amounts shall be stated for a period of
 1261 at least 12 months and may distinguish between the period prior
 1262 to the time that purchasers elect a majority of the board of
 1263 administration and the period after that date.

1264 5. If the developer intends to guarantee the level of
 1265 assessments, such guarantee must be based upon a good faith
 1266 estimate of the revenues and expenses of the timeshare plan. The
 1267 guarantee must include a description of the following:

1268 a. The specific time period measured in one or more
 1269 calendar or fiscal years during which the guarantee will be in
 1270 effect.

1271 b. A statement that the developer will pay all common
 1272 expenses incurred in excess of the total revenues of the
 1273 timeshare plan pursuant to s. 721.15(2) if the developer has
 1274 excused himself or herself from the payment of assessments
 1275 during the guarantee period.

1276 c. The level, expressed in total dollars, at which the
 1277 developer guarantees the budget. If the developer has reserved



HB 1243

2003

1278 the right to extend or increase the guarantee level pursuant to
1279 s. 721.15(2), a disclosure must be included to that effect.

1280 6. If the developer intends to provide a trust fund to
1281 defer or reduce the payment of annual assessments, a copy of the
1282 trust instrument shall be attached as an exhibit and shall
1283 include a description of such arrangement, including, but not
1284 limited to:

1285 a. The specific amount of such trust funds and the source
1286 of the funds.

1287 b. The name and address of the trustee.

1288 c. The investment methods permitted by the trust
1289 agreement.

1290 d. A statement in conspicuous type that the funds from the
1291 trust account may not cover all assessments and that there is no
1292 guarantee that purchasers will not have to pay assessments in
1293 the future.

1294 7. The budget of a phase timeshare plan may contain a note
1295 identifying the number of timeshare interests covered by the
1296 budget, indicating the number of timeshare interests, if any,
1297 estimated to be declared as part of the timeshare plan during
1298 that calendar year, and projecting the common expenses for the
1299 timeshare plan based upon the number of timeshare interests
1300 estimated to be declared as part of the timeshare plan during
1301 that calendar year.

1302 (v) A schedule of estimated closing expenses to be paid by
1303 a purchaser or lessee of a timeshare interest and a statement as
1304 to whether a title opinion or title insurance policy is
1305 available to the purchaser and, if so, at whose expense.

1306 (w) The identity of the developer and the chief operating
1307 officer or principal directing the creation and sale of the



HB 1243

2003

1308 timeshare plan and a statement of the experience of each in this
1309 field or, if no experience, a statement of that fact.

1310 (x) A statement of the total financial obligation of the
1311 purchaser, including the purchase price and any additional
1312 charges to which the purchaser may be subject.

1313 (y) The name of any person who will or may have the right
1314 to alter, amend, or add to the charges to which the purchaser
1315 may be subject and the terms and conditions under which such
1316 alterations, amendments, or additions may be imposed.

1317 (z) A statement of the purchaser's right of cancellation
1318 of the purchase contract.

1319 (aa) A description of the insurance coverage provided for
1320 the timeshare plan.

1321 (bb) A statement as to whether the timeshare plan is
1322 participating in an exchange program and, if so, the name and
1323 address of the exchange company offering the exchange program.

1324 (cc) The existence of rules and regulations regarding any
1325 reservation features governing a purchaser's ability to make
1326 reservations for a timeshare period, including, if applicable, a
1327 conspicuous type disclaimer in substantially the following form:

1328
1329 *The right to reserve a timeshare period is subject to rules and*
1330 *regulations of the timeshare plan reservation system.*

1331
1332 (dd) If a developer is filing a timeshare plan that
1333 includes a timeshare instrument or component site document that
1334 was in conformance with the laws and rules in existence at the
1335 time the timeshare plan was created but does not conform to
1336 existing laws and rules that govern the timeshare plan and the
1337 developer does not have the authority or power to amend or



HB 1243

2003

1338 change the timeshare instrument or component site document to
1339 conform to such existing laws or rules as directed by the
1340 division, a brief explanation of current law and the conflict
1341 with the timeshare instrument or component site document,
1342 preceded by disclaimer in conspicuous type in substantially the
1343 following form:

1344
1345 *Florida law has been amended and certain provisions in [insert*
1346 *appropriate reference to timeshare instrument or component site*
1347 *document] that were in conformance with Florida law as it*
1348 *existed at the time the timeshare plan was created are not in*
1349 *conformance with current Florida law. These documents may only*
1350 *be amended by [insert appropriate reference to person or entity*
1351 *that has the right to amend or change the timeshare instrument*
1352 *or component site document]. The developer does not warrant that*
1353 *such documents are in technical compliance with all applicable*
1354 *Florida laws and regulations. All questions regarding amendment*
1355 *of these documents should be directed to [insert appropriate*
1356 *reference to person or entity that has the right to amend or*
1357 *change the timeshare instrument or component site document].*

1358
1359 (ee) Any other information that a seller, with the
1360 approval of the division, desires to include in the public
1361 offering statement.

1362 (ff) Copies of the following documents and plans, to the
1363 extent they are applicable, shall be included as exhibits to the
1364 filed ~~registered~~ public offering statement provided, if the
1365 timeshare plan has not been declared or created at the time of
1366 the filing, the developer shall provide proposed documents:

1367 1. The declaration of condominium.



HB 1243

2003

- 1368 2. The cooperative documents.
- 1369 3. The declaration of covenants and restrictions.
- 1370 4. The articles of incorporation creating the owners'
- 1371 association.
- 1372 5. The bylaws of the owners' association.
- 1373 6. Any ~~The~~ ground lease or other underlying lease of the
- 1374 real property associated with ~~on which~~ the timeshare plan ~~is~~
- 1375 situated. In the case of a personal property timeshare plan, any
- 1376 lease of the personal property associated with the personal
- 1377 property timeshare plan.
- 1378 7. The management agreement and all maintenance and other
- 1379 contracts regarding the management and operation of the
- 1380 timeshare property which have terms in excess of 1 year.
- 1381 8. The estimated operating budget for the timeshare plan
- 1382 and the required schedule of purchasers' expenses.
- 1383 9. The floor plan of each type of accommodation and the
- 1384 plot plan showing the location of all accommodations and
- 1385 facilities declared as part of the timeshare plan and filed with
- 1386 the division.
- 1387 10. The lease for any facilities.
- 1388 11. A declaration of servitude of properties serving the
- 1389 accommodations and facilities, but not owned by purchasers or
- 1390 leased to them or the owners' association.
- 1391 12. Any documents required by s. 721.03(3)(e) as the
- 1392 result of the inclusion of a timeshare plan in the conversion of
- 1393 the building to condominium or cooperative ownership.
- 1394 13. The form of agreement for sale or lease of timeshare
- 1395 interests.
- 1396 14. The executed agreement for escrow of payments made to
- 1397 the developer prior to closing and the form of any agreement for



HB 1243

2003

1398 escrow of ad valorem tax escrow payments, if any, to be made
1399 into an ad valorem tax escrow account pursuant to s. 192.037(6).

1400 15. The documents containing any restrictions on use of
1401 the property required by paragraph (s).

1402 16. A letter from the escrow agent or filing attorney
1403 confirming that the escrow agent and its officers, directors, or
1404 other partners are independent pursuant to the requirements of
1405 this chapter.

1406 17.16. Any other documents or instruments creating the
1407 timeshare plan.

1408 (gg) Such other information as is necessary to fairly,
1409 meaningfully, and effectively disclose all aspects of the
1410 timeshare plan, including, but not limited to, any disclosures
1411 made necessary by the operation of s. 721.03(8). However, if a
1412 developer has, in good faith, attempted to comply with the
1413 requirements of this section, and if, in fact, he or she has
1414 substantially complied with the disclosure requirements of this
1415 chapter, nonmaterial errors or omissions shall not be
1416 actionable.

1417 (hh) Notwithstanding the provisions of this subsection,
1418 the filed ~~registered~~ public offering statement for a component
1419 site of a multisite timeshare plan filed pursuant to this
1420 subsection may contain cross-references to information contained
1421 in the related multisite timeshare plan filed ~~registered~~ public
1422 offering statement filed pursuant to s. 721.55 in lieu of
1423 repeating such information.

1424 (6) The division is authorized to prescribe by rule the
1425 form of the approved purchaser public offering statement that
1426 must be furnished by the developer to each purchaser. The form
1427 of the purchaser public offering statement must provide fair,



HB 1243

2003

1428 meaningful, and effective disclosure of all aspects of the
1429 timeshare plan. For timeshare plans filed pursuant to this part,
1430 the developer shall furnish each purchaser with the following:

1431 (a) A copy of the purchaser public offering statement text
1432 in the form approved by the division for delivery to purchasers.

1433 (b) Copies of the exhibits required to be filed with the
1434 division pursuant to subparagraphs (5)(ff)1., 2., 4., 5., 8.,
1435 and 16.

1436 (c) A receipt for timeshare plan documents and a list
1437 describing any exhibit to the filed ~~registered~~ public offering
1438 statement filed with the division which is not delivered to the
1439 purchaser. The division is authorized to prescribe by rule the
1440 form of the receipt for timeshare plan documents and the
1441 description of exhibits list that must be furnished to the
1442 purchaser. The description of documents list utilized by a
1443 developer shall be filed with the division for review as part of
1444 the filed ~~registered~~ public offering statement pursuant to this
1445 section. The developer shall be required to provide the managing
1446 entity with a copy of the approved filed ~~registered~~ public
1447 offering statement and any approved amendments thereto to be
1448 maintained by the managing entity as part of the books and
1449 records of the timeshare plan pursuant to s. 721.13(3)(d).

1450 (d) Any other exhibit which the developer includes as part
1451 of the purchaser public offering statement, provided that the
1452 developer first files the exhibit with the division.

1453 (e) An executed copy of any document which the purchaser
1454 signs.

1455 (f) Each purchaser shall receive a fully executed paper
1456 copy of the purchase contract.



HB 1243

2003

1457 Section 7. Paragraph (g) of subsection (1) of section
 1458 721.075, Florida Statutes, is amended and paragraph (e) is added
 1459 to subsection (2) of said section, to read:

1460 721.075 Incidental benefits.--Incidental benefits shall be
 1461 offered only as provided in this section.

1462 (1) Accommodations, facilities, products, services,
 1463 discounts, or other benefits which satisfy the requirements of
 1464 this subsection shall be subject to the provisions of this
 1465 section and exempt from the other provisions of this chapter
 1466 which would otherwise apply to such accommodations or facilities
 1467 if and only if:

1468 (g) The incidental benefit is filed with the division for
 1469 review in conjunction with the filing of a timeshare plan or in
 1470 connection with a previously filed timeshare plan.

1471 (2) Each purchaser shall execute a separate acknowledgment
 1472 and disclosure statement with respect to all incidental
 1473 benefits, which statement shall include the following
 1474 information:

1475 (e) A statement indicating the source of the services,
 1476 points, or other products that constitute the incidental
 1477 benefit.

1478 Section 8. Section 721.08, Florida Statutes, is amended to
 1479 read:

1480 721.08 Escrow accounts; nondisturbance instruments;
 1481 alternate security arrangements; transfer of legal title.--

1482 (1) Prior to the filing of a ~~registered~~ public offering
 1483 statement with the division, all developers shall establish an
 1484 escrow account with an escrow agent for the purpose of
 1485 protecting the funds or other property of purchasers required to
 1486 be escrowed by this section. An escrow agent shall maintain the



HB 1243

2003

1487 accounts called for in this section only in such a manner as to
 1488 be under the direct supervision and control of the escrow agent.
 1489 The escrow agent shall have a fiduciary duty to each purchaser
 1490 to maintain the escrow accounts in accordance with good
 1491 accounting practices and to release the purchaser's funds or
 1492 other property from escrow only in accordance with this chapter.
 1493 The escrow agent shall retain all affidavits received pursuant
 1494 to this section for a period of 5 years. Should the escrow agent
 1495 receive conflicting demands for funds or other property held in
 1496 escrow, the escrow agent shall immediately notify the division
 1497 of the dispute and either promptly submit the matter to
 1498 arbitration or, by interpleader or otherwise, seek an
 1499 adjudication of the matter by court.

1500 (2) One hundred percent of all funds or other property
 1501 which is received from or on behalf of purchasers of the
 1502 timeshare plan or timeshare interest prior to the occurrence of
 1503 events required in this subsection shall be deposited pursuant
 1504 to an escrow agreement approved by the division. The ~~escrow~~
 1505 ~~agreement shall provide that the~~ funds or other property may be
 1506 released from escrow only as follows:

1507 (a) *Cancellation.*--In the event a purchaser gives a valid
 1508 notice of cancellation pursuant to s. 721.10 or is otherwise
 1509 entitled to cancel the sale, the funds or property received from
 1510 or on behalf of the purchaser, or the proceeds thereof, shall be
 1511 returned to the purchaser. Such refund shall be made within 20
 1512 days after ~~of~~ demand therefor by the purchaser or within 5 days
 1513 after receipt of funds from the purchaser's cleared check,
 1514 whichever is later. If the purchaser has received benefits under
 1515 the contract prior to the effective date of the cancellation,
 1516 the funds or other property to be returned to the purchaser may



HB 1243

2003

1517 be reduced by the proportion of contract benefits actually
1518 received.

1519 (b) *Purchaser's default.*--Following expiration of the 10-
1520 day cancellation period, if the purchaser defaults in the
1521 performance of her or his obligations under the terms of the
1522 contract to purchase or such other agreement by which a seller
1523 sells the timeshare interest, the developer shall provide an
1524 affidavit to the escrow agent requesting release of the escrowed
1525 funds or property and shall provide a copy of such affidavit to
1526 the purchaser who has defaulted. The developer's affidavit, as
1527 required herein, shall include:

1528 1. A statement that the purchaser has defaulted and that
1529 the developer has not defaulted;

1530 2. A brief explanation of the nature of the default and
1531 the date of its occurrence;

1532 3. A statement that pursuant to the terms of the contract
1533 the developer is entitled to the funds held by the escrow agent;
1534 and

1535 4. A statement that the developer has not received from
1536 the purchaser any written notice of a dispute between the
1537 purchaser and developer or a claim by the purchaser to the
1538 escrow.

1539 (c) *Compliance with conditions.*--

1540 1. Timeshare licenses.--If the timeshare plan is one in
1541 which timeshare licenses are to be sold and no cancellation or
1542 default has occurred, the escrow agent may release the escrowed
1543 funds or other property to or on the order of the developer upon
1544 presentation of:

1545 a. An affidavit by the developer that all of the following
1546 conditions have been met:



HB 1243

2003

1547 (I) Expiration of the cancellation period.
 1548 (II) Completion of construction.
 1549 (III) Closing.
 1550 (IV) (A) ~~Either~~ Execution, delivery, and recordation by
 1551 each interestholder of the nondisturbance and notice to
 1552 creditors instrument, as described in this section; or,
 1553 ~~alternatively~~, (B) Transfer by the developer of legal
 1554 title to the subject accommodations and facilities, or all use
 1555 rights therein, into ~~to~~ a trust satisfying the requirements of
 1556 subparagraph 4. ~~sub-subparagraph 3.b.~~ and the execution,
 1557 delivery, and recordation by each other interestholder of the
 1558 nondisturbance and notice to creditors instrument, as described
 1559 in this section.

