

Bill No. SB 2630

Barcode 622732

CHAMBER ACTION

Senate

House

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The Committee on Regulated Industries (Posey) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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,

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1 719.608, 719.61, and 719.62, if applicable, and, if the
2 existing improvements received a certificate of occupancy more
3 than 18 months before such conversion, one of the following:

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

12 2. The developer shall fund reserve accounts for
13 capital expenditures and deferred maintenance for the roof,
14 plumbing, air-conditioning, and any component of the structure
15 the useful life of which is less than the useful life of the
16 overall structure. The reserve accounts shall be funded for
17 each component in an amount equal to the product of the
18 estimated current replacement cost of such component as of the
19 date of such conversion (as disclosed and substantiated by a
20 certificate under the seal of an architect or engineer
21 authorized to practice in this state) multiplied by a
22 fraction, the numerator of which shall be the ~~age remaining~~
23 ~~life~~ of the component in years (as disclosed and substantiated
24 by a certificate under the seal of an architect or engineer
25 authorized to practice in this state) and the denