



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill decreases government regulation of timeshare plans located outside the state of Florida. This bill also regulates the use of alternative media by developers.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

The Florida Vacation Plan and Timesharing Act establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers and prospective purchasers.<sup>1</sup> A timeshare unit is an accommodation of a timeshare plan which is divided into timeshare periods<sup>2</sup> or a condominium unit in which timeshare estates have been created.<sup>3</sup> A timeshare plan is any arrangement, plan, scheme, or similar device whereby a purchaser gives consideration for ownership rights in, or a right to use, any accommodations and facilities for less than a full year during any given year, but not necessarily for consecutive years. Prior to offering any timeshare plan, a developer must file a registered public offering statement with the Division of Florida Land Sales, Condominiums, and Mobile Homes (division) of the Department of Business and Professional Regulation for approval.<sup>4</sup>

##### Requirements When Not Filing a Public Offering Statement

Under current law, a person cannot sell a timeshare or provide information to a prospective purchaser about a timeshare unit that is located outside the state of Florida, unless the timeshare plan has been filed and approved by the division. While a person is staying at a timeshare located inside the state of Florida the developer of the timeshare may want to provide the person with information about another timeshare for sale by that developer, including ones located out of the state.

This bill creates s. 721.03(11), F.S., which provides that a seller can offer timeshare interests in a timeshare plan located outside the state of Florida without filing a public offering statement, provided all of the following criteria have been satisfied:

- The Seller has provided a disclosure statement to each prospective purchaser. The disclosure statement must contain information that is substantially equivalent to the disclosures required in timeshare and multi-state timeshare public offering statements. The disclosure statement must also include exhibits of the following documents:
  - Declaration of condominium;
  - Cooperative documents;
  - Declaration of covenants and restrictions;
  - Articles of incorporation creating the owners' association;
  - Bylaws of the owners' association;
  - Management agreement and all maintenance and other contracts regarding the management and operation of the timeshare property which have terms in excess of 1 year;
  - Estimated operating budget for the timeshare plan and the required schedule of purchasers' expenses; and

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<sup>1</sup> Sections 721.02(2), (3), F.S.

<sup>2</sup> Section 721.05(39), F.S.

<sup>3</sup> Section 718.103(26), F.S.

<sup>4</sup> Section 721.07, F.S.

- Any other documents or instruments creating the timeshare plan.
- The seller must deliver the disclosure statement in a way that satisfies the requirements of ch. 721, F.S., regarding a public offering statement. The disclosure statement can be delivered by alternative media means as permitted in ch. 721, F.S.
- The seller must utilize and furnish to each purchaser a fully completed and executed copy of a purchase contract that contains the statement:

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

The contract must also contain the initial purchase price and any additional charges to which the purchaser could be subject to such as financing and the current year's annual assessment for common expenses.

- All purchase contracts must also contain the following statements in conspicuous type:
  - "This timeshare plan has not been reviewed or approved by the State of Florida"; and
  - "The timeshare interest you are purchasing requires certain procedures to be followed in order for you to use your interest. These procedures may be different from those followed in other timeshare plans. You should read and understand these procedures prior to purchasing".
- The seller can only offer an out-of-state plan on behalf of:
  - The developer of a timeshare plan that has been approved by the division within the last 7 years, or where an amendment by the developer has been approved by the division within the preceding 7 years, which timeshare plan has neither been terminated or withdrawn; or
  - A developer under common ownership or control with a developer described above provided that any common ownership must constitute as least a 50% ownership interest.
- An out-of state timeshare plan can only be offered to a person who already owns a timeshare interest in a timeshare plan filed by a developer that has met the 7-year requirements stated above.
- Any out-of-state timeshare plan must meet all requirements of ch. 720, F.S., except as provided in ss. 721.06, 721.065, 721.07, 721.27, 721.55, and 721.58, F.S. The out-of-state timeshare plan must also be eligible for any exemptions provided by ch. 721, F.S.
- Any escrow account required to be established by s. 721.08, F.S., can be maintained in the jurisdiction where the timeshare property is located.
- The seller must be required to provide notice of the out-of-state timeshare plan to the division on a form prescribed by the division, along with payment of a one-time fee not to exceed \$1,000 per filing.