1560 b. A certified copy of each ~~the~~ recorded nondisturbance
 1561 and notice to creditors instrument ~~that complies with subsection~~
 1562 ~~(3)~~.

1563 c. One of the following:

1564 (I) A copy of a memorandum of agreement, as defined in s.
 1565 721.05~~(21)~~, together with satisfactory evidence that the
 1566 original memorandum of agreement has been irretrievably
 1567 delivered for recording to the appropriate official responsible
 1568 for maintaining the public records in the county in which the
 1569 subject accommodations and facilities are located. The original
 1570 memorandum of agreement must be recorded within 180 days after
 1571 the date on which the purchaser executed her or his purchase
 1572 agreement.

1573 (II) A notice delivered for recording to the appropriate
 1574 official responsible for maintaining the public records in each
 1575 county in which the subject accommodations and facilities are
 1576 located notifying all persons of the identity of an independent



HB 1243

2003

1577 escrow agent or trustee satisfying the requirements of
 1578 subparagraph 4. ~~sub-subparagraph 3.b.~~ that shall maintain
 1579 separate books and records, in accordance with good accounting
 1580 practices, for the timeshare plan in which timeshare licenses
 1581 are to be sold. The books and records shall indicate each
 1582 accommodation and facility that is subject to such a timeshare
 1583 plan and each purchaser of a timeshare license in the timeshare
 1584 plan.

1585 2. Timeshare estates.--If the timeshare plan is one in
 1586 which timeshare estates are to be sold, ~~other than interests in~~
 1587 ~~a trust pursuant to subparagraph 3.,~~ and no cancellation or
 1588 default has occurred, the escrow agent may release the escrowed
 1589 funds or other property to or on the order of the developer upon
 1590 presentation of:

1591 a. An affidavit by the developer that all of the following
 1592 conditions have been met:

1593 (I) Expiration of the cancellation period.

1594 (II) Completion of construction.

1595 (III) Closing.

1596 b. If the timeshare estate is sold by agreement for deed,
 1597 a certified copy of the recorded nondisturbance and notice to
 1598 creditors instrument, as described in this section.

1599 c. Evidence that each accommodation and facility:

1600 (I) Is free and clear of the claims of any
 1601 interestholders, other than the claims of interestholders that,
 1602 through a recorded instrument, are irrevocably made subject to
 1603 the timeshare instrument and the use rights of purchasers made
 1604 available through the timeshare instrument;

1605 (II) Is the subject of a recorded nondisturbance and
 1606 notice to creditors instrument that complies with subsection (3)



HB 1243

2003

1607 and s. 721.17; or

1608 (III) Has been transferred into a trust satisfying the
 1609 requirements of subparagraph 4.

1610 d. Evidence that the timeshare estate:

1611 (I) Is free and clear of the claims of any
 1612 interestholders, other than the claims of interestholders that,
 1613 through a recorded instrument, are irrevocably made subject to
 1614 the timeshare instrument and the use rights of purchasers made
 1615 available through the timeshare instrument; ~~or~~

1616 (II) Is ~~that are~~ the subject of a recorded nondisturbance
 1617 and notice to creditors instrument that complies with subsection
 1618 (3) and s. 721.17~~(3)~~.

1619 3. Personal property timeshare interests.--If the
 1620 timeshare plan is one in which personal property timeshare
 1621 ~~interests~~ estates are to be sold as ~~interests in a trust that~~
 1622 ~~complies in all respects with the provisions of sub-subparagraph~~
 1623 ~~b.~~, and no cancellation or default has occurred, the escrow
 1624 agent may release the escrowed funds or other property to or on
 1625 the order of the developer upon presentation of:

1626 a. An affidavit by the developer that all of the following
 1627 conditions have been met:

1628 (I) Expiration of the cancellation period.

1629 (II) Completion of construction.

1630 (III) ~~Transfer of the subject accommodations and~~
 1631 ~~facilities, or all use rights therein, to the trust.~~

1632 (IV)—Closing.

1633 b. If the personal property timeshare interest is sold by
 1634 agreement for transfer, evidence that the agreement for transfer
 1635 complies fully with s. 721.06 and this section.

1636 c.(I) Transfer by the owner of the underlying personal



HB 1243

2003

1637 property of legal title to the subject accommodations and
 1638 facilities or all use rights therein into a trust satisfying the
 1639 requirements of subparagraph 4.; or

1640 (II) Transfer by the owner of the underlying personal
 1641 property of legal title to the subject accommodations and
 1642 facilities or all use rights therein into an owners' association
 1643 satisfying the requirements of subparagraph 5.

1644 d. Evidence of compliance with the provisions of
 1645 subparagraph 6., if required.

1646 4. Trust.--

1647 a. If the subject accommodations or facilities, or all use
 1648 rights therein, are to be transferred into a trust in order to
 1649 comply with this paragraph, such transfer shall take place
 1650 pursuant to this subparagraph.

1651 b. Prior to the transfer by each interestholder of the
 1652 subject accommodations and facilities, or all use rights
 1653 therein, to a trust, any lien or other encumbrance against such
 1654 accommodations and facilities, or use rights therein, shall be
 1655 made subject to a nondisturbance and notice to creditors
 1656 instrument pursuant to subsection (3) as described in this
 1657 section. No transfer pursuant to this subparagraph sub-
 1658 subparagraph shall become effective until the trustee accepts
 1659 such transfer and the responsibilities set forth herein. A trust
 1660 established pursuant to this subparagraph sub-subparagraph shall
 1661 comply with the following provisions:

1662 (I) The trustee shall be an individual or a business
 1663 entity authorized and qualified to conduct trust business in
 1664 this state. Any corporation authorized to do business in this
 1665 state may act as trustee in connection with a timeshare plan
 1666 pursuant to this chapter. The trustee must be independent from



HB 1243

2003

1667 any developer or managing entity of the timeshare plan or any
 1668 interestholder of any accommodation or facility of such plan.

1669 (II) The trust shall be irrevocable so long as any
 1670 purchaser has a right to occupy any portion of the timeshare
 1671 property pursuant to the timeshare plan.

1672 (III) The trustee shall not convey, hypothecate, mortgage,
 1673 assign, lease, or otherwise transfer or encumber in any fashion
 1674 any interest in or portion of the timeshare property with
 1675 respect to which any purchaser has a right of use or occupancy
 1676 unless the timeshare plan is terminated pursuant to the
 1677 timeshare instrument, or such conveyance, hypothecation,
 1678 mortgage, assignment, lease, transfer, or encumbrance is
 1679 approved by a vote of two-thirds of all voting interests of the
 1680 timeshare plan and such decision is declared by a court of
 1681 competent jurisdiction to be in the best interests of the
 1682 purchasers of the timeshare plan. The trustee shall notify the
 1683 division in writing within 10 days after ~~of~~ receiving notice of
 1684 the filing of any petition relating to obtaining such a court
 1685 order. The division shall have standing to advise the court of
 1686 the division's interpretation of the statute as it relates to
 1687 the petition.

1688 (IV) All purchasers of the timeshare plan or the owners'
 1689 association of the timeshare plan shall be the express
 1690 beneficiaries of the trust. The trustee shall act as a fiduciary
 1691 to the beneficiaries of the trust. The personal liability of the
 1692 trustee shall be governed by s. 737.306. The agreement
 1693 establishing the trust shall set forth the duties of the
 1694 trustee. The trustee shall be required to furnish promptly to
 1695 the division upon request a copy of the complete list of the
 1696 names and addresses of the owners in the timeshare plan and a



HB 1243

2003

1697 copy of any other books and records of the timeshare plan
1698 required to be maintained pursuant to s. 721.13 that are in the
1699 possession, custody, or control of the trustee. All expenses
1700 reasonably incurred by the trustee in the performance of its
1701 duties, together with any reasonable compensation of the
1702 trustee, shall be common expenses of the timeshare plan.

1703 (V) The trustee shall not resign upon less than 90 days'
1704 prior written notice to the managing entity and the division. No
1705 resignation shall become effective until a substitute trustee,
1706 approved by the division, is appointed by the managing entity
1707 and accepts the appointment.

1708 (VI) The documents establishing the trust arrangement
1709 shall constitute a part of the timeshare instrument.

1710 (VII) For trusts holding property in a timeshare plan
1711 located outside this state, the trust and trustee holding such
1712 property shall be deemed in compliance with the requirements of
1713 this subparagraph if such trust and trustee are is authorized
1714 and qualified to conduct trust business under the laws of such
1715 jurisdiction and the agreement or law governing such trust
1716 arrangement provides substantially similar protections for the
1717 purchaser as are required in this subparagraph for trusts
1718 holding property in a timeshare plan in this state.

1719 (VIII) The trustee shall have appointed a registered agent
1720 in this state for service of process. In the event such a
1721 registered agent is not appointed, service of process may be
1722 served pursuant to s. 721.265.



HB 1243

2003

1723 5. Owners' association.--

1724 a. If the subject accommodations or facilities, or all use
1725 rights therein, are to be transferred into an owners'
1726 association in order to comply with this paragraph, such
1727 transfer shall take place pursuant to this subparagraph.

1728 b. Prior to the transfer by each interestholder of the
1729 subject accommodations and facilities, or all use rights
1730 therein, to an owners' association, any lien or other
1731 encumbrance against such accommodations and facilities, or use
1732 rights therein, shall be made subject to a nondisturbance and
1733 notice to creditors instrument pursuant to subsection (3). No
1734 transfer pursuant to this subparagraph shall become effective
1735 until the owners' association accepts such transfer and the
1736 responsibilities set forth herein. An owners' association
1737 established pursuant to this subparagraph shall comply with the
1738 following provisions:

1739 (I) The owners' association shall be a business entity
1740 authorized and qualified to conduct business in this state.
1741 Control of the board of directors of the owners' association
1742 must be independent from any developer or managing entity of the
1743 timeshare plan or any interestholder.

1744 (II) The articles of incorporation of the owners'
1745 association shall provide that the corporation may not be
1746 voluntarily dissolved without the unanimous vote of all owners
1747 of personal property timeshare interests so long as any
1748 purchaser has a right to occupy any portion of the timeshare
1749 property pursuant to the timeshare plan.

1750 (III) The owners' association shall not convey,
1751 hypothecate, mortgage, assign, lease, or otherwise transfer or
1752 encumber in any fashion any interest in or portion of the



HB 1243

2003

1753 timeshare property with respect to which any purchaser has a
 1754 right of use or occupancy unless the timeshare plan is
 1755 terminated pursuant to the timeshare instrument, or such
 1756 conveyance, hypothecation, mortgage, assignment, lease,
 1757 transfer, or encumbrance is approved by a vote of two-thirds of
 1758 all voting interests of the association and such decision is
 1759 declared by a court of competent jurisdiction to be in the best
 1760 interests of the purchasers of the timeshare plan. The owners'
 1761 association shall notify the division in writing within 10 days
 1762 after receiving notice of the filing of any petition relating to
 1763 obtaining such a court order. The division shall have standing
 1764 to advise the court of the division's interpretation of the
 1765 statute as it relates to the petition.

1766 (IV) All purchasers of the timeshare plan shall be members
 1767 of the owners' association and shall be entitled to vote on
 1768 matters requiring a vote of the owners' association as provided
 1769 in this chapter or the timeshare instrument. The owners'
 1770 association shall act as a fiduciary to the purchasers of the
 1771 timeshare plan. The articles of incorporation establishing the
 1772 owners' association shall set forth the duties of the owners'
 1773 association. All expenses reasonably incurred by the owners'
 1774 association in the performance of its duties, together with any
 1775 reasonable compensation of the officers or directors of the
 1776 owners' association, shall be common expenses of the timeshare
 1777 plan.

1778 (V) The documents establishing the owners' association
 1779 shall constitute a part of the timeshare instrument.

1780 (VI) For owners' associations holding property in a
 1781 timeshare plan located outside this state, the owners'
 1782 association holding such property shall be deemed in compliance



HB 1243

2003

1783 with the requirements of this subparagraph if such owners'
 1784 association is authorized and qualified to conduct owners'
 1785 association business under the laws of such jurisdiction and the
 1786 agreement or law governing such arrangement provides
 1787 substantially similar protections for the purchaser as are
 1788 required in this subparagraph for owners' associations holding
 1789 property in a timeshare plan in this state.

1790 (VII) The owners' association shall have appointed a
 1791 registered agent in this state for service of process. In the
 1792 event such a registered agent is not appointed, service of
 1793 process may be made pursuant to s. 721.265.

1794 6. Personal property subject to certificate of title.--If
 1795 any personal property that is an accommodation or facility of a
 1796 timeshare plan is subject to a certificate of title in this
 1797 state pursuant to chapter 319 or chapter 328, the following
 1798 notation must be made on such certificate of title pursuant to
 1799 s. 319.27(1) or s. 328.15(1):

1800
 1801 *The further transfer or encumbrance of the property subject to*
 1802 *this certificate of title, or any lien or encumbrance thereon,*
 1803 *is subject to the requirements of section 721.17, Florida*
 1804 *Statutes, and the transferee or lienor agrees to be bound by all*
 1805 *of the obligations set forth therein.*

1806
 1807 7.4. If the developer has previously provided a certified
 1808 copy of any document required by this paragraph, she or he may
 1809 for all subsequent disbursements substitute a true and correct
 1810 copy of the certified copy, provided no changes to the document
 1811 have been made or are required to be made.

1812 8. In the event that use rights relating to an



HB 1243

2003

1813 accommodation or facility are transferred into a trust pursuant
 1814 to subparagraph 4. or into an owners' association pursuant to
 1815 subparagraph 5., all other interestholders, including the owner
 1816 of the underlying fee or underlying personal property, must
 1817 execute a nondisturbance and notice to creditors instrument
 1818 pursuant to subsection (3).

1819 (d) Substitution of other assurances for escrowed funds or
 1820 other property.-- Funds or other property escrowed as provided
 1821 in this section may be released from escrow to or on the order
 1822 of the developer upon acceptance by the director of the division
 1823 of other assurances pursuant to subsection (5) as a substitute
 1824 for such escrowed funds or other property. The amount of
 1825 escrowed funds or other property that may be released pursuant
 1826 to this paragraph shall be equal to or less than the face amount
 1827 of the assurances accepted by the director from time to time.

1828 (3) NONDISTURBANCE AND NOTICE TO CREDITORS
 1829 INSTRUMENT.--The nondisturbance and notice to creditors
 1830 instrument, when required, shall be executed by each
 1831 interestholder.

