

HB 1163

2006
CS

CHAMBER ACTION

1 The Civil Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to vacation and timeshare plans; amending
7 s. 721.03, F.S.; revising the formula for funding reserve
8 accounts; authorizing a seller to offer timeshare
9 interests in timeshare plans located outside of this state
10 without filing a public offering statement for such out-
11 of-state timeshare plan; providing criteria for such
12 offers; requiring certain notice; providing for a fee;
13 amending s. 721.05, F.S.; revising the definition of the
14 term "one-to-one purchaser to accommodation ratio";
15 amending s. 721.13, F.S.; providing conditions under which
16 certain timeshare condominium associations and timeshare
17 cooperative associations are subject to certain provisions
18 relating to transfer of association control; authorizing
19 funding of reserve accounts to be waived or reduced;
20 amending s. 721.165, F.S.; authorizing certain insurance
21 to include reasonable deductibles as determined initially
22 by the seller and thereafter by the managing entity;
23 providing an effective date.

Page 1 of 12

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb1163-01-c1

HB 1163

2006
CS24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50

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

Section 1. Paragraph (e) of subsection (3) of section 721.03, Florida Statutes, is amended, and subsection (11) is added to that section, to read:

721.03 Scope of chapter.--

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

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

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

HB 1163

2006
CS

51 2. The developer shall fund reserve accounts for capital
52 expenditures and deferred maintenance for the roof, plumbing,
53 air-conditioning, and any component of the structure the useful
54 life of which is less than the useful life of the overall
55 structure. The reserve accounts shall be funded for each
56 component in an amount equal to the product of the estimated
57 current replacement cost of such component as of the date of
58 such conversion (as disclosed and substantiated by a certificate
59 under the seal of an architect or engineer authorized to
60 practice in this state) multiplied by a fraction, the numerator
61 of which shall be the age ~~remaining life~~ of the component in
62 years (as disclosed and substantiated by a certificate under the
63 seal of an architect or engineer authorized to practice in this
64 state) and the denominator of which shall be the total useful
65 life of the component in years (as disclosed and substantiated
66 by a certificate under the seal of an architect or engineer
67 authorized to practice in this state). Alternatively, the
68 reserve accounts may be funded for each component in an amount
69 equal to the amount that, except for the application of this
70 subsection, would be required to be maintained pursuant to s.
71 718.618(1) or s. 719.618(1). The developer shall fund the
72 reserve accounts contemplated in this subparagraph out of the
73 proceeds of each sale of a timeshare interest, on a pro rata
74 basis, in an amount not less than a percentage of the total
75 amount to be deposited in the reserve account equal to the
76 percentage of ownership allocable to the timeshare interest
77 sold. When an owners' association makes an expenditure of
78 reserve account funds before the developer has initially sold

Page 3 of 12

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb1163-01-c1

HB 1163

2006
CS

79 | all timeshare interests, the developer shall make a deposit in
80 | the reserve account if the reserve account is insufficient to
81 | pay the expenditure. Such deposit shall be at least equal to
82 | that portion of the expenditure which would be charged against
83 | the reserve account deposit that would have been made for any
84 | such timeshare interest had the timeshare interest been
85 | initially sold. When a developer deposits amounts in excess of
86 | the minimum reserve account funding, later deposits may be
87 | reduced to the extent of the excess funding.

88 | 3. The developer shall provide each purchaser with a
89 | warranty of fitness and merchantability pursuant to s.
90 | 718.618(6) or s. 719.618(6).

91 | (11) A seller may offer timeshare interests in a real
92 | property timeshare plan located outside of this state without
93 | filing a public offering statement for such out-of-state real
94 | property timeshare plan pursuant to s. 721.07 or s. 721.55,
95 | provided all of the following criteria have been satisfied:

96 | (a) The seller shall provide a disclosure statement to
97 | each prospective purchaser of such out-of-state timeshare plan.
98 | The disclosure statement shall contain information that is
99 | substantively equivalent to the disclosures required to be
100 | provided for similar timeshare plans pursuant to s. 721.07 or s.
101 | 721.55, whichever is applicable. The disclosure statement shall
102 | also include the exhibits that are required by s.
103 | 721.07(5)(ff)1., 2., 3., 4., 5., 7., 8., and 20.

104 | (b) With respect to any offer for an out-of-state
105 | timeshare plan made pursuant to this subsection, the delivery by
106 | the seller to a prospective purchaser of the disclosure

HB 1163

2006
CS

107 statement required by paragraph (a) shall be deemed to satisfy
108 any requirement of this chapter regarding a public offering
109 statement.

