

HB 1163

2006

1 A bill to be entitled

2 An act relating to vacation and timeshare plans; amending
3 s. 721.03, F.S.; authorizing a seller to offer timeshare
4 interests in timeshare plans located outside of this state
5 without filing a public offering statement for such out-
6 of-state timeshare plan; providing criteria for such
7 offers; amending s. 721.05, F.S.; revising the definition
8 of the term "one-to-one purchaser to accommodation ratio";
9 amending s. 721.07, F.S.; providing that the developer may
10 deliver certain documents by means of certain alternative
11 media; prescribing guidelines for the use of alternative
12 media in the delivery of such documents; requiring certain
13 alternative media to contain a disclosure statement;
14 amending s. 721.13, F.S.; providing that timeshare
15 condominium associations and timeshare cooperative
16 associations are not subject to certain provisions
17 relating to transfer of association control; amending s.
18 721.165, F.S.; authorizing certain insurance to include
19 reasonable deductibles as determined initially by the
20 seller and thereafter by the managing entity; providing an
21 effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Subsection (11) is added to section 721.03,
26 Florida Statutes, to read:

27 721.03 Scope of chapter.--

28 (11) A seller may offer timeshare interests in a timeshare
29 plan located outside of this state without filing a public
30 offering statement for such out-of-state timeshare plans
31 pursuant to s. 721.07 or s. 721.55, provided all of the
32 following criteria have been satisfied:

33 (a) The seller shall provide a disclosure statement to
34 each prospective purchaser of such out-of-state timeshare plan.
35 The disclosure statement shall contain information that is
36 substantively equivalent to the disclosures required to be
37 provided for similar timeshare plans pursuant to s. 721.07 or s.
38 721.55, whichever is applicable. The disclosure statement shall
39 also include the exhibits that are required by s.
40 721.07(5)(ff)1., 2., 3., 4., 5., 7., 8., and 20.

41 (b) With respect to any offer for an out-of-state
42 timeshare plan made pursuant to this subsection, the delivery by
43 the seller to a prospective purchaser of the disclosure
44 statement required by paragraph (a) shall be deemed to satisfy
45 any requirement of this chapter regarding a public offering
46 statement. The disclosure statement and any other required
47 documents may be delivered by means of alternative media as
48 otherwise permitted by this chapter.

49 (c) The seller shall utilize and furnish to each purchaser
50 of an out-of-state timeshare plan offered pursuant to this
51 subsection a fully completed and executed copy of a purchase
52 contract that contains the statement set forth in s.
53 721.065(2)(c) in conspicuous type located immediately prior to
54 the space in the contract reserved for the purchaser's
55 signature. The contract shall also contain the initial purchase

56 price and any additional charges to which the purchaser may be
57 subject in connection with the purchase of the timeshare plan,
58 such as financing, or that will be collected from the purchaser
59 on or before closing, such as the current year's annual
60 assessment for common expenses.

61 (d) All purchase contracts for out-of-state timeshare
62 plans offered pursuant to this subsection must also contain the
63 following statements in conspicuous type:

64
65 This timeshare plan has not been reviewed or approved by the
66 State of Florida.

67
68 The timeshare interest you are purchasing requires certain
69 procedures to be followed in order for you to use your interest.
70 These procedures may be different from those followed in other
71 timeshare plans. You should read and understand these procedures
72 prior to purchasing.

73
74 (e)1. An out-of-state timeshare plan may only be offered
75 pursuant to this subsection by the seller on behalf of:

76 a. The developer of a timeshare plan that has been
77 approved by the division within the preceding 7 years pursuant
78 to s. 721.07 or s. 721.55, or concerning which an amendment by
79 the developer has been approved by the division within the
80 preceding 7 years, which timeshare plan has neither been
81 terminated nor withdrawn; or

82 b. A developer under common ownership or control with a
83 developer described in sub-subparagraph a., provided that any

84 common ownership shall constitute at least a 50-percent
 85 ownership interest.

86 2. An out-of-state timeshare plan may only be offered
 87 pursuant to this subsection to a person who already owns a
 88 timeshare interest in a timeshare plan filed by a developer
 89 described in subparagraph 1.