### One-to-One Purchaser to Accommodation Ratio

Section 721.05(25), F.S., provides that the "one-to-one purchaser to accommodation ratio" is the ratio of the number of purchasers eligible to use the accommodations of a timeshare plan on a given day to the number of accommodations available for use within the plan on that day, such that the total number of purchasers eligible to use the accommodations of the timeshare plan during a given calendar year never exceeds the total number of accommodations available for use in the timeshare plan during that year. For purposes of calculation under this subsection, each purchaser must be counted at least once, and no individual timeshare unit may be counted more than 365 times per calendar year (or more than 366 times per leap year). A purchaser who is delinquent in the payment of timeshare plan assessments will continue to be considered eligible to use the accommodations of the timeshare plan for purposes

of this subsection notwithstanding any application of s. 721.13(6)<sup>5</sup>.

This bill amends s. 721.05(25), F.S., by replacing all references to "calendar year" or "year" with "12-month period".

### Public Offering Statement

A "public offering statement" is the written materials describing a single-site timeshare plan or a multi-site timeshare plan, including any exhibits attached thereto.<sup>6</sup> A developer must file a registered public offering statement with the division. The form of the purchaser public offering statement must provide fair, meaningful, and effective disclosure of all aspects of the timeshare plan.<sup>7</sup>

Section 721.07(6), F.S., provides that for timeshare plans filed pursuant to this part, the developer must furnish each purchaser with the following:

- A copy of the purchaser public offering statement text in the form approved by the division for delivery to purchasers;
- Copies of the exhibits required to be filed with the division pursuant to subparagraphs (5)(ff)1., 2., 4., 5., 8., and 20;
- A receipt for timeshare plan documents and a list describing any exhibit to the filed public offering statement filed with the division which is not delivered to the purchaser. The division is authorized to prescribe by rule the form of the receipt for timeshare plan documents and the description of exhibits list that must be furnished to the purchaser. The description of documents list utilized by a developer shall be filed with the division for review as part of the filed public offering statement pursuant to this section. The developer shall be required to provide the managing entity with a copy of the approved filed public offering statement and any approved amendments thereto to be maintained by the managing entity as part of the books and records of the timeshare plan pursuant to s. 721.13(3)(d);
- Any other exhibit which the developer includes as part of the purchaser public offering statement, provided that the developer first files the exhibit with the division;
- An executed copy of any document which the purchaser signs; and
- A fully executed paper copy of the purchase contract.

This bill amends s. 721.07(6), F.S., by deleting the requirement that developers must furnish to each purchaser a fully executed paper copy of the purchase contract.

### Use of Alternative Media to Deliver Documents

This bill creates 721.07(7), F.S., which provides that a developer can provide a purchaser with the option of receiving any document required by ch. 721, F.S. through alternative media instead of delivering a paper copy to the purchaser. The purchaser's choice of document format must be made in writing on a separate form that must disclose the system requirements necessary to view the alternative media and must be signed by the purchaser. The form must also state that the purchaser should not select alternative media unless it can be viewed by the purchaser before the expiration of the 10-day cancellation period.

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<sup>5</sup> Section 721.13(6), F.S., provides that "The managing entity of any timeshare plan located in this state may deny the use of the accommodations and facilities of the timeshare plan to any purchaser who is delinquent in the payment of any assessments made by the managing entity against such purchaser for common expenses or for ad valorem real estate taxes".

<sup>6</sup> Section 721.05(29), F.S.

<sup>7</sup> Section 721.07(6), F.S.

If only a portion of the documents are delivered by alternative media, then the developer must identify which information appears in the alternative media and which information is being delivered in paper format in the table of contents and in the receipt for timeshare documents.

If a purchase contract is delivered by alternative media, the alternative media must contain substantially the following statement located on the outside of any compact disc or other alternative media jacket, sleeve, or other container:

"You may cancel your contract without any penalty or obligation within 10 calendar days after you sign the contract or the date you receive the last of all documents required to be delivered to you. Refer to your purchase contract for more details."

This bill gives the division the authority to determine by rule where the statement must be located.

This bill also provides that the order and content of a public offering statement delivered through alternative media must comply with the rules of the division. Prior to delivery of the public offering statement through alternative media, the developer must give the division a copy of the public offering statement in the alternative media format proposed to be used by the developer together with the executed certificate, using forms provided by the division, certifying that the portion of the public offering statement delivered through the proposed alternative media format is accurate and, where practicable, identical to the written public offering statement. The alternative media format used to view the public offering statement can contain additional materials such as advertising materials. Where other materials are contained in the alternative media, the location of the public offering statement must be specifically and prominently identified in the alternative media and easily accessed by the purchaser. If the developer subsequently amends the written public offering statement, the alternative media public offering statement must also be amended to conform to the amendment, and the developer must file with the division an executed certificate certifying that public offering statement in the alternative media format are identical to the written public offering statement. The developer can provide paper copies of the amendments to the purchaser.