110 (c) The seller shall utilize and furnish to each purchaser
111 of an out-of-state timeshare plan offered pursuant to this
112 subsection a fully completed and executed copy of a purchase
113 contract that contains the statement set forth in s.
114 721.065(2)(c) in conspicuous type located immediately prior to
115 the space in the contract reserved for the purchaser's
116 signature. The contract shall also contain the initial purchase
117 price and any additional charges to which the purchaser may be
118 subject in connection with the purchase of the timeshare plan,
119 such as financing, or that will be collected from the purchaser
120 on or before closing, such as the current year's annual
121 assessment for common expenses.

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

125
126 This timeshare plan has not been reviewed or approved by
127 the State of Florida.

128
129 The timeshare interest you are purchasing requires certain
130 procedures to be followed in order for you to use your
131 interest. These procedures may be different from those
132 followed in other timeshare plans. You should read and
133 understand these procedures prior to purchasing.

134

HB 1163

2006
CS

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

137 a. The developer of a timeshare plan that has been
138 approved by the division within the preceding 7 years pursuant
139 to s. 721.07 or s. 721.55, or concerning which an amendment by
140 the developer has been approved by the division within the
141 preceding 7 years, which timeshare plan has been neither
142 terminated nor withdrawn; or

143 b. A developer under common ownership or control with a
144 developer described in sub-subparagraph a., provided that any
145 common ownership shall constitute at least a 50-percent
146 ownership interest.

147 2. An out-of-state timeshare plan may only be offered
148 pursuant to this subsection to a person who already owns a
149 timeshare interest in a timeshare plan filed by a developer
150 described in subparagraph 1.

151 (f)1. Except for ss. 721.06, 721.065, 721.07, 721.27,
152 721.55, and 721.58, any out-of-state timeshare plan offered
153 pursuant to this subsection must meet all requirements of this
154 chapter. The out-of-state timeshare plan shall also be eligible
155 for any exemptions provided by this chapter.

156 2. Any escrow account required to be established by s.
157 721.08 for any out-of-state timeshare plan offered under this
158 subsection may be maintained in the situs jurisdiction.

159 (g) Any seller of an out-of-state timeshare plan offered
160 pursuant to this subsection shall be required to provide notice
161 of such plan to the division on a form prescribed by the

HB 1163

2006
CS

162 division, along with payment of a one-time fee not to exceed
 163 \$1,000 per filing.

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

166 721.05 Definitions.--As used in this chapter, the term:

167 (25) "One-to-one purchaser to accommodation ratio" means
 168 the ratio of the number of purchasers eligible to use the
 169 accommodations of a timeshare plan on a given day to the number
 170 of accommodations available for use within the plan on that day,
 171 such that the total number of purchasers eligible to use the
 172 accommodations of the timeshare plan during any 12-month period
 173 ~~a given calendar year~~ never exceeds the total number of
 174 accommodations available for use in the timeshare plan during
 175 that 12-month period ~~year~~. For purposes of calculation under
 176 this subsection, each purchaser must be counted at least once,
 177 and no individual timeshare unit may be counted more than 365
 178 times per 12-month period ~~calendar year~~ (or more than 366 times
 179 per leap year). A purchaser who is delinquent in the payment of
 180 timeshare plan assessments shall continue to be considered
 181 eligible to use the accommodations of the timeshare plan for
 182 purposes of this subsection notwithstanding any application of
 183 s. 721.13(6).

184 Section 3. Paragraph (b) of subsection (1) and paragraph
 185 (c) of subsection (3) of section 721.13, Florida Statutes, are
 186 amended to read:

187 721.13 Management.--
 188 (1)

HB 1163

2006
CS

189 (b)1. With respect to a timeshare plan which is also
190 regulated under chapter 718 or chapter 719, or which contains a
191 mandatory owners' association, the board of administration of
192 the owners' association shall be considered the managing entity
193 of the timeshare plan.

194 2. During any period of time in which such owners'
195 association has entered into a contract with a manager or
196 management firm to provide some or all of the management
197 services to the timeshare plan, both the board of administration
198 and the manager or management firm shall be considered the
199 managing entity of the timeshare plan and shall be jointly and
200 severally responsible for the faithful discharge of the duties
201 of the managing entity.

202 3. An owners' association which is the managing entity of
203 a timeshare plan that includes condominium units or cooperative
204 units shall not be considered a condominium association pursuant
205 to the provisions of chapter 718 or a cooperative association
206 pursuant to the provisions of chapter 719, unless such owners'
207 association also operates the entire condominium pursuant to s.
208 718.111 or the entire cooperative pursuant to s. 719.104.

209 4.a. Notwithstanding anything to the contrary contained in
210 chapter 718 or chapter 719, timeshare condominium associations
211 and timeshare cooperative associations created after July 1,
212 2006, are not subject to the provisions of s. 718.301(1) and (2)
213 or s. 719.301(1) and (2) unless a majority of those present at a
214 duly called meeting of the association other than any developer,
215 which majority shall constitute at least 15 percent of the total
216 voting interests other than those owned by any developer, vote

HB 1163

2006
CS

217 to hold a transfer-of-control election. A meeting to decide
218 whether to have a transfer-of-control election shall be
219 conducted upon the written request of 15 percent of the total
220 voting interests other than those owned by any developer. If a
221 transfer-of-control election is approved, that election, when
222 held, shall entitle purchasers other than a developer to elect a
223 majority of the members of the board of administration of the
224 association.