1832 (a) The instrument shall state that:

1833 1.(a) If the party seeking enforcement is not in default
 1834 of its obligations, the instrument may be enforced by both the
 1835 seller and any purchaser of the timeshare plan;

1836 2.(b) The instrument shall be effective as between the
 1837 timeshare purchaser and interestholder despite any rejection or
 1838 cancellation of the contract between the timeshare purchaser and
 1839 developer as a result of bankruptcy proceedings of the
 1840 developer; and

1841 3.(c) So long as a purchaser remains in good standing with
 1842 respect to her or his obligations under the timeshare



HB 1243

2003

1843 instrument, including making all payments to the managing entity
 1844 required by the timeshare instrument with respect to the annual
 1845 common expenses of the timeshare ~~the interestholder has any~~
 1846 ~~interest in the accommodations, facilities, or plan, then the~~
 1847 interestholder will fully honor all ~~the~~ rights of such purchaser
 1848 relating to the subject accommodation or facility as reflected
 1849 ~~timeshare purchasers in and to the timeshare instrument plan,~~
 1850 ~~will honor the purchasers' right to cancel their contracts and~~
 1851 ~~receive appropriate refunds, and will comply with all other~~
 1852 ~~requirements of this chapter and rules promulgated hereunder.~~

1853
 1854 The instrument shall contain language sufficient to provide
 1855 subsequent creditors of the developer and interestholders with
 1856 notice of the existence of the timeshare plan and of the rights
 1857 of purchasers and shall serve to protect the interest of the
 1858 timeshare purchasers from any claims of subsequent creditors.

1859 (b) Real property timeshare plans.--For real property
 1860 timeshare plans, the instrument shall be recorded in the public
 1861 records of the county in which the subject accommodations or
 1862 facilities are located.

1863 (c) Personal property timeshare plans.--For personal
 1864 property timeshare plans, the instrument shall be included
 1865 within or attached as an exhibit to a security agreement or
 1866 other agreement executed by the interestholder. Constructive
 1867 notice of such security agreement or other agreement shall be
 1868 provided in the manner prescribed by chapter 679 or other
 1869 applicable law.

1870 (d) A copy of the ~~recorded~~ nondisturbance and notice to
 1871 creditors instrument, when required, shall be provided to each



HB 1243

2003

1872 timeshare purchaser at the time the purchase contract is
 1873 executed.

1874 (4) In lieu of any escrow provisions required by this act,
 1875 the director of the division shall have the discretion to permit
 1876 deposit of the funds or other property in an escrow account as
 1877 required by the jurisdiction in which the sale took place.

1878 (5)(a) In lieu of any escrows required by this section,
 1879 the director of the division shall have the discretion to accept
 1880 other assurances, including, but not limited to, a surety bond
 1881 issued by a company authorized and licensed to do business in
 1882 this state as surety or an irrevocable letter of credit in an
 1883 amount equal to the escrow requirements of this section.

1884 (b) Notwithstanding anything in chapter 718 or chapter 719
 1885 to the contrary, the director of the division shall have the
 1886 discretion to accept other assurances pursuant to paragraph (a)
 1887 in lieu of any requirement that completion of construction of
 1888 one or more accommodations or facilities of a timeshare plan be
 1889 accomplished prior to closing.

1890 (c) In lieu of a nondisturbance and notice to creditors
 1891 instrument, when such an instrument is otherwise required by
 1892 this section, the director of the division shall have the
 1893 discretion to accept alternate means of protecting the
 1894 continuing rights of purchasers in and to the subject
 1895 accommodations or facilities of the timeshare plan as and for
 1896 the term described in the timeshare instrument, and of providing
 1897 effective constructive notice of such continuing purchaser
 1898 rights to subsequent owners of the accommodations or facilities
 1899 and to subsequent creditors of the affected interestholder.

1900 (6) An escrow agent holding funds escrowed pursuant to
 1901 this section may invest such escrowed funds in securities of the



HB 1243

2003

1902 United States Government, or any agency thereof, or in savings
1903 or time deposits in institutions insured by an agency of the
1904 United States Government. The right to receive the interest
1905 generated by any such investments shall be paid to the party to
1906 whom the escrowed funds or other property are paid unless
1907 otherwise specified by contract.

1908 (7) Each escrow agent shall maintain separate books and
1909 records for each timeshare plan and shall maintain such books
1910 and records in accordance with good accounting practices.

1911 (8) An escrow agent holding escrowed funds pursuant to
1912 this chapter that have not been claimed for a period of 5 years
1913 after the date of deposit shall make at least one reasonable
1914 attempt to deliver such unclaimed funds to the purchaser who
1915 submitted such funds to escrow. In making such attempt, an
1916 escrow agent is entitled to rely on a purchaser's last known
1917 address as set forth in the books and records of the escrow
1918 agent and is not required to conduct any further search for the
1919 purchaser. If an escrow agent's attempt to deliver unclaimed
1920 funds to any purchaser is unsuccessful, the escrow agent may
1921 deliver such unclaimed funds to the division and the division
1922 shall deposit such unclaimed funds in the Division of Florida
1923 Land Sales, Condominiums, and Mobile Homes Trust Fund, 30 days
1924 after giving notice in a publication of general circulation in
1925 the county in which the timeshare property containing the
1926 purchaser's timeshare interest is located. The purchaser may
1927 claim the same at any time prior to the delivery of such funds
1928 to the division. After delivery of such funds to the division,
1929 the purchaser shall have no more rights to the unclaimed funds.
1930 The escrow agent shall not be liable for any claims from any



HB 1243

2003

1931 party arising out of the escrow agent's delivery of the
 1932 unclaimed funds to the division pursuant to this section.

1933 (9) For each transfer of the legal title to a timeshare
 1934 estate by a developer, the developer shall deliver an instrument
 1935 evidencing such transfer to the purchaser or to the clerk of the
 1936 court for recording. For each transfer of the legal title to a
 1937 personal property timeshare interest by a developer, the
 1938 developer shall deliver an instrument evidencing such transfer
 1939 to the purchaser subject to the provisions of this section.

1940 (10)(a) Any developer, seller, or escrow agent who
 1941 intentionally fails to comply with the provisions of this
 1942 section concerning the establishment of an escrow account,
 1943 deposits of funds into escrow, and withdrawal therefrom is
 1944 guilty of a felony of the third degree, punishable as provided
 1945 in s. 775.082, s. 775.083, or s. 775.084, or the successor
 1946 thereof. The failure to establish an escrow account or to place
 1947 funds therein as required in this section is prima facie
 1948 evidence of an intentional and purposeful violation of this
 1949 section.

1950 (b) Any developer, interestholder, trustee, or officer or
 1951 director of an owners' association who intentionally fails to
 1952 comply with the provisions of this section concerning the
 1953 establishment of a trust or owners' association, conveyances of
 1954 property into the trust or owners' association, and conveyances
 1955 or encumbrances of trust or owners' association property is
 1956 guilty of a felony of the third degree, punishable as provided
 1957 in s. 775.082, s. 775.083, or s. 775.084, or the successor
 1958 thereof. The failure to establish a trust or owners'
 1959 association, or to transfer property into the trust or owners'
 1960 association, or the failure of a trustee or officer or director



HB 1243

2003

1961 of an owners' association to comply with the trust agreement,
 1962 articles of incorporation, or bylaws with respect to conveyances
 1963 or encumbrances of trust or owners' association property, as
 1964 required by this section, is prima facie evidence of an
 1965 intentional and purposeful violation of this section.

1966 Section 9. Paragraph (a) of subsection (1) of section
 1967 721.09, Florida Statutes, is amended to read:

1968 721.09 Reservation agreements; escrows.--

1969 (1)(a) Prior to filing the filed ~~registered~~ public
 1970 offering statement with the division, a seller shall not offer a
 1971 timeshare plan for sale but may accept reservation deposits and
 1972 advertise the reservation deposit program upon approval by the
 1973 division of a fully executed escrow agreement and reservation
 1974 agreement properly filed with the division.

1975 Section 10. Paragraph (a) of subsection (1), paragraph (e)
 1976 of subsection (6), and subsections (7), (8), and (9) of section
 1977 721.11, Florida Statutes, are amended to read:

1978 721.11 Advertising materials; oral statements.--

1979 (1)(a) A developer may file ~~All~~ advertising material ~~must~~
 1980 ~~be filed~~ with the division for review ~~by the developer prior to~~
 1981 ~~use. At the request of the developer,~~ The division shall review
 1982 any the advertising material filed for review by the developer
 1983 and notify the developer of any deficiencies within 10 days
 1984 after the filing. If the developer corrects the deficiencies or
 1985 if there are no deficiencies, the division shall notify the
 1986 developer of its approval of the advertising materials.
 1987 Notwithstanding anything to the contrary contained in this
 1988 subsection, so long as the developer uses advertising materials
 1989 approved by the division, following the developer's request for
 1990 a review, the developer shall not be liable for any violation of



HB 1243

2003

1991 | this section or s. 721.111 with respect to such advertising
 1992 | materials.

1993 | (6) Failure to provide cancellation rights or disclosures
 1994 | as required by this subsection in connection with the sale of a
 1995 | regulated short-term product constitutes misrepresentation in
 1996 | accordance with paragraph (4)(a). Any agreement relating to the
 1997 | sale of a regulated short-term product must be regulated as
 1998 | advertising material and is subject to the following:

1999 | (e) If the seller provides the purchaser with the right to
 2000 | cancel the purchase of a regulated short-term product at any
 2001 | time up to 7 days prior to the purchaser's reserved use of the
 2002 | accommodations, but in no event less than 10 days, and if the
 2003 | seller refunds the total amount of all payments made by the
 2004 | purchaser reduced by the proportion of any benefits the
 2005 | purchaser has actually received prior to the effective date of
 2006 | the cancellation, the specific value of which has been agreed to
 2007 | between the purchaser and the seller, the short-term product
 2008 | offer shall be exempt from the requirements of paragraphs (b),
 2009 | (c), and (d). An agreement relating to the sale of the regulated
 2010 | short-term product made pursuant to this paragraph must contain
 2011 | a statement setting forth the cancellation and refund rights of
 2012 | the prospective purchaser in a manner that is consistent with
 2013 | this section and s. 721.10, including a description of the
 2014 | length of the cancellation right, a statement that the
 2015 | purchaser's intent to cancel must be in writing and sent to the
 2016 | seller at a specified address, a statement that the notice of
 2017 | cancellation is effective upon the date sent, and a statement
 2018 | that any attempt to waive the cancellation right is unlawful.
 2019 | The right of cancellation provided to the purchaser pursuant to
 2020 | this paragraph may not be waived by the prospective purchaser or



HB 1243

2003

2021 by any other person on behalf of the prospective purchaser.
2022 Notice of cancellation must be given in the same manner
2023 prescribed for giving notice of cancellation pursuant to s.
2024 721.10(2). If the prospective purchaser gives a valid notice of
2025 cancellation, or is otherwise entitled to cancel the sale, the
2026 funds or other property received from or on behalf of the
2027 prospective purchaser, or the proceeds thereof, shall be
2028 returned to the prospective purchaser. Such refund shall be made
2029 in the manner prescribed for refunds under s. 721.10.

2030 (7) Notwithstanding the provisions of s. 721.05(7)~~(6)~~(b),
2031 a seller may portray possible accommodations or facilities to
2032 prospective purchasers in advertising material, or a purchaser
2033 public offering statement, without such accommodations or
2034 facilities being available for use by purchasers so long as the
2035 advertising material or purchaser public offering statement
2036 complies with the provisions of subsection (4).

2037 (8) Notwithstanding the provisions of s. 721.05(7)~~(6)~~(b),
2038 a developer may portray possible accommodations or facilities to
2039 prospective purchasers by disseminating oral or written
2040 statements regarding same to broadcast or print media with no
2041 obligation on the developer's part to actually construct such
2042 accommodations or facilities or to file such accommodations or
2043 facilities with the division, but only so long as such oral or
2044 written statements are not considered advertising material
2045 pursuant to paragraph (3)(e).

2046 (9) Notwithstanding the provisions of s. 721.05(7)~~(6)~~(b),
2047 a seller of a multisite timeshare plan may portray a possible
2048 component site to prospective purchasers with no accommodations
2049 or facilities located at such component site being available for



HB 1243

2003

2050 use by purchasers so long as the seller satisfies the following
2051 requirements:

2052 (a) A developer of a multisite timeshare plan may
2053 disseminate oral or written statements to broadcast or print
2054 media describing a possible component site with no obligation on
2055 the developer's part to actually add such component site to the
2056 multisite timeshare plan or to amend the developer's filing with
2057 the division, but only so long as such oral or written
2058 statements are not considered advertising material pursuant to
2059 paragraph (3)(e).

2060 (b) A seller may make representations to purchasers in
2061 advertising material or in a purchaser public offering statement
2062 regarding the possible accommodations and facilities of a
2063 possible component site without such accommodations or
2064 facilities being available for use by purchasers so long as the
2065 advertising material or purchaser public offering statement
2066 complies with the provisions of subsection (4).

2067 (c) In the event a seller makes any of the representations
2068 permitted by paragraph (b), the purchase agreement must contain
2069 the following conspicuous disclosure unless and until such time
2070 as the developer has committed itself in the timeshare
2071 instrument to adding the possible component site to the
2072 multisite timeshare plan, at which time the seller may portray
2073 the component site pursuant to the timeshare instrument without
2074 restriction:

2075

2076 *[Description of possible component site] is only a possible*
2077 *component site which may never be added to the multisite*
2078 *timeshare plan (or multisite vacation ownership plan or*
2079 *multisite vacation plan or vacation club). Do not purchase an*



HB 1243

2003

2080 *interest in the multisite timeshare plan (or multisite vacation*
 2081 *ownership plan or multisite vacation plan or vacation club) in*
 2082 *reliance upon the addition of this component site.*

2083 (d) Notwithstanding anything contained in this chapter to
 2084 the contrary, a developer or managing entity may communicate
 2085 with existing purchasers regarding possible component sites
 2086 without restriction, so long as all oral and written statements
 2087 made to existing purchasers pursuant to this subsection comply
 2088 with the provisions of subsection (4).

2089 (e) Any violation of this subsection by a developer,
 2090 seller, or managing entity shall constitute a violation of this
 2091 chapter. Any violation of this subsection with respect to a
 2092 purchaser whose purchase has not yet closed shall be deemed to
 2093 provide that purchaser with a new 10-day voidability period.

2094 Section 11. Subsection (1) of section 721.12, Florida
 2095 Statutes, is amended to read:

2096 721.12 Recordkeeping by seller.--Each seller of a
 2097 timeshare plan shall maintain among its business records the
 2098 following:

2099 (1) A copy of each contract for the sale of a timeshare
 2100 interest, which contract has not been canceled. If a timeshare
 2101 estate is being sold, the seller is required to retain a copy of
 2102 the contract only until a deed of conveyance, agreement for
 2103 deed, or lease is recorded in the office of the clerk of the
 2104 circuit court in the county wherein the plan is located. If a
 2105 personal property timeshare plan is being sold, the seller is
 2106 required to retain a copy of the contract only until a
 2107 certificate of transfer, agreement for transfer, lease, or other
 2108 instrument of transfer that fully complies with s. 721.08 is
 2109 delivered to the purchaser.