90 (f)1. Except as provided in ss. 721.06, 721.065, 721.07,
 91 721.27, 721.55, and 721.58, any out-of-state timeshare plan
 92 offered pursuant to this subsection must meet all requirements
 93 of this chapter. The out-of-state timeshare plan shall also be
 94 eligible for any exemptions provided by this chapter.

95 2. Any escrow account required to be established by s.
 96 721.08 for any out-of-state timeshare plan offered under this
 97 subsection may be maintained in the situs jurisdiction.

98 (g) Any seller of an out-of-state timeshare plan offered
 99 pursuant to this subsection shall be required to provide notice
 100 of such plan to the division on a form prescribed by the
 101 division, along with payment of a one-time fee not to exceed
 102 \$1,000 per filing.

103 Section 2. Subsection (25) of section 721.05, Florida
 104 Statutes, is amended to read:

105 721.05 Definitions.--As used in this chapter, the term:

106 (25) "One-to-one purchaser to accommodation ratio" means
 107 the ratio of the number of purchasers eligible to use the
 108 accommodations of a timeshare plan on a given day to the number
 109 of accommodations available for use within the plan on that day,
 110 such that the total number of purchasers eligible to use the
 111 accommodations of the timeshare plan during any 12-month period

112 ~~a given calendar year~~ never exceeds the total number of
 113 accommodations available for use in the timeshare plan during
 114 that 12-month period ~~year~~. For purposes of calculation under
 115 this subsection, each purchaser must be counted at least once,
 116 and no individual timeshare unit may be counted more than 365
 117 times per 12-month period ~~calendar year~~ (or more than 366 times
 118 per leap year). A purchaser who is delinquent in the payment of
 119 timeshare plan assessments shall continue to be considered
 120 eligible to use the accommodations of the timeshare plan for
 121 purposes of this subsection notwithstanding any application of
 122 s. 721.13(6).

123 Section 3. Paragraph (f) of subsection (6) of section
 124 721.07, Florida Statutes, is amended, and subsection (7) is
 125 added to that section, to read:

126 721.07 Public offering statement.--Prior to offering any
 127 timeshare plan, the developer must submit a filed public
 128 offering statement to the division for approval as prescribed by
 129 s. 721.03, s. 721.55, or this section. Until the division
 130 approves such filing, any contract regarding the sale of that
 131 timeshare plan is subject to cancellation by the purchaser
 132 pursuant to s. 721.10.

133 (6) The division is authorized to prescribe by rule the
 134 form of the approved purchaser public offering statement that
 135 must be furnished by the developer to each purchaser. The form
 136 of the purchaser public offering statement must provide fair,
 137 meaningful, and effective disclosure of all aspects of the
 138 timeshare plan. For timeshare plans filed pursuant to this part,
 139 the developer shall furnish each purchaser with the following:

140 ~~(f) Each purchaser shall receive a fully executed paper~~
141 ~~copy of the purchase contract.~~

142 (7) (a) A developer may provide a purchaser with the option
143 of receiving through alternative media, in any commercially
144 acceptable format, any document required by this chapter to be
145 delivered to a purchaser in lieu of delivering a paper copy of
146 such document to the purchaser. The purchaser's choice of the
147 document format shall be set forth in writing on a separate form
148 that shall also disclose the system requirements necessary to
149 view the alternative media and shall be signed by the purchaser.
150 The form shall also state that the purchaser should not select
151 alternative media unless the alternative media can be viewed by
152 the purchaser prior to expiration of the 10-day cancellation
153 period. The alternative media disclosure statement shall be
154 listed on the receipt for timeshare documents pursuant to a form
155 prescribed by the division.

156 (b) If a portion, but not all, of such documents is
157 delivered to a purchaser through the use of alternative media,
158 the developer shall identify which information appears in the
159 alternative media and which information is being delivered in
160 paper format in the applicable table of contents and in the
161 receipt for timeshare documents.