225 b. No transfer-of-control election held pursuant to this
226 subparagraph shall be held prior to the time that transfer of
227 majority control of the members of the board of administration
228 of the association would otherwise be required by the provisions
229 of s. 718.301(1) or s. 719.301(1). After such time, the election
230 approved under sub-subparagraph a. shall be held with 75 days
231 after the vote authorizing a transfer-of-control election. After
232 purchasers other than a developer vote to elect a majority of
233 the members of the board of administration of the association, a
234 developer may exercise the right to vote any developer-owned
235 timeshare interests in the same manner as any purchaser except
236 for purposes of reacquiring control of the association or
237 electing a majority of the members of the board of
238 administration.

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

241 (c)1. Providing each year to all purchasers an itemized
242 annual budget which shall include all estimated revenues and
243 expenses. The budget shall be in the form required by s.
244 721.07(5)(u). The budget shall be the final budget adopted by

HB 1163

2006
CS

245 | the managing entity for the current fiscal year. The final
246 | adopted budget is not required to be delivered if the managing
247 | entity has previously delivered a proposed annual budget for the
248 | current fiscal year to purchasers in accordance with chapter 718
249 | or chapter 719 and the managing entity includes a description of
250 | any changes in the adopted budget with the assessment notice and
251 | a disclosure regarding the purchasers' right to receive a copy
252 | of the adopted budget, if desired. The budget shall contain, as
253 | a footnote or otherwise, any related party transaction
254 | disclosures or notes which appear in the audited financial
255 | statements of the managing entity for the previous budget year
256 | as required by paragraph (e). A copy of the final budget shall
257 | be filed with the division for review within 30 days after the
258 | beginning of each fiscal year together with a statement of the
259 | number of periods of 7-day annual use availability that exist
260 | within the timeshare plan, including those periods filed for
261 | sale by the developer but not yet committed to the timeshare
262 | plan, for which annual fees are required to be paid to the
263 | division under s. 721.27.

264 | 2. Notwithstanding anything contained in chapter 718 or
265 | chapter 719 to the contrary, the board of administration of an
266 | owners' association which serves as the managing entity may from
267 | time to time reallocate reserves for deferred maintenance and
268 | capital expenditures required by s. 721.07(5)(u)3.a.(XI) from
269 | any deferred maintenance or capital expenditure reserve account
270 | to any other deferred maintenance or capital expenditure reserve
271 | account or accounts in its discretion without the consent of
272 | purchasers of the timeshare plan. Funds in any deferred

Page 10 of 12

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb1163-01-c1

HB 1163

2006
CS

273 maintenance or capital expenditure reserve account may not be
274 transferred to any operating account without the consent of a
275 majority of the purchasers of the timeshare plan. The managing
276 entity may from time to time transfer excess funds in any
277 operating account to any deferred maintenance or capital
278 expenditure reserve account without the vote or approval of
279 purchasers of the timeshare plan. In the event any amount of
280 reserves for accommodations and facilities of a timeshare plan
281 containing timeshare licenses or personal property timeshare
282 interests exists at the end of the term of the timeshare plan,
283 such reserves shall be refunded to purchasers on a pro rata
284 basis.

285 3. With respect to any timeshare plan that has a managing
286 entity that is an owners' association, reserves may be waived or
287 reduced by a majority vote of those voting interests that are
288 present, in person or by proxy, at a duly called meeting of the
289 owners' association. If a meeting of the purchasers has been
290 called to determine whether to waive or reduce the funding of
291 reserves and no such result is achieved or a quorum is not
292 attained, the reserves as included in the budget shall go into
293 effect.

294 Section 4. Subsection (1) of section 721.165, Florida
295 Statutes, is amended to read:

296 721.165 Insurance.--

297 (1) The seller, initially, and thereafter the managing
298 entity, shall be responsible for obtaining insurance to protect
299 the accommodations and facilities of the timeshare plan in an
300 amount equal to the replacement cost of such accommodations and

HB 1163

2006
CS

301 facilities. Any insurance, regardless of any requirement in the
302 timeshare instrument for coverage for "full insurable value,"
303 "replacement cost," or the like, may include reasonable
304 deductibles as determined initially by the seller and thereafter
305 by the managing entity. Failure to obtain and maintain the
306 insurance required by this subsection during any period of
307 developer control of the managing entity shall constitute a
308 breach of s. 721.13(2)(a) by the managing entity, unless the
309 managing entity can show that, despite such failure, it
310 exercised due diligence to obtain and maintain the insurance
311 required by this subsection.

312 Section 5. This act shall take effect July 1, 2006.