HB 1243

2003

2110 Section 12. Paragraphs (a) and (b) of subsection (1),
2111 paragraph (b) of subsection (2), paragraphs (c), (d), and (e) of
2112 subsection (3), paragraph (g) of subsection (6), and subsections
2113 (4) and (8) of section 721.13, Florida Statutes, are amended,
2114 subsection (9) is renumbered as subsection (10), and new
2115 subsections (9) and (11) are added to said section, to read:

2116 721.13 Management.--

2117 (1)(a) For each timeshare plan, the developer shall
2118 provide for a managing entity, which shall be either the
2119 developer, a separate manager or management firm, or an owners'
2120 association. Any owners' association shall be created prior to
2121 the first closing ~~recording~~ of the timeshare interest
2122 instrument.

2123 (b)1. With respect to a timeshare plan which is also
2124 regulated under chapter 718 or chapter 719, or which contains a
2125 mandatory owners' association, the board of administration of
2126 the owners' association shall be considered the managing entity
2127 of the timeshare plan.

2128 2. During any period of time in which such association has
2129 entered into a contract with a manager or management firm to
2130 provide some or all of the management services to the timeshare
2131 plan, both the board of administration and the manager or
2132 management firm shall be considered the managing entity of the
2133 timeshare plan and shall be jointly and severally responsible
2134 for the faithful discharge of the duties of the managing entity.

2135 3. An owners' association which is the managing entity of
2136 a timeshare plan that includes condominium units or cooperative
2137 units shall not be considered a condominium association pursuant
2138 to the provisions of chapter 718 or a cooperative association
2139 pursuant to the provisions of chapter 719, unless such owners'



HB 1243

2003

2140 association also operates the entire condominium pursuant to s.
 2141 718.111 or the entire cooperative pursuant to s. 719.104.

2142 (2)

2143 (b) The managing entity shall invest the operating and
 2144 reserve funds of the timeshare plan in accordance with s.
 2145 518.11(1); however, the managing entity shall give safety of
 2146 capital greater weight than production of income. In no event
 2147 shall the managing entity invest timeshare plan funds with a
 2148 developer or with any entity that is not independent of any
 2149 developer or any managing entity within the meaning of s.
 2150 721.05(20) ~~(18)~~, and in no event shall the managing entity
 2151 invest timeshare plan funds in notes and mortgages related in
 2152 any way to the timeshare plan.

2153 (3) The duties of the managing entity include, but are not
 2154 limited to:

2155 (c)1. Providing each year to all purchasers an itemized
 2156 annual budget which shall include all estimated revenues and
 2157 expenses. The budget shall be in the form required by s.
 2158 721.07(5)(u). The budget and shall be the final budget adopted
 2159 by the managing entity for the current fiscal year. The final
 2160 adopted budget is not required to be delivered if the managing
 2161 entity has previously delivered a proposed annual budget for the
 2162 current fiscal year to purchasers in accordance with chapter 718
 2163 or chapter 719, and the managing entity includes a description
 2164 of any changes in the adopted budget with the assessment notice
 2165 and a disclosure regarding the purchasers' right to receive a
 2166 copy of the adopted budget if desired. The budget shall contain,
 2167 as a footnote or otherwise, any related party transaction
 2168 disclosures or notes which appear in the audited financial
 2169 statements of the managing entity for the previous budget year



HB 1243

2003

2170 as required by paragraph (e). A copy of the final budget shall
2171 be filed with the division for review within 30 days after the
2172 beginning of each fiscal year together with a statement of the
2173 number of periods of 7-day annual use availability that exist
2174 within the timeshare plan, including those periods filed for
2175 sale by the developer but not yet committed to the timeshare
2176 plan, for which annual fees are required to be paid to the
2177 division under s. 721.27.

2178 2. Notwithstanding anything contained in chapter 718 or
2179 chapter 719 to the contrary, the board of administration of an
2180 owners' association which serves as the managing entity may from
2181 time to time reallocate reserves for deferred maintenance and
2182 capital expenditures required by s. 721.07(5)(u)3.a.(XI) from
2183 any deferred maintenance or capital expenditure reserve account
2184 to any other deferred maintenance or capital expenditure reserve
2185 account or accounts in its discretion without the consent of
2186 purchasers of the timeshare plan. Funds in any deferred
2187 maintenance or capital expenditure reserve account may not be
2188 transferred to any operating account without the consent of a
2189 majority of the purchasers of the timeshare plan. The managing
2190 entity may from time to time transfer excess funds in any
2191 operating account to any deferred maintenance or capital
2192 expenditure reserve account without the vote or approval of
2193 purchasers of the timeshare plan. In the event any amount of
2194 reserves for accommodations and facilities of a timeshare plan
2195 containing timeshare licenses exists at the end of the term of
2196 the timeshare plan, such reserves shall be refunded to
2197 purchasers on a pro rata basis.

2198 (d)1. Maintenance of all books and records concerning the
2199 timeshare plan so that all such books and records are reasonably



HB 1243

2003

2200 available for inspection by any purchaser or the authorized
 2201 agent of such purchaser. For purposes of this subparagraph, the
 2202 books and records of the timeshare plan shall be considered
 2203 "reasonably available" if copies of the requested portions are
 2204 delivered to the purchaser or the purchaser's agent within 7
 2205 days of the date the managing entity receives a written request
 2206 for the records signed by the purchaser. The managing entity may
 2207 charge the purchaser a reasonable fee for copying the requested
 2208 information not to exceed 25 cents per page. However, any
 2209 purchaser or agent of such purchaser shall be permitted to
 2210 personally inspect and examine the books and records wherever
 2211 located at any reasonable time, under reasonable conditions, and
 2212 under the supervision of the custodian of those records. The
 2213 custodian shall supply copies of the records where requested and
 2214 upon payment of the copying fee. No fees other than those set
 2215 forth in this section may be charged for the providing of,
 2216 inspection, or examination of books and records. All books and
 2217 financial records of the timeshare plan must be maintained in
 2218 accordance with generally accepted accounting practices.

2219 2. If the books and records of the timeshare plan are not
 2220 maintained on the premises of the accommodations and facilities
 2221 of the timeshare plan, the managing entity shall inform the
 2222 division in writing of the location of the books and records and
 2223 the name and address of the person who acts as custodian of the
 2224 books and records at that location. In the event that the
 2225 location of the books and records changes, the managing entity
 2226 shall notify the division of the change in location and the name
 2227 and address of the new custodian within 30 days after ~~of~~ the
 2228 date the books and records are moved. The purchasers shall be
 2229 notified of the location of the books and records and the name



HB 1243

2003

2230 and address of the custodian in the copy of the annual budget
 2231 provided to them pursuant to paragraph (c).

2232 3. The division is authorized to adopt rules which specify
 2233 those items and matters that shall be included in the books and
 2234 records of the timeshare plan and which specify procedures to be
 2235 followed in requesting and delivering copies of the books and
 2236 records.

2237 4. Notwithstanding any provision of chapter 718 or chapter
 2238 719 to the contrary, the managing entity may not furnish the
 2239 name, address, or electronic mail address of any purchaser to
 2240 any other purchaser or authorized agent thereof unless the
 2241 purchaser whose name, ~~and~~ address, or electronic address ~~is~~ are
 2242 requested first approves the disclosure in writing.

2243 (e) Arranging for an annual audit of the financial
 2244 statements of the timeshare plan by a certified public
 2245 accountant licensed by the Board of Accountancy of the
 2246 Department of Business and Professional Regulation, in
 2247 accordance with generally accepted auditing standards as defined
 2248 by the rules of the Board of Accountancy of the Department of
 2249 Business and Professional Regulation. The financial statements
 2250 required by this section must be prepared on an accrual basis
 2251 using fund accounting, and must be presented in accordance with
 2252 generally accepted accounting principles. A copy of the audited
 2253 financial statements must be filed with the division for review
 2254 and forwarded to the board of directors and officers of the
 2255 owners' association, if one exists, no later than 5 calendar
 2256 months after the end of the timeshare plan's fiscal year. If no
 2257 owners' association exists, each purchaser must be notified, no
 2258 later than 5 months after the end of the timeshare plan's fiscal
 2259 year, that a copy of the audited financial statements is



HB 1243

2003

2260 available upon request to the managing entity. Notwithstanding
 2261 any requirement of s. 718.111(13) or s. 719.104(4), the audited
 2262 financial statements required by this section are the only
 2263 annual financial reporting requirements for timeshare
 2264 condominiums or timeshare cooperatives.

2265 (4) The managing entity shall maintain among its records
 2266 and provide to the division upon request a complete list of the
 2267 names and addresses of all purchasers and owners of timeshare
 2268 units in the timeshare plan. The managing entity shall update
 2269 this list no less frequently than quarterly. Pursuant to
 2270 paragraph (3)(d), the managing entity may not publish this
 2271 owner's list or provide a copy of it to any purchaser or to any
 2272 third party other than the division. However, the managing
 2273 entity shall to those persons listed on the owner's list
 2274 materials provided by any purchaser, upon the written request of
 2275 that purchaser, if the purpose of the mailing is to advance
 2276 legitimate owners' association business, such as a proxy
 2277 solicitation for any purpose, including the recall of one or
 2278 more board members elected by the owners or the discharge of the
 2279 manager or management firm. The use of any proxies solicited in
 2280 this manner must comply with the provisions of the timeshare
 2281 instrument and this chapter. A mailing requested for the purpose
 2282 of advancing legitimate owners' association business shall occur
 2283 within 30 days after receipt of a request from a purchaser. The
 2284 board of administration of the association shall be responsible
 2285 for determining the appropriateness of any mailing requested
 2286 pursuant to this subsection. The purchaser who requests the
 2287 mailing must reimburse the owners' association in advance for
 2288 the owners' association's actual costs in performing the
 2289 mailing. It shall be a violation of this chapter and, if



HB 1243

2003

2290 applicable, of part VIII of chapter 468, for the board of
2291 administration or the manager or management firm to refuse to
2292 mail any material requested by the purchaser to be mailed,
2293 provided the sole purpose of the materials is to advance
2294 legitimate owners' association business. If the purpose of the
2295 mailing is a proxy solicitation to recall one or more board
2296 members elected by the owners or to discharge the manager or
2297 management firm and the managing entity does not mail the
2298 materials within 30 days after receipt of a request from a
2299 purchaser, the circuit court in the county where the timeshare
2300 plan is located may, upon application from the requesting
2301 purchaser, summarily order the mailing of the materials solely
2302 related to the recall of one or more board members elected by
2303 the owners or the discharge of the manager or management firm.
2304 The court shall dispose of an application on an expedited basis.
2305 In the event of such an order, the court may order the managing
2306 entity to pay the purchaser's costs, including attorney's fees
2307 reasonably incurred to enforce the purchaser's rights, unless
2308 the managing entity can prove it refused the mailing in good
2309 faith because of a reasonable basis for doubt about the
2310 legitimacy of the mailing.

2311 (6)

2312 (g) A managing entity shall have breached its fiduciary
2313 duty described in subsection (2) in the event it enforces the
2314 denial of use pursuant to paragraph (b) against any one
2315 purchaser or group of purchasers without similarly enforcing it
2316 against all purchasers, including all developers and owners of
2317 the underlying fee or underlying personal property; however, a
2318 managing entity shall not be required to solicit rentals
2319 pursuant to paragraph (f) for every delinquent purchaser. A



HB 1243

2003

2320 managing entity shall also have breached its fiduciary duty in
 2321 the event an error in the books and records of the timeshare
 2322 plan results in a denial of use pursuant to this subsection of
 2323 any purchaser who is not, in fact, delinquent. In addition to
 2324 any remedies otherwise available to purchasers of the timeshare
 2325 plan arising from such breaches of fiduciary duty, such breach
 2326 shall also constitute a violation of this chapter. In addition,
 2327 any purchaser receiving a notice of delinquency pursuant to
 2328 paragraph (b), or any third party claiming under such purchaser
 2329 pursuant to paragraph (b), may immediately bring an action for
 2330 injunctive or declaratory relief against the managing entity
 2331 seeking to have the notice invalidated on the grounds that the
 2332 purchaser is not, in fact, delinquent, that the managing entity
 2333 failed to follow the procedures prescribed by this section, or
 2334 on any other available grounds. The prevailing party in any such
 2335 action shall be entitled to recover his or her reasonable
 2336 attorney's fees from the losing party.

2337 (8) Notwithstanding anything to the contrary in s.
 2338 718.110, s. 718.113, s. 718.114, or s. 719.1055, the board of
 2339 administration of any owners' association that operates a
 2340 timeshare condominium pursuant to s. 718.111, or a timeshare
 2341 cooperative pursuant to s. 719.104, shall have the power to make
 2342 material alterations or substantial additions to the
 2343 accommodations or facilities of such timeshare condominium or
 2344 timeshare cooperative without the approval of the owners'
 2345 association. However, if the timeshare condominium or timeshare
 2346 cooperative contains any residential units that are not subject
 2347 to the timeshare plan, such action by the board of
 2348 administration must be approved by a majority of the owners of
 2349 such residential units. Unless otherwise provided in the



HB 1243

2003

2350 timeshare instrument as originally recorded, no such amendment
 2351 may change the configuration or size of any accommodation in any
 2352 material fashion, or change the proportion or percentage by
 2353 which a member of the association shares the common expenses,
 2354 unless the record owners of the affected units or timeshare
 2355 interests and all record owners of liens on the affected units
 2356 or timeshare interests join in the execution of the amendment.

2357 (9) All notices or other information sent by a board of
 2358 administration of an owners' association may be delivered to a
 2359 purchaser by electronic mail, provided that the purchaser first
 2360 consents electronically to the use of electronic mail for notice
 2361 purposes in a manner that reasonably demonstrates that the
 2362 purchaser has the ability to access the notice by electronic
 2363 mail. Proxies or written consents on votes of any owners'
 2364 association may be received by electronic mail, shall have legal
 2365 effect, and may be utilized for votes of an owners' association,
 2366 provided that the electronic signature is authenticated through
 2367 use of a password, cryptography software, or other reasonable
 2368 means and that proof of such authentication is made available to
 2369 the board of directors.

2370 (10)~~(9)~~ Any failure of the managing entity to faithfully
 2371 discharge the fiduciary duty to purchasers imposed by this
 2372 section or to otherwise comply with the provisions of this
 2373 section shall be a violation of this chapter and of part VIII of
 2374 chapter 468.

2375 (11) Notwithstanding the other provisions of this section,
 2376 personal property timeshare plans are only subject to the
 2377 provisions of subsections (1)(a)-(d), (2)(a), (3)(a)-(h), (5),
 2378 (6), (9), and (10).



HB 1243

2003

2379 Section 13. Subsection (4) is added to section 721.14,
 2380 Florida Statutes, to read:

2381 721.14 Discharge of managing entity.--

2382 (4) This section shall not apply to personal property
 2383 timeshare plans.