### Management of Timeshare Plans

Section 721.13, F.S., provides that for each timeshare plan, the developer must provide for a managing entity, which must be the developer, a separate manager or management firm, or an owners' association. Where there is a condominium or cooperative timeshare that requires a mandatory owners' association, the board of administration must be considered the managing entity of the timeshare plan.

This bill amends s. 721.13, F.S., to provide that notwithstanding anything to the contrary contained in condominium or cooperative law, timeshare condominium associations and cooperative associations are not subject to the provisions of s. 718.301, F.S. or s. 719.301, F.S., pertaining to the transfer of condominium and cooperative association control.

### Insurance for Timeshare Accommodations and Facilities

Section 721.165, F.S., provides that the seller, and thereafter, the managing entity, is responsible for obtaining insurance to protect the accommodations and facilities of the timeshare plan in an amount equal to the replacement cost of such accommodations and facilities.

This bill amends s. 721.165, F.S., to provide that any insurance may include reasonable deductibles as determined initially by the seller and thereafter by the managing entity.

## C. SECTION DIRECTORY:

Section 1 amends s. 721.03, F.S., to provide criteria that must be met before a seller can offer a timeshare interest in a timeshare plan located outside the state of Florida without filing a public offering statement.

Section 2 amends s. 721.05, F.S., to replace all references to "calendar year" or "year" with "12-month period".

Section 3 amends s. 721.07, F.S., to remove language requiring the developer to furnish each purchaser a fully executed paper copy of the purchase contract. This section also provides requirements for using alternative media options for the delivery of documents required by ch. 721, F.S.

Section 4 amends s. 721.13, F.S., to provide that timeshare condominiums and cooperatives are not subject to the condominium or cooperative provisions pertaining to transition of association control.

Section 5 amends s. 721.165, F.S. to provide that any insurance may include reasonable deductibles as determined initially by the seller and thereafter by the managing entity.

Section 6 provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT <sup>8</sup>

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

This bill will have a negative fiscal impact on state government revenues. Amending s. 721.03, F.S., will exempt developers from registering certain out of state timeshare plans. The change to section 721.03, F.S., will remove the language directing the department from collecting the registration fees (\$2/timeshare week) for those exempted timeshare plans. This will be partially offset by the one-time fee of \$1,000 payable to the division for the developer exercising this exemption from filing. There are currently 78 out of state timeshare projects (comprising 161,888 timeshare weeks) filed with the division. During FY 2004/05, 11 projects (comprising 51,056 timeshare weeks) were filed. The division is unable to determine the number of projects that would be entitled to this exemption; however, based upon FY 2004/05 filings and if all 11 projects were to have been entitled to this exemption, the division would receive \$11,000 in exemption fees instead of \$102,112 in filing fees and \$102,112 in annual fees.

#### 2. Expenditures:

EXPENDITURES – FUNDING SOURCE (TRUST FUND)			
<b>Recurring Effects</b>	FY 2006-07	FY 2007-08	FY 2008-09
Salaries/Benefits # of FTE's	0	0	0
Expenses	0	0	0
Other (identify)	0	0	0
Subtotal	0	0	0
<b>Non-Operating Expenditures</b>			
Service Charges (to General Revenue)	(6,651)	(6,651)	(6,651)
Other Indirect Costs	0	0	0
Subtotal	(6,651)	(6,651)	(6,651)

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

<sup>8</sup> Fiscal impact provided by DBPR on March 13, 2006

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will require sellers of out-of-state timeshare plans to file notice of their plan to the Division of Florida Land Sales, Condominiums, and Mobile Homes along with payment of a \$1,000 filing fee.

DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR	
Direct Private Sector Costs	Each seller who is entitled to the exemption and elects not to file a public offering statement with the department would pay a \$1,000 exemption fee.
Direct Private Sector Benefits	Each seller who is entitled to the exemption and elects not to file a public offering statement with the department would not have to pay the \$2/timeshare week fee.
Effects on Competition, Private Enterprise & Employment Markets	Unknown

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 721 03(11)(g), F.S., requires a form to be prescribed by the division. This bill authorizes the Division of Florida Land Sales, Condominiums, and Mobile Homes to prescribe by rule the prominent location where the statement, regarding the canceling of the contract, must be located on any compact disc or other alternative media jacket, sleeve, or other container.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A