162 (c) If a purchase contract is delivered by alternative
163 media pursuant to this subsection, such alternative media shall
164 contain substantially the following statement located on the
165 outside of any compact disc or other alternative media jacket,
166 sleeve, or other container:

167

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

172
173 The division is authorized to prescribe by rule the prominent
174 location where the statement shall be located.

175 (d) The order and content of a purchaser public offering
176 statement or a multisite purchaser public offering statement
177 delivered through alternative media shall comply with rules
178 adopted or issued by the division.

179 (e) Prior to delivery of the purchaser public offering
180 statement through alternative media, the developer must submit
181 to the division a copy of the purchaser public offering
182 statement in the alternative media format proposed to be used by
183 the developer together with an executed certificate, using forms
184 prescribed by the division, certifying that the portion of the
185 purchaser public offering statement delivered through the
186 proposed alternative media format is an accurate representation
187 of, and, where practical, identical to, the corresponding
188 portion of the written purchaser public offering statement.

189 (f) The alternative media format used to display the
190 purchaser public offering statement may also contain materials
191 in addition to the purchaser public offering statement,
192 including advertising materials. In the event that the
193 alternative media contains materials other than the purchaser
194 public offering statement, the location of the purchaser public
195 offering statement in the alternative media must be specifically

HB 1163

2006

196 and prominently identified in the alternative media and easily
197 accessed by the purchaser.

198 (g) If the developer subsequently amends the written
199 purchaser public offering statement, the alternative media
200 purchaser public offering statement must also be amended to
201 conform to such amendment, and the developer shall file with the
202 division an executed certificate, using forms prescribed by the
203 division, certifying that the portions of the purchaser public
204 offering statement set forth in alternative media format are
205 identical to the corresponding portions of the written purchaser
206 public offering statement, as amended. Alternatively, the
207 developer may provide paper copies of the amendments to the
208 purchaser.

209 Section 4. Paragraph (b) of subsection (1) of section
210 721.13, Florida Statutes, is amended to read:

211 721.13 Management.--

212 (1)

213 (b)1. With respect to a timeshare plan which is also
214 regulated under chapter 718 or chapter 719, or which contains a
215 mandatory owners' association, the board of administration of
216 the owners' association shall be considered the managing entity
217 of the timeshare plan.

218 2. During any period of time in which such owners'
219 association has entered into a contract with a manager or
220 management firm to provide some or all of the management
221 services to the timeshare plan, both the board of administration
222 and the manager or management firm shall be considered the
223 managing entity of the timeshare plan and shall be jointly and

224 severally responsible for the faithful discharge of the duties
 225 of the managing entity.

226 3. An owners' association which is the managing entity of
 227 a timeshare plan that includes condominium units or cooperative
 228 units shall not be considered a condominium association pursuant
 229 to the provisions of chapter 718 or a cooperative association
 230 pursuant to the provisions of chapter 719, unless such owners'
 231 association also operates the entire condominium pursuant to s.
 232 718.111 or the entire cooperative pursuant to s. 719.104.

233 4. Notwithstanding anything to the contrary contained in
 234 chapter 718 or chapter 719, timeshare condominium associations
 235 and timeshare cooperative associations are not subject to the
 236 provisions of s. 718.301 or s. 719.301.

237 Section 5. Subsection (1) of section 721.165, Florida
 238 Statutes, is amended to read:

239 721.165 Insurance.--

240 (1) The seller, initially, and thereafter the managing
 241 entity, shall be responsible for obtaining insurance to protect
 242 the accommodations and facilities of the timeshare plan in an
 243 amount equal to the replacement cost of such accommodations and
 244 facilities. Any insurance, regardless of any requirement in the
 245 timeshare instrument for coverage for "full insurable value,"
 246 "replacement cost," or the like, may include reasonable
 247 deductibles as determined initially by the seller and thereafter
 248 by the managing entity. Failure to obtain and maintain the
 249 insurance required by this subsection during any period of
 250 developer control of the managing entity shall constitute a
 251 breach of s. 721.13(2)(a) by the managing entity, unless the

HB 1163

2006

252 | managing entity can show that, despite such failure, it
253 | exercised due diligence to obtain and maintain the insurance
254 | required by this subsection.

255 | Section 6. This act shall take effect July 1, 2006.