2384 Section 14. Paragraph (c) of subsection (2) and subsection
 2385 (7) of section 721.15, Florida Statutes, are amended, and
 2386 subsection (10) is added to said section, to read:

2387 721.15 Assessments for common expenses.--

2388 (2)

2389 (c) For the purpose of calculating the obligation of a
 2390 developer under a guarantee pursuant to paragraph (b),
 2391 depreciation expenses related to real property shall be excluded
 2392 from common expenses incurred during the guarantee period,
 2393 except that for real property that is used for the production of
 2394 fees, revenues, or other income, depreciation expenses shall be
 2395 excluded only to the extent that they exceed the net income from
 2396 the production of such fees, revenues, or other income.

2397 (7) A purchaser, regardless of how her or his timeshare
 2398 estate, ~~or~~ timeshare license, or personal property timeshare
 2399 interest has been acquired, including a purchaser at a judicial
 2400 sale, is personally liable for all assessments for common
 2401 expenses which come due while the purchaser is the owner of such
 2402 interest. A successor in interest is jointly and severally
 2403 liable with her or his predecessor in interest for all unpaid
 2404 assessments against such predecessor up to the time of transfer
 2405 of the timeshare interest to such successor without prejudice to
 2406 any right a successor in interest may have to recover from her
 2407 or his predecessor in interest any amounts assessed against such
 2408 predecessor and paid by such successor. The predecessor in



HB 1243

2003

2409 interest shall provide the managing entity with a copy of the
 2410 recorded deed of conveyance if the interest is a timeshare
 2411 estate or a copy of the instrument of transfer if the interest
 2412 is a timeshare license or personal property timeshare interest,
 2413 containing the name and mailing address of the successor in
 2414 interest within 15 days after the date of transfer. The managing
 2415 entity shall not be liable to any person for any inaccuracy in
 2416 the books and records of the timeshare plan arising from the
 2417 failure of the predecessor in interest to timely and correctly
 2418 notify the managing entity of the name and mailing address of
 2419 the successor in interest.

2420 (10) This section shall not apply to personal property
 2421 timeshare plans.

2422 Section 15. Subsection (6) is added to section 721.16,
 2423 Florida Statutes, to read:

2424 721.16 Liens for overdue assessments; liens for labor
 2425 performed on, or materials furnished to, a timeshare unit.--

2426 (6) This section shall not apply to personal property
 2427 timeshare plans.

2428 Section 16. Section 721.17, Florida Statutes, is amended
 2429 to read:

2430 721.17 Transfer of interest.--Except in the case of a
 2431 timeshare plan subject to the provisions of chapter 718 or
 2432 chapter 719, no developer, ~~or~~ owner of the underlying fee, or
 2433 owner of the underlying personal property shall sell, lease,
 2434 assign, mortgage, or otherwise transfer his or her interest in
 2435 the accommodations and facilities of the timeshare plan except
 2436 by an instrument evidencing the transfer recorded in the public
 2437 records of the county in which such accommodations and
 2438 facilities are located or, with respect to personal property



HB 1243

2003

2439 timeshare plans, in full compliance with s. 721.08. The
 2440 instrument shall be executed by both the transferor and
 2441 transferee and shall state:

2442 (1) That its provisions are intended to protect the rights
 2443 of all purchasers of the plan.

2444 (2) That its terms may be enforced by any prior or
 2445 subsequent timeshare purchaser so long as that purchaser is not
 2446 in default of his or her obligations.

2447 (3) That so long as a purchaser remains in good standing
 2448 with respect to her or his obligations under the timeshare
 2449 instrument, including making all payments to the managing entity
 2450 required by the timeshare instrument with respect to the annual
 2451 common expenses of the timeshare plan, the transferee shall will
 2452 fully honor all the rights of such purchaser relating to the
 2453 subject accommodation or facility as reflected ~~the purchasers to~~
 2454 ~~occupy and use the accommodations and facilities as provided in~~
 2455 ~~their original contracts and~~ the timeshare instrument
 2456 instruments.

2457 (4) That the transferee will fully honor all rights of
 2458 timeshare purchasers to cancel their contracts and receive
 2459 appropriate refunds.

2460 (5) That the obligations of the transferee under such
 2461 instrument will continue to exist despite any cancellation or
 2462 rejection of the contracts between the developer and purchaser
 2463 arising out of bankruptcy proceedings.

2464
 2465 Should any transfer of the interest of the developer, ~~or~~ owner
 2466 of the underlying fee, or owner of the underlying property occur
 2467 in a manner which is not in compliance with this section, the
 2468 terms set forth in this section shall be presumed to be a part



HB 1243

2003

2469 of the transfer and shall be deemed to be included in the
 2470 instrument of transfer. Notice shall be mailed to each purchaser
 2471 of record within 30 days after ~~of~~ the transfer unless such
 2472 transfer does not affect the purchaser's rights in or use of the
 2473 timeshare plan. Persons who hold mortgages or liens on the
 2474 property constituting a timeshare plan before the filed
 2475 ~~registered~~ public offering statement of such plan is approved by
 2476 the division shall not be considered transferees for the
 2477 purposes of this section.

2478 Section 17. Section 721.18, Florida Statutes, is amended
 2479 to read:

2480 721.18 Exchange programs; filing of information and other
 2481 materials; filing fees; unlawful acts in connection with an
 2482 exchange program.--

2483 (1) If a purchaser is offered the opportunity to subscribe
 2484 to an exchange program, the seller shall deliver to the
 2485 purchaser, together with the purchaser public offering
 2486 statement, and prior to the offering or execution of any
 2487 contract between the purchaser and the company offering the
 2488 exchange program, written information regarding such exchange
 2489 program; or, if the exchange company is dealing directly with
 2490 the purchaser, the exchange company shall deliver to the
 2491 purchaser, prior to the initial offering or execution of any
 2492 contract between the purchaser and the company offering the
 2493 exchange program, written information regarding such exchange
 2494 program. In either case, the purchaser shall certify in writing
 2495 to the receipt of such information. Such information shall
 2496 include, but is not limited to, the following information, the
 2497 form and substance of which shall first be approved by the
 2498 division in accordance with subsection (2):



HB 1243

2003

- 2499 (a) The name and address of the exchange company.
- 2500 (b) The names of all officers, directors, and shareholders
- 2501 of the exchange company.
- 2502 (c) Whether the exchange company or any of its officers or
- 2503 directors has any legal or beneficial interest in any developer,
- 2504 seller, or managing entity for any timeshare plan participating
- 2505 in the exchange program and, if so, the name and location of the
- 2506 timeshare plan and the nature of the interest.
- 2507 (d) Unless otherwise stated, a statement that the
- 2508 purchaser's contract with the exchange company is a contract
- 2509 separate and distinct from the purchaser's contract with the
- 2510 seller of the timeshare plan.
- 2511 (e) Whether the purchaser's participation in the exchange
- 2512 program is dependent upon the continued affiliation of the
- 2513 timeshare plan with the exchange program.
- 2514 (f) A statement that ~~whether~~ the purchaser's participation
- 2515 in the exchange program is voluntary. This statement is not
- 2516 required to be given by the managing entity of a multisite
- 2517 timeshare plan to purchasers in the multisite timeshare plan.
- 2518 (g) A complete and accurate description of the terms and
- 2519 conditions of the purchaser's contractual relationship with the
- 2520 exchange program and the procedure by which changes thereto may
- 2521 be made.
- 2522 (h) A complete and accurate description of the procedure
- 2523 to qualify for and effectuate exchanges.
- 2524 (i) A complete and accurate description of all
- 2525 limitations, restrictions, or priorities employed in the
- 2526 operation of the exchange program, including, but not limited
- 2527 to, limitations on exchanges based on seasonality, timeshare
- 2528 unit size, or levels of occupancy, expressed in boldfaced type,



HB 1243

2003

2529 and, in the event that such limitations, restrictions, or
 2530 priorities are not uniformly applied by the exchange program, a
 2531 clear description of the manner in which they are applied.

2532 (j) Whether exchanges are arranged on a space-available
 2533 basis and whether any guarantees of fulfillment of specific
 2534 requests for exchanges are made by the exchange program.

2535 (k) Whether and under what circumstances a purchaser, in
 2536 dealing with the exchange program, may lose the use and
 2537 occupancy of her or his timeshare period in any properly applied
 2538 for exchange without her or his being provided with substitute
 2539 accommodations by the exchange program.

2540 (l) The fees or range of fees for membership or
 2541 participation by purchasers in the exchange program by
 2542 purchasers, including any conversion or other fees payable to
 2543 third parties, a statement whether any such fees may be altered
 2544 by the exchange company, and the circumstances under which
 2545 alterations may be made.

2546 (m) The name and address of the site of each ~~accommodation~~
 2547 ~~or facility included in the timeshare plan~~ plans participating
 2548 in the exchange program.

2549 (n) The number of the timeshare units in each timeshare
 2550 plan which are available for occupancy and which qualify for
 2551 participation in the exchange program, expressed within the
 2552 following numerical groupings: 1-5; 6-10; 11-20; 21-50; and 51
 2553 and over.

2554 (o) The number of currently enrolled purchasers for each
 2555 timeshare plan participating in the exchange program, expressed
 2556 within the following numerical groupings: 1-100; 101-249; 250-
 2557 499; 500-999; and 1,000 and over; and a statement of the



HB 1243

2003

2558 criteria used to determine those purchasers who are currently
 2559 enrolled with the exchange program.

2560 (p) The disposition made by the exchange company of
 2561 timeshare periods deposited with the exchange program by
 2562 purchasers enrolled in the exchange program and not used by the
 2563 exchange company in effecting exchanges.

2564 (q) The following information, which shall be
 2565 independently audited by a certified public accountant or
 2566 accounting firm in accordance with the standards of the
 2567 Accounting Standards Board of the American Institute of
 2568 Certified Public Accountants and reported annually ~~beginning no~~
 2569 ~~later than July 1, 1982:~~

2570 1. The number of purchasers currently enrolled in the
 2571 exchange program.

2572 2. The number of accommodations and facilities that have
 2573 current written affiliation agreements with the exchange
 2574 program.

2575 3. The percentage of confirmed exchanges, which is the
 2576 number of exchanges confirmed by the exchange program divided by
 2577 the number of exchanges properly applied for, together with a
 2578 complete and accurate statement of the criteria used to
 2579 determine whether an exchange request was properly applied for.

2580 4. The number of timeshare periods for which the exchange
 2581 program has an outstanding obligation to provide an exchange to
 2582 a purchaser who relinquished a timeshare period during the year
 2583 in exchange for a timeshare period in any future year.

2584 5. The number of exchanges confirmed by the exchange
 2585 program during the year.

2586 (r) A statement in boldfaced type to the effect that the
 2587 percentage described in subparagraph (q)3. is a summary of the



HB 1243

2003

2588 exchange requests entered with the exchange program in the
2589 period reported and that the percentage does not indicate the
2590 probabilities of a purchaser's being confirmed to any specific
2591 choice or range of choices.

2592 (2) Each exchange company offering an exchange program to
2593 purchasers in this state shall file with the division for review
2594 the information specified in subsection (1), together with any
2595 membership agreement and application between the purchaser and
2596 the exchange company, and the audit specified in subsection (1)
2597 on or before June 1 of each year. However, an exchange company
2598 shall make its initial filing at least 20 days prior to offering
2599 an exchange program to any purchaser in this state. Each filing
2600 shall be accompanied by an annual filing fee of \$500. Within 20
2601 days after ~~of~~ receipt of such filing, the division shall
2602 determine whether the filing is adequate to meet the
2603 requirements of this section and shall notify the exchange
2604 company in writing that the division has either approved the
2605 filing or found specified deficiencies in the filing. If the
2606 division fails to respond within 20 days, the filing shall be
2607 deemed approved. The exchange company may correct the
2608 deficiencies; and, within 10 days after receipt of corrections
2609 from the exchange company, the division shall notify the
2610 exchange company in writing that the division has either
2611 approved the filing or found additional specified deficiencies
2612 in the filing. If the exchange company fails to adequately
2613 respond to any deficiency notice within 10 days, the division
2614 may reject the filing. Subsequent to such rejection, a new
2615 filing fee and a new division initial review period pursuant to
2616 this subsection shall apply to any refiling or further review of
2617 the rejected filing.



HB 1243

2003

2618 (a) Any material change to an approved exchange company
2619 filing shall be filed with the division for approval as an
2620 amendment prior to becoming effective. Each amendment filing
2621 shall be accompanied by a filing fee of \$100. The exchange
2622 company may correct the deficiencies; and, within 10 days after
2623 receipt of corrections from the exchange company, the division
2624 shall notify the exchange company in writing that the division
2625 has either approved the filing or found additional specified
2626 deficiencies in the filing. Each approved amendment to the
2627 approved exchange company filing, other than an amendment that
2628 does not materially alter or modify the exchange program in a
2629 manner that is adverse to a purchaser, as determined by the
2630 exchange company in its reasonable discretion, shall be
2631 delivered to each purchaser who has not closed. An approved
2632 exchange program filing is required to be updated with respect
2633 to added or deleted resorts only once each year, and such annual
2634 update shall not be deemed to be a material change to the
2635 filing.

2636 (b) If at any time the division determines that any of
2637 such information supplied by an exchange company fails to meet
2638 the requirements of this section, the division may undertake
2639 enforcement action against the exchange company in accordance
2640 with the provision of s. 721.26.

2641 (3) No developer shall have any liability with respect to
2642 any violation of this chapter arising out of the publication by
2643 the developer of information provided to it by an exchange
2644 company pursuant to this section. No exchange company shall have
2645 any liability with respect to any violation of this chapter
2646 arising out of the use by a developer of information relating to



HB 1243

2003

2647 an exchange program other than that provided to the developer by
2648 the exchange company.

2649 (4) At the request of the exchange company, the division
2650 shall review any audio, written, or visual publications or
2651 materials relating to an exchange company or an exchange program
2652 shall be filed for review by the exchange company and shall
2653 notify the exchange company of any deficiencies within 10 with
2654 the division within 3 days after the filing of their use. If the
2655 exchange company corrects the deficiencies or if there are no
2656 deficiencies, the division shall notify the exchange company of
2657 its approval of the advertising materials. If the exchange
2658 company fails to adequately respond to any deficiency notice
2659 within 10 days, the division may reject the advertising
2660 materials. Subsequent to such rejection, a new division initial
2661 review period pursuant to this subsection shall apply to any
2662 refiling or further review.

2663 (5) The failure of an exchange company to observe the
2664 requirements of this section, or the use of any unfair or
2665 deceptive act or practice in connection with the operation of an
2666 exchange program, is a violation of this chapter.

2667 Section 18. Section 721.19, Florida Statutes, is amended
2668 to read:

2669 721.19 Provisions requiring purchase or lease of timeshare
2670 property by owners' association or purchasers; validity.--In any
2671 timeshare plan in which timeshare estates or personal property
2672 timeshare interests are sold, no grant or reservation made by a
2673 declaration, lease, or other document, nor any contract made by
2674 the developer, managing entity, or owners' association, which
2675 requires the owners' association or purchasers to purchase or
2676 lease any portion of the timeshare property shall be valid



HB 1243

2003

2677 unless approved by a majority of the purchasers other than the
 2678 developer, after more than 50 percent of the timeshare periods
 2679 have been sold.

2680 Section 19. Section 721.20, Florida Statutes, is amended
 2681 to read:

2682 721.20 Licensing requirements; suspension or revocation of
 2683 license; exceptions to applicability; collection of advance fees
 2684 for listings unlawful.--

2685 (1) Any seller of a timeshare plan must be a licensed real
 2686 estate salesperson, broker, or broker-salesperson as defined in
 2687 s. 475.01, except as provided in s. 475.011.

2688 (2) Solicitors who engage only in the solicitation of
 2689 prospective purchasers and any purchaser who refers no more than
 2690 20 people to a developer per year or who otherwise provides
 2691 testimonials on behalf of a developer are exempt from the
 2692 provisions of chapter 475.

2693 (3) A solicitor who has violated the provisions of chapter
 2694 468, chapter 718, chapter 719, this chapter, or the rules of the
 2695 division governing timesharing shall be subject to the
 2696 provisions of s. 721.26. Any developer or other person who
 2697 supervises, directs, or engages the services of a solicitor
 2698 shall be liable for any violation of the provisions of chapter
 2699 468, chapter 718, chapter 719, this chapter, or the rules of the
 2700 division governing timesharing committed by such solicitor.

2701 (4) County and municipal governments shall have the
 2702 authority to adopt codes of conduct and regulations to govern
 2703 solicitor activity conducted on public property, including
 2704 providing for the imposition of penalties prescribed by a
 2705 schedule of fines adopted by ordinance for violations of any
 2706 such code of conduct or regulation. Any violation of any such



HB 1243

2003

2707 adopted code of conduct or regulation shall not constitute a
 2708 separate violation of this chapter. This subsection is not
 2709 intended to restrict or invalidate any local code of conduct or
 2710 regulation.

2711 (5) This section does not apply to those individuals who
 2712 offer for sale only timeshare interests in timeshare property
 2713 located outside this state and who do not engage in any sales
 2714 activity within this state or to timeshare plans which are
 2715 registered with the Securities and Exchange Commission. For the
 2716 purposes of this section, both timeshare licenses and timeshare
 2717 estates are considered to be interests in real property.

2718 (6) Notwithstanding the provisions of s. 475.452, it is
 2719 unlawful for any broker, salesperson, or broker-salesperson to
 2720 collect any advance fee for the listing of any timeshare estate
 2721 or timeshare license.

2722 (7) It is unlawful for any broker, salesperson, or broker-
 2723 salesperson to collect any advance fee for the listing of a
 2724 personal property timeshare interest.

2725 (8) Subsections (1), (2), and (3) do not apply to persons
 2726 who offer personal property timeshare plans.

2727 Section 20. Subsection (6) is added to section 721.24,
 2728 Florida Statutes, to read:

2729 721.24 Firesafety.--

2730 (6) Accommodations and facilities of personal property
 2731 timeshare plans shall be exempt from the requirements of this
 2732 section.

2733 Section 21. Paragraphs (a), (d), and (e) of subsection (5)
 2734 of section 721.26, Florida Statutes, are amended to read:

2735 721.26 Regulation by division.--The division has the power
 2736 to enforce and ensure compliance with the provisions of this



HB 1243

2003

2737 chapter, except for parts III and IV, using the powers provided
 2738 in this chapter, as well as the powers prescribed in chapters
 2739 498, 718, and 719. In performing its duties, the division shall
 2740 have the following powers and duties:

2741 (5) Notwithstanding any remedies available to purchasers,
 2742 if the division has reasonable cause to believe that a violation
 2743 of this chapter, or of any division rule or order promulgated or
 2744 issued pursuant to this chapter, has occurred, the division may
 2745 institute enforcement proceedings in its own name against any
 2746 regulated party, as such term is defined in this subsection:

2747 (a)1. "Regulated party," for purposes of this section,
 2748 means any developer, exchange company, seller, managing entity,
 2749 owners' association, owners' association director, owners'
 2750 association officer, manager, management firm, escrow agent,
 2751 trustee, any respective assignees or agents, or any other person
 2752 having duties or obligations pursuant to this chapter.

2753 2. Any person who materially participates in any offer or
 2754 disposition of any interest in, or the management or operation
 2755 of, a timeshare plan in violation of this chapter or relevant
 2756 rules involving fraud, deception, false pretenses,
 2757 misrepresentation, or false advertising or the disbursement,
 2758 concealment, or diversion of any funds or assets, which conduct
 2759 adversely affects the interests of a purchaser, and which person
 2760 directly or indirectly controls a regulated party or is a
 2761 general partner, officer, director, agent, or employee of such
 2762 regulated party, shall be jointly and severally liable under
 2763 this subsection with such regulated party, unless such person
 2764 did not know, and in the exercise of reasonable care could not
 2765 have known, of the existence of the facts giving rise to the
 2766 violation of this chapter. A right of contribution shall exist



HB 1243

2003

2767 among jointly and severally liable persons pursuant to this
2768 paragraph.

2769 (d)1. The division may bring an action in circuit court
2770 for declaratory or injunctive relief or for other appropriate
2771 relief, including restitution.

2772 2. The division shall have broad authority and discretion
2773 to petition the circuit court to appoint a receiver with respect
2774 to any managing entity which fails to perform its duties and
2775 obligations under this chapter with respect to the operation of
2776 a timeshare plan. The circumstances giving rise to an
2777 appropriate petition for receivership under this subparagraph
2778 include, but are not limited to:

2779 a. Damage to or destruction of any of the accommodations
2780 or facilities of a timeshare plan, where the managing entity has
2781 failed to repair or reconstruct same.

2782 b. A breach of fiduciary duty by the managing entity,
2783 including, but not limited to, undisclosed self-dealing or
2784 failure to timely assess, collect, or disburse the common
2785 expenses of the timeshare plan.

2786 c. Failure of the managing entity to operate the timeshare
2787 plan in accordance with the timeshare instrument and this
2788 chapter.

2789

2790 If, under the circumstances, it appears that the events giving
2791 rise to the petition for receivership cannot be reasonably and
2792 timely corrected in a cost-effective manner consistent with the
2793 timeshare instrument, the receiver may petition the circuit
2794 court to implement such amendments or revisions to the timeshare
2795 instrument as may be necessary to enable the managing entity to
2796 resume effective operation of the timeshare plan, or to enter an



HB 1243

2003

2797 order terminating the timeshare plan, or to enter such further
2798 orders regarding the disposition of the timeshare property as
2799 the court deems appropriate, including the disposition and sale
2800 of the timeshare property held by the owners' association or the
2801 purchasers. In the event of a receiver's sale, all rights,
2802 title, and interest held by the owners' association or any
2803 purchaser shall be extinguished and title shall vest in the
2804 buyer. This provision applies to timeshare estates, personal
2805 property timeshare interests, and timeshare licenses. All
2806 reasonable costs and fees of the receiver relating to the
2807 receivership shall become common expenses of the timeshare plan
2808 upon order of the court.

2809 3. The division may revoke its approval of any filing for
2810 any timeshare plan for which a petition for receivership has
2811 been filed pursuant to this paragraph.

2812 (e)1. The division may impose a penalty against any
2813 regulated party for a violation of this chapter or any rule
2814 adopted thereunder. A penalty may be imposed on the basis of
2815 each day of continuing violation, but in no event may the
2816 penalty for any offense exceed \$10,000. All accounts collected
2817 shall be deposited with the Treasurer to the credit of the
2818 Division of Florida Land Sales, Condominiums, and Mobile Homes
2819 Trust Fund.

2820 2.a. If a regulated party fails to pay a penalty, the
2821 division shall thereupon issue an order directing that such
2822 regulated party cease and desist from further operation until
2823 such time as the penalty is paid; or the division may pursue
2824 enforcement of the penalty in a court of competent jurisdiction.



HB 1243

2003

2825 b. If an owners' association or managing entity fails to
 2826 pay a civil penalty, the division may pursue enforcement in a
 2827 court of competent jurisdiction.

2828 Section 22. Section 721.27, Florida Statutes, is amended
 2829 to read:

2830 721.27 Annual fee for each timeshare unit in plan.--On
 2831 January 1 of each year, each managing entity of a timeshare plan
 2832 located in this state shall collect as a common expense and pay
 2833 to the division an annual fee of \$1 ~~\$2~~ for each 7 days of annual
 2834 use availability that exist within the timeshare plan at that
 2835 time, subject to any limitations on the amount of such annual
 2836 fee pursuant to s. 721.58. If any portion of the annual fee is
 2837 not paid by March 1, the managing entity may be assessed a
 2838 penalty pursuant to s. 721.26.

2839 Section 23. Section 721.52, Florida Statutes, is amended
 2840 to read:

2841 721.52 Definitions.--As used in this chapter, the term:

2842 (1) "Applicable law" means the law of the jurisdiction
 2843 where the accommodations and facilities referred to are located.

2844 (2) "Component site" means a specific geographic site
 2845 where a portion of the accommodations and facilities of the
 2846 multisite timeshare plan are located. If permitted under
 2847 applicable law, separate phases operated as a single development
 2848 located at a specific geographic site under common management
 2849 shall be deemed a single component site for purposes of this
 2850 part.

2851 (3) "Inventory" means the accommodations and facilities
 2852 located at a particular component site or sites owned, leased,
 2853 licensed, or otherwise acquired for use by a developer and
 2854 offered as part of the multisite timeshare plan.



HB 1243

2003

2855 (4) "Multisite timeshare plan" means any method,
2856 arrangement, or procedure with respect to which a purchaser
2857 obtains, by any means, a recurring right to use and occupy
2858 accommodations or facilities of more than one component site,
2859 only through use of a reservation system, whether or not the
2860 purchaser is able to elect to cease participating in the plan.
2861 However, the term "multisite timeshare plan" shall not include
2862 any method, arrangement, or procedure wherein:

2863 (a) The contractually specified maximum total financial
2864 obligation on the purchaser's part is \$3,000 or less, during the
2865 entire term of the plan; or

2866 (b) The term is for a period of 3 years or less,
2867 regardless of the purchaser's contractually specified maximum
2868 total financial obligation, if any. For purposes of determining
2869 the term of such use and occupancy rights, the period of any
2870 optional renewals which a purchaser, in his or her sole
2871 discretion, may elect to exercise, whether or not for additional
2872 consideration, shall not be included. For purposes of
2873 determining the term of such use and occupancy rights, the
2874 period of any automatic renewals shall be included unless a
2875 purchaser has the right to terminate the membership at any time
2876 and receive a pro rata refund or the purchaser receives a notice
2877 no less than 30 days and no more than 60 days prior to the date
2878 of renewal informing the purchaser of the right to terminate at
2879 any time prior to the date of automatic renewal.

2880
2881 Multisite timeshare plan does not mean an exchange program as
2882 defined in s. 721.05. Timeshare estates may only be offered in a
2883 multisite timeshare plan pursuant to s. 721.57.



HB 1243

2003

2884 (5) "Nonspecific multisite timeshare plan" means a
2885 multisite timeshare plan containing timeshare licenses or
2886 personal property timeshare interests, with respect to which a
2887 purchaser receives a right to use all of the accommodations and
2888 facilities, if any, of the multisite timeshare plan through the
2889 reservation system, but no specific right to use any particular
2890 accommodations and facilities for the remaining term of the
2891 multisite timeshare plan in the event that the reservation
2892 system is terminated for any reason prior to the expiration of
2893 the term of the multisite timeshare plan.

2894 ~~(6)~~~~(5)~~ "Reservation system" means the method, arrangement,
2895 or procedure by which a purchaser, in order to reserve the use
2896 and occupancy of any accommodation or facility of the multisite
2897 timeshare plan for one or more use periods, is required to
2898 compete with other purchasers in the same multisite timeshare
2899 plan regardless of whether such reservation system is operated
2900 and maintained by the multisite timeshare plan managing entity,
2901 an exchange company, or any other person. In the event that a
2902 purchaser is required to use an exchange program as the
2903 purchaser's principal means of obtaining the right to use and
2904 occupy a multisite timeshare plan's accommodations and
2905 facilities, such arrangement shall be deemed a reservation
2906 system. When an exchange company utilizes a mechanism for the
2907 exchange of use of timeshare periods among members of an
2908 exchange program, such utilization is not a reservation system
2909 of a multisite timeshare plan.

2910 (7) "Specific multisite timeshare plan" means a multisite
2911 timeshare plan containing timeshare licenses or personal
2912 property timeshare interests, with respect to which a purchaser
2913 receives a specific right to use accommodations and facilities,



HB 1243

2003

2914 if any, at one component site of a multisite timeshare plan,
 2915 together with use rights in the other accommodations and
 2916 facilities of the multisite timeshare plan created by or
 2917 acquired through the reservation system.

2918 ~~(8)(6)~~ "Vacation club" means a multisite timeshare plan.

2919 Section 24. Paragraph (a) of subsection (1) of section
 2920 721.53, Florida Statutes, is amended and paragraph (f) is added
 2921 to subsection (1) of said section, to read:

2922 721.53 Subordination instruments; alternate security
 2923 arrangements.--

2924 (1) With respect to each accommodation or facility of a
 2925 multisite timeshare plan, the developer shall provide the
 2926 division with satisfactory evidence that one of the following
 2927 has occurred with respect to each interestholder prior to
 2928 offering the accommodation or facility as a part of the
 2929 multisite timeshare plan:

2930 (a) The interestholder has executed and recorded a
 2931 nondisturbance and notice to creditors instrument pursuant to s.
 2932 721.08~~(2)(e)~~.

2933 (f) With respect to any personal property accommodations
 2934 or facilities, the developer and any other interestholder have
 2935 complied fully with the applicable provisions of s. 721.08.

2936 Section 25. Section 721.54, Florida Statutes, is amended
 2937 to read:

2938 721.54 Term of nonspecific multisite timeshare plans.--It
 2939 shall be a violation of this part to represent to a purchaser of
 2940 a nonspecific multisite timeshare plan ~~as defined in s.~~

2941 ~~721.552(4)~~ that the term of the plan for that purchaser is
 2942 longer than the shortest term of availability of any of the
 2943 accommodations included within the plan at the time of purchase.



HB 1243

2003

2944 Section 26. Section 721.55, Florida Statutes, is amended
2945 to read:

2946 721.55 Multisite timeshare plan public offering
2947 statement.--Each filed ~~registered~~ public offering statement for
2948 a multisite timeshare plan shall contain the information
2949 required by this section and shall comply with the provisions of
2950 s. 721.07, except as otherwise provided therein. The division is
2951 authorized to provide by rule the method by which a developer
2952 must provide such information to the division. Each multisite
2953 timeshare plan filed ~~registered~~ public offering statement shall
2954 contain the following information and disclosures:

- 2955 (1) A cover page containing:
- 2956 (a) The name of the multisite timeshare plan.
- 2957 (b) The following statement in conspicuous type:

2958

2959 *This public offering statement contains important matters*
2960 *to be considered in acquiring an interest in a multisite*
2961 *timeshare plan (or multisite vacation ownership plan or*
2962 *multisite vacation plan or vacation club). The statements*
2963 *contained herein are only summary in nature. A prospective*
2964 *purchaser should refer to all references, accompanying exhibits,*
2965 *contract documents, and sales materials. The prospective*
2966 *purchaser should not rely upon oral representations as being*
2967 *correct and should refer to this document and accompanying*
2968 *exhibits for correct representations.*

- 2969
- 2970 (2) A summary containing all statements required to be in
2971 conspicuous type in the public offering statement and in all
2972 exhibits thereto.



HB 1243

2003

2973 (3) A separate index for the contents and exhibits of the
2974 public offering statement.

2975 (4) A text, which shall include, where applicable, the
2976 information and disclosures set forth in paragraphs (a)-(1).

2977 (a) A description of the multisite timeshare plan,
2978 including its term, legal structure, and form of ownership. For
2979 multisite timeshare plans in which the purchaser will receive a
2980 timeshare estate pursuant to s. 721.57 and for ~~or a~~ specific
2981 multistate timeshare plans ~~license as defined in s. 721.552(4),~~
2982 the description must also include the term of each component
2983 site within the multisite timeshare plan.

2984 (b) A description of the structure and ownership of the
2985 reservation system together with a disclosure of the entity
2986 responsible for the operation of the reservation system. The
2987 description shall include the financial terms of any lease of
2988 the reservation system, if applicable. The developer shall not
2989 be required to disclose the financial terms of any such lease if
2990 such lease is prepaid in full for the term of the multisite
2991 timeshare plan or to any extent that neither purchasers nor the
2992 managing entity will be required to make payments for the
2993 continued use of the system following default by the developer
2994 or termination of the managing entity.

2995 (c)1. A description of the manner in which the reservation
2996 system operates. The description shall include a disclosure in
2997 compliance with the demand balancing standard set forth in s.
2998 721.56(6) and shall describe the developer's efforts to comply
2999 with same in creating the reservation system. The description
3000 shall also include a summary of the rules and regulations
3001 governing access to and use of the reservation system.



HB 1243

2003

3002 2. In lieu of describing the rules and regulations of the
 3003 reservation system in the public offering statement text, the
 3004 developer may attach the rules and regulations as a separate
 3005 public offering statement exhibit, together with a cross-
 3006 reference in the public offering statement text to such exhibit.

3007 (d) The existence of and an explanation regarding any
 3008 priority reservation features that affect a purchaser's ability
 3009 to make reservations for the use of a given accommodation or
 3010 facility on a first come, first served basis, including, if
 3011 applicable, the following statement in conspicuous type:

3012
 3013 *Component sites contained in the multisite timeshare plan*
 3014 *(or multisite vacation ownership plan or multisite vacation plan*
 3015 *or vacation club) are subject to priority reservation features*
 3016 *which may affect your ability to obtain a reservation.*

3017
 3018 (e) A summary of the material rules and regulations, if
 3019 any, other than the reservation system rules and regulations,
 3020 affecting the purchaser's use of each accommodation and facility
 3021 at each component site.

3022 (f) If the provisions of s. 721.552 and the timeshare
 3023 instrument permit additions, substitutions, or deletions of
 3024 accommodations or facilities, the public offering statement must
 3025 include substantially the following information:

3026 1. Additions.--

3027 a. A description of the basis upon which new
 3028 accommodations and facilities may be added to the multisite
 3029 timeshare plan; by whom additions may be made; and the
 3030 anticipated effect of the addition of new accommodations and
 3031 facilities upon the reservation system, its priorities, its



HB 1243

2003

3032 rules and regulations, and the availability of existing
3033 accommodations and facilities.

3034 b. The developer must disclose the existence of any cap on
3035 annual increases in common expenses of the multisite timeshare
3036 plan that would apply in the event that additional
3037 accommodations and facilities are made a part of the plan.

3038 c. The developer shall also disclose any extent to which
3039 the purchasers of the multisite timeshare plan will have the
3040 right to consent to any proposed additions; if the purchasers do
3041 not have the right to consent, the developer must include the
3042 following disclosure in conspicuous type:

3043
3044 *Accommodations and facilities may be added to this*
3045 *multisite timeshare plan (or multisite vacation ownership plan*
3046 *or multisite vacation plan or vacation club) without the consent*
3047 *of the purchasers. The addition of accommodations and facilities*
3048 *to the plan may result in the addition of new purchasers who*
3049 *will compete with existing purchasers in making reservations for*
3050 *the use of available accommodations and facilities within the*
3051 *plan, and may also result in an increase in the annual*
3052 *assessment against purchasers for common expenses.*

3053

3054 2. Substitutions.--

3055 a. A description of the basis upon which new
3056 accommodations and facilities may be substituted for existing
3057 accommodations and facilities of the multisite timeshare plan;
3058 by whom substitutions may be made; the basis upon which the
3059 determination may be made to cause such substitutions to occur;
3060 and any limitations upon the ability to cause substitutions to
3061 occur.



HB 1243

2003

3062 b. The developer shall also disclose any extent to which
3063 purchasers will have the right to consent to any proposed
3064 substitutions; if the purchasers do not have the right to
3065 consent, the developer must include the following disclosure in
3066 conspicuous type:

3067

3068 *New accommodations and facilities may be substituted for*
3069 *existing accommodations and facilities of this multisite*
3070 *timeshare plan (or multisite vacation ownership plan or*
3071 *multisite vacation plan or vacation club) without the consent of*
3072 *the purchasers. The replacement accommodations and facilities*
3073 *may be located at a different place or may be of a different*
3074 *type or quality than the replaced accommodations and facilities.*
3075 *The substitution of accommodations and facilities may also*
3076 *result in an increase in the annual assessment against*
3077 *purchasers for common expenses.*

3078

3079 3. Deletions.--A description of any provision of the
3080 timeshare instrument governing deletion of accommodations or
3081 facilities from the multisite timeshare plan. If the timeshare
3082 instrument does not provide for business interruption insurance
3083 in the event of a casualty, or if it is unavailable, or if the
3084 instrument permits the developer, the managing entity, or the
3085 purchasers to elect not to reconstruct after casualty under
3086 certain circumstances or to secure replacement accommodations or
3087 facilities in lieu of reconstruction, the public offering
3088 statement must contain a disclosure that during the
3089 reconstruction, replacement, or acquisition period, or as a
3090 result of a decision not to reconstruct, purchasers of the plan



HB 1243

2003

3091 may temporarily compete for available accommodations on a
3092 greater than one-to-one purchaser to accommodation ratio.

3093 (g) A description of the developer and the managing entity
3094 of the multisite timeshare plan, including:

3095 1. The identity of the developer; the developer's business
3096 address; the number of years of experience the developer has in
3097 the timeshare, hotel, motel, travel, resort, or leisure
3098 industries; and a description of any pending lawsuit or judgment
3099 against the developer which is material to the plan. If there
3100 are no such pending lawsuits or judgments, there shall be a
3101 statement to that effect.

3102 2. The identity of the managing entity of the multisite
3103 timeshare plan; the managing entity's business address; the
3104 number of years of experience the managing entity has in the
3105 timeshare, hotel, motel, travel, resort, or leisure industries;
3106 and a description of any lawsuit or judgment against the
3107 managing entity which is material to the plan. If there are no
3108 pending lawsuits or judgments, there shall be a statement to
3109 that effect. The description of the managing entity shall also
3110 include a description of the relationship among the managing
3111 entity of the multisite timeshare plan and the various component
3112 site managing entities.

3113 (h) A description of the purchaser's liability for common
3114 expenses of the multisite timeshare plan, including the
3115 following:

3116 1. A description of the common expenses of the plan,
3117 including the method of allocation and assessment of such common
3118 expenses, whether component site common expenses and real estate
3119 taxes are included within the total common expense assessment of
3120 the multisite timeshare plan, and, if not, the manner in which



HB 1243

2003

3121 timely payment of component site common expenses and real estate
3122 taxes shall be accomplished.

3123 2. A description of any cap imposed upon the level of
3124 common expenses payable by the purchaser. In no event shall the
3125 total common expense assessment for the multisite timeshare plan
3126 in a given calendar year exceed 125 percent of the total common
3127 expense assessment for the plan in the previous calendar year.

3128 3. A description of the entity responsible for the
3129 determination of the common expenses of the multisite timeshare
3130 plan, as well as any entity which may increase the level of
3131 common expenses assessed against the purchaser at the multisite
3132 timeshare plan level.

3133 4. A description of the method used to collect common
3134 expenses, including the entity responsible for such collections,
3135 and the lien rights of any entity for nonpayment of common
3136 expenses. If the common expenses of any component site are
3137 collected by the managing entity of the multisite timeshare
3138 plan, a statement to that effect together with the identity and
3139 address of the escrow agent required by s. 721.56(3).

3140 5. If the purchaser will receive an interest in a
3141 nonspecific multistate timeshare plan license ~~as defined in s.~~
3142 ~~721.552(4)~~, a statement that a multisite timeshare plan budget
3143 is attached to the public offering statement as an exhibit
3144 pursuant to paragraph (7)(c). The multisite timeshare plan
3145 budget shall comply with the provisions of s. 721.07(5)(u).

3146 6. If the developer intends to guarantee the level of
3147 assessments for the multisite timeshare plan, such guarantee
3148 must be based upon a good faith estimate of the revenues and
3149 expenses of the multisite timeshare plan. The guarantee must
3150 include a description of the following:



HB 1243

2003

3151 a. The specific time period, measured in one or more
 3152 calendar or fiscal years, during which the guarantee will be in
 3153 effect.

3154 b. A statement that the developer will pay all common
 3155 expenses incurred in excess of the total revenues of the
 3156 multisite timeshare plan, if the developer is to be excused from
 3157 the payment of assessments during the guarantee period.

3158 c. The level, expressed in total dollars, at which the
 3159 developer guarantees the assessments. If the developer has
 3160 reserved the right to extend or increase the guarantee level, a
 3161 disclosure must be included to that effect.

3162 7. If required under applicable law, the developer shall
 3163 also disclose the following matters for each component site:

3164 a. Any limitation upon annual increases in common
 3165 expenses;

3166 b. The existence of any bad debt or working capital
 3167 reserve; and

3168 c. The existence of any replacement or deferred
 3169 maintenance reserve.

3170 (i) If there are any restrictions upon the sale, transfer,
 3171 conveyance, or leasing of an interest in a multisite timeshare
 3172 plan, a description of the restrictions together with a
 3173 statement in conspicuous type in substantially the following
 3174 form:

3175
 3176 *The sale, lease, or transfer of interests in this multisite*
 3177 *timeshare plan is restricted or controlled.*

3178
 3179 (j) The following statement in conspicuous type in
 3180 substantially the following form:



HB 1243

2003

3181
3182 *The purchase of an interest in a multisite timeshare plan*
3183 *(or multisite vacation ownership plan or multisite vacation plan*
3184 *or vacation club) should be based upon its value as a vacation*
3185 *experience or for spending leisure time, and not considered for*
3186 *purposes of acquiring an appreciating investment or with an*
3187 *expectation that the interest may be resold.*

3188
3189 (k) If the multisite timeshare plan provides purchasers
3190 with the opportunity to participate in an exchange program, a
3191 description of the name and address of the exchange company and
3192 the method by which a purchaser accesses the exchange program.
3193 In lieu of this requirement, the public offering statement text
3194 may contain a cross-reference to other provisions in the public
3195 offering statement or in an exhibit containing this information.

3196 (1) A description of each component site, which
3197 description may be disclosed in a written, graphic, tabular, or
3198 other form approved by the division. The description of each
3199 component site shall include the following information:

3200 1. The name and address of each component site.
3201 2. The number of accommodations, timeshare interests, and
3202 timeshare periods, expressed in periods of 7-day use
3203 availability, committed to the multisite timeshare plan and
3204 available for use by purchasers.

3205 3. Each type of accommodation in terms of the number of
3206 bedrooms, bathrooms, sleeping capacity, and whether or not the
3207 accommodation contains a full kitchen. For purposes of this
3208 description, a full kitchen shall mean a kitchen having a
3209 minimum of a dishwasher, range, sink, oven, and refrigerator.



HB 1243

2003

3210 4. A description of facilities available for use by the
 3211 purchaser at each component site, including the following:

3212 a. The intended use of the facility, if not apparent from
 3213 the description.

3214 b. Any user fees associated with a purchaser's use of the
 3215 facility.

3216 5. A cross-reference to the location in the public
 3217 offering statement of the description of any priority
 3218 reservation features which may affect a purchaser's ability to
 3219 obtain a reservation in the component site.

3220 (5) Such other information as the division determines is
 3221 necessary to fairly, meaningfully, and effectively disclose all
 3222 aspects of the multisite timeshare plan, including, but not
 3223 limited to, any disclosures made necessary by the operation of
 3224 s. 721.03(8). However, if a developer has, in good faith,
 3225 attempted to comply with the requirements of this section, and
 3226 if, in fact, the developer has substantially complied with the
 3227 disclosure requirements of this chapter, nonmaterial errors or
 3228 omissions shall not be actionable.

3229 (6) Any other information that the developer, with the
 3230 approval of the division, desires to include in the public
 3231 offering statement text.

3232 (7) The following documents shall be included as exhibits
 3233 to the registered public offering statement, if applicable:

3234 (a) The timeshare instrument.

3235 (b) The reservation system rules and regulations.

3236 (c) The multisite timeshare plan budget pursuant to
 3237 subparagraph (4)(h)5.

3238 (d) Any document containing the material rules and
 3239 regulations described in paragraph (4)(e).



HB 1243

2003

3240 (e) Any contract, agreement, or other document through
 3241 which component sites are affiliated with the multisite
 3242 timeshare plan.

3243 (f) Any escrow agreement required pursuant to s. 721.08 or
 3244 s. 721.56(3).

3245 (g) The form agreement for sale or lease of an interest in
 3246 the multisite timeshare plan.

3247 (h) The form receipt for multisite timeshare plan
 3248 documents required to be given to the purchaser pursuant to s.
 3249 721.551(2)(b).

3250 (i) The description of documents list required to be given
 3251 to the purchaser by s. 721.551(2)(b).

3252 (j) The component site managing entity affidavit or
 3253 statement required by s. 721.56(1).

3254 (k) Any subordination instrument required by s. 721.53.

3255 (l)1. If the multisite timeshare plan contains any
 3256 component sites located in this state, the information required
 3257 by s. 721.07(5) pertaining to each such component site unless
 3258 exempt pursuant to s. 721.03.

3259 2. If the purchaser will receive a timeshare estate
 3260 pursuant to s. 721.57, or an interest in a specific multistate
 3261 timeshare plan, ~~license as defined in s. 721.552(4)~~ in a
 3262 component site located outside of this state but which is
 3263 offered in this state, the information required by s. 721.07(5)
 3264 pertaining to that component site, + provided, however, that the
 3265 provisions of s. 721.07(5)(u) shall only require disclosure of
 3266 information related to the estimated budget for the timeshare
 3267 plan and purchaser's expenses as required by the jurisdiction in
 3268 which the component site is located.



HB 1243

2003

3269 (8)(a) A timeshare plan containing only one component site
 3270 must be filed with the division as a multisite timeshare plan if
 3271 the timeshare instrument reserves the right for the developer to
 3272 add future component sites. However, if the developer fails to
 3273 add at least one additional component site to a timeshare plan
 3274 described in this paragraph within 3 years after the date the
 3275 plan is initially filed with the division, the multisite filing
 3276 for such plan shall thereupon terminate, and the developer may
 3277 not thereafter offer any further interests in such plan unless
 3278 and until he or she refiles such plan with the division pursuant
 3279 to this chapter.

3280 (b) The public offering statement for any timeshare plan
 3281 described in paragraph (a) must include the following disclosure
 3282 in conspicuous type:

3283
 3284 *This timeshare plan has been filed as a multisite timeshare*
 3285 *plan (or multisite vacation ownership plan or multisite vacation*
 3286 *plan or vacation club); however, this plan currently contains*
 3287 *only one component site. The developer is not required to add*
 3288 *any additional component sites to the plan. Do not purchase an*
 3289 *interest in this plan in reliance upon the addition of any other*
 3290 *component sites.*

3291 Section 27. Paragraphs (b), (c), and (f) of subsection (2)
 3292 of section 721.551, Florida Statutes, are amended to read:

3293 721.551 Delivery of multisite timeshare plan purchaser
 3294 public offering statement.--

3295 (2) The developer shall furnish each purchaser with the
 3296 following:

3297 (b) A receipt for multisite timeshare plan documents and a
 3298 list describing any exhibit to the filed ~~registered~~ public



HB 1243

2003

3299 offering statement which is not delivered to the purchaser. The
 3300 division is authorized to prescribe by rule the form of the
 3301 receipt for multisite timeshare plan documents and the
 3302 description of exhibits list that must be furnished to the
 3303 purchaser pursuant to this section.

3304 (c) If the purchaser will receive a timeshare estate
 3305 pursuant to s. 721.57, or an interest in a specific multistate
 3306 timeshare plan, ~~license as defined in s. 721.552(4)~~ in a
 3307 component site located in this state, the developer shall also
 3308 furnish the purchaser with the information required to be
 3309 delivered pursuant to s. 721.07(6)(a) and (b) for the component
 3310 site in which the purchaser will receive an estate or interest
 3311 in a specific multistate timeshare plan license.

3312 (f) The developer shall be required to provide the
 3313 managing entity of the multisite timeshare plan with a copy of
 3314 the approved filed ~~registered~~ public offering statement and any
 3315 approved amendments thereto to be maintained by the managing
 3316 entity as part of the books and records of the timeshare plan
 3317 pursuant to s. 721.13(3)(d).

3318 Section 28. Paragraph (a) of subsection (2), paragraph (c)
 3319 of subsection (3), and subsections (4) and (5) of section
 3320 721.552, Florida Statutes, are amended to read:

3321 721.552 Additions, substitutions, or deletions of
 3322 component site accommodations or facilities; purchaser remedies
 3323 for violations.--Additions, substitutions, or deletions of
 3324 component site accommodations or facilities may be made only in
 3325 accordance with the following:

3326 (2) SUBSTITUTIONS.--

3327 (a) Substitutions are available only for nonspecific
 3328 multistate timeshare license plans as defined in subsection (4).



HB 1243

2003

3329 Specific multistate timeshare license plans or as defined in
 3330 ~~subsection (4) and~~ plans offering timeshare estates pursuant to
 3331 s. 721.57 may not contain an accommodation substitution right.

3332 (3) DELETIONS.--

3333 (c) *Automatic deletion.*--The timeshare instrument may
 3334 provide that a component site will be automatically deleted upon
 3335 the expiration of its term in a timeshare plan other than a
 3336 nonspecific multistate timeshare license plan or as otherwise
 3337 provided in the timeshare instrument. However, the timeshare
 3338 instrument must also provide that in the event a component site
 3339 is deleted from the plan in this manner, a sufficient number of
 3340 purchasers of the plan will also be deleted so as to maintain no
 3341 greater than a one-to-one purchaser to accommodation ratio.

3342 ~~(4) SPECIFIC AND NONSPECIFIC TIMESHARE LICENSES. For~~
 3343 ~~purposes of this chapter, a specific timeshare license means one~~
 3344 ~~with respect to which a purchaser receives a specific right to~~
 3345 ~~use accommodations and facilities, if any, at one component site~~
 3346 ~~of a multisite timeshare plan, together with use rights in the~~
 3347 ~~other accommodations and facilities of the multisite timeshare~~
 3348 ~~plan created by or acquired through the reservation system. For~~
 3349 ~~purposes of this chapter, a nonspecific timeshare license means~~
 3350 ~~one with respect to which a purchaser receives a right to use~~
 3351 ~~all of the accommodations and facilities, if any, of a multisite~~
 3352 ~~timeshare plan through the reservation system, but no specific~~
 3353 ~~right to use any particular accommodations and facilities for~~
 3354 ~~the remaining term of the multisite timeshare plan in the event~~
 3355 ~~that the reservation system is terminated for any reason prior~~
 3356 ~~to the expiration of the term of the multisite timeshare plan.~~



HB 1243

2003

3357 ~~(4)(5)~~ VIOLATIONS; PURCHASER REMEDIES.--All purchaser
 3358 remedies pursuant to s. 721.21 shall be available for any
 3359 violation of the provisions of this section.

3360 Section 29. Subsections (4) and (5) of section 721.56,
 3361 Florida Statutes, are amended to read:

3362 721.56 Management of multisite timeshare plans;
 3363 reservation systems; demand balancing.--

3364 (4) The managing entity of a multisite timeshare plan
 3365 shall comply fully with the requirements of s. 721.13, subject
 3366 to the provisions of s. 721.13(11) for personal property
 3367 timeshare plans; however, with respect to a given component
 3368 site, the managing entity of the multisite timeshare plan shall
 3369 not be responsible for compliance as the managing entity of that
 3370 component site unless the managing entity of the multisite
 3371 timeshare plan is also the managing entity of that component
 3372 site. Unless the timeshare instrument provides otherwise, the
 3373 operator of the reservation system is the managing entity of a
 3374 multisite timeshare plan.

3375 (5)(a)1. The reservation system is a facility of any
 3376 nonspecific ~~timeshare license~~ multisite timeshare plan ~~as~~
 3377 ~~defined in s. 721.552(4)~~. The reservation system is not a
 3378 facility of any specific ~~timeshare license~~ multisite timeshare
 3379 ~~plan as defined in s. 721.552(4)~~, nor is it a facility of any
 3380 multisite timeshare plan in which timeshare estates are offered
 3381 pursuant to s. 721.57.

3382 2. The reservation system of any multisite timeshare plan
 3383 shall include any computer software and hardware employed for
 3384 the purpose of enabling or facilitating the operation of the
 3385 reservation system. Nothing contained in this part shall
 3386 preclude a manager or management firm that is serving as



HB 1243

2003

3387 managing entity of a multisite timeshare plan from providing in
3388 its contract with the purchasers or owners' association of the
3389 multisite timeshare plan or in the timeshare instrument that the
3390 manager or management firm owns the reservation system and that
3391 the managing entity shall continue to own the reservation system
3392 in the event the purchasers discharge the managing entity
3393 pursuant to s. 721.14.

3394 (b) In the event of a termination of a managing entity of
3395 a nonspecific license multisite timeshare plan ~~as defined in s.~~
3396 ~~721.552(4)~~, which managing entity owns the reservation system,
3397 irrespective of whether the termination is voluntary or
3398 involuntary and irrespective of the cause of such termination,
3399 in addition to any other remedies available to purchasers in
3400 this part, the terminated managing entity shall, prior to such
3401 termination, establish a trust meeting the criteria set forth in
3402 this paragraph. It is the intent of the Legislature that this
3403 trust arrangement provide for an adequate period of continued
3404 operation of the reservation system of the multisite timeshare
3405 plan, during which period the new managing entity shall make
3406 provision for the acquisition of a substitute reservation
3407 system.

3408 1. The trust shall be established with an independent
3409 trustee. Both the terminated managing entity and the new
3410 managing entity shall attempt to agree on an acceptable trustee.
3411 In the event they cannot agree on an acceptable trustee, they
3412 shall each designate a nominee, and the two nominees shall
3413 select the trustee.

3414 2. The terminated managing entity shall take all steps
3415 necessary to enable the trustee or the trustee's designee to
3416 operate the reservation system in the same manner as provided in



HB 1243

2003

3417 the timeshare instrument and the public offering statement. The
3418 trustee may, but shall not be required to, contract with the
3419 terminated managing entity for the continued operation of the
3420 reservation system. In the event the trustee elects to contract
3421 with the terminated managing entity, that managing entity shall
3422 be required to operate the reservation system and shall be
3423 entitled to payment for that service. The payment shall in no
3424 event exceed the amount previously paid to the terminated
3425 managing entity for operation of the reservation system.

3426 3. The trust shall remain in effect for a period of no
3427 longer than 1 year following the date of termination of the
3428 managing entity.

3429 4. Nothing contained in this subsection shall abrogate or
3430 otherwise interfere with any proprietary rights in the
3431 reservation system that have been reserved by the discharged
3432 managing entity, in its management contract or otherwise, so
3433 long as such proprietary rights are not asserted in a manner
3434 that would prevent the continued operation of the reservation
3435 system as contemplated in this subsection.

3436 (c) In the event of a termination of a managing entity of
3437 a timeshare estate or specific ~~license~~ multisite timeshare plan
3438 ~~as defined in s. 721.552(4)~~, which managing entity owns the
3439 reservation system, irrespective of whether the termination is
3440 voluntary or involuntary and irrespective of the cause of such
3441 termination, in addition to any other remedies available to
3442 purchasers in this part, the terminated managing entity shall,
3443 prior to such termination, promptly transfer to each component
3444 site managing entity all relevant data contained in the
3445 reservation system with respect to that component site,
3446 including, but not limited to:



HB 1243

2003

3447 1. The names, addresses, and reservation status of
 3448 component site accommodations.

3449 2. The names and addresses of all purchasers of timeshare
 3450 interests at that component site.

3451 3. All outstanding confirmed reservations and reservation
 3452 requests for that component site.

3453 4. Such other component site records and information as
 3454 are necessary, in the reasonable discretion of the component
 3455 site managing entity, to permit the uninterrupted operation and
 3456 administration of the component site, provided that a given
 3457 component site managing entity shall not be entitled to any
 3458 information regarding other component sites or regarding the
 3459 terminated multisite timeshare plan managing entity.

3460
 3461 All reasonable costs incurred by the terminated managing entity
 3462 in effecting the transfer of information required by this
 3463 paragraph shall be reimbursed to the terminated managing entity
 3464 on a pro rata basis by each component site, and the amount of
 3465 such reimbursement shall constitute a common expense of each
 3466 component site.

3467 Section 30. Subsection (2) of section 721.57, Florida
 3468 Statutes, is amended to read:

3469 721.57 Offering of timeshare estates in multisite
 3470 timeshare plans; required provisions in the timeshare
 3471 instrument.--

3472 (2) The timeshare instrument of a multisite timeshare plan
 3473 in which timeshare estates are offered, other than a trust
 3474 meeting the requirements of s. 721.08, must contain or provide
 3475 for all of the following matters:



HB 1243

2003

3476 (a) The purchaser will receive a timeshare estate as
 3477 defined in s. 721.05 in one of the component sites of the
 3478 multisite timeshare plan. The use rights in the other component
 3479 sites of the multisite timeshare plan shall be made available to
 3480 the purchaser through the reservation system pursuant to the
 3481 timeshare instrument.

3482 (b) In the event that the reservation system is terminated
 3483 or otherwise becomes unavailable for any reason prior to the
 3484 expiration of the term of the multisite timeshare plan:

3485 1. The purchaser will be able to continue to use the
 3486 accommodations and facilities of the component site in which she
 3487 or he has been conveyed a timeshare estate in the manner
 3488 described in the timeshare instrument for the remaining term of
 3489 the timeshare estate; and

3490 2. Any use rights in that component site which had
 3491 previously been made available through the reservation system to
 3492 purchasers of the multisite timeshare plan who were not offered
 3493 a timeshare estate at that component site will terminate when
 3494 the reservation system is terminated or otherwise becomes
 3495 unavailable for any reason.

3496 Section 31. Subsection (6) of section 721.84, Florida
 3497 Statutes, is amended to read:

3498 721.84 Appointment of a registered agent; duties.--

3499 (6) Unless otherwise provided in this section, a
 3500 registered agent in receipt of any notice or other document
 3501 addressed from the lienholder to the obligor in care of the
 3502 registered agent at the registered office must mail, by first
 3503 class mail if the obligor's address is within the United States,
 3504 and by international air mail if the obligor's address is
 3505 outside the United States, with postage fees prepaid, such



HB 1243

2003

3506 notice or documents to the obligor at the obligor's last
 3507 designated address within 5 days after ~~of~~ receipt.

3508 Section 32. Section 721.96, Florida Statutes, is amended
 3509 to read:

3510 721.96 Purpose.--The purpose of this part is to provide
 3511 for the appointment of commissioners of deeds to take
 3512 acknowledgments, proofs of execution, and oaths outside the
 3513 United States in connection with the execution of any deed,
 3514 mortgage, deed of trust, contract, power of attorney, or any
 3515 other agreement, instrument or writing concerning, relating to,
 3516 or to be used or recorded in connection with a timeshare estate,
 3517 personal property timeshare interest, timeshare license, any
 3518 property subject to a timeshare plan, or the operation of a
 3519 timeshare plan located within this state.

3520 Section 33. Subsection (1) of section 721.97, Florida
 3521 Statutes, is amended to read:

3522 721.97 Timeshare commissioner of deeds.--

3523 (1) The Governor may appoint commissioners of deeds to
 3524 take acknowledgments, proofs of execution, or oaths in any
 3525 foreign country. The term of office is 4 years. Commissioners of
 3526 deeds shall have authority to take acknowledgments, proofs of
 3527 execution, and oaths in connection with the execution of any
 3528 deed, mortgage, deed of trust, contract, power of attorney, or
 3529 any other writing to be used or recorded in connection with a
 3530 timeshare estate, personal property timeshare interest,
 3531 timeshare license, any property subject to a timeshare plan, or
 3532 the operation of a timeshare plan located within this state;
 3533 provided such instrument or writing is executed outside the
 3534 United States. Such acknowledgments, proofs of execution, and
 3535 oaths must be taken or made in the manner directed by the laws



HB 1243

2003

3536 of this state, including but not limited to s. 117.05(4),
3537 (5)(a), and (6), Florida Statutes 1997, and certified by a
3538 commissioner of deeds. The certification must be endorsed on or
3539 annexed to the instrument or writing aforesaid and has the same
3540 effect as if made or taken by a notary public licensed in this
3541 state.

3542 Section 34. This act shall take effect upon becoming a
3543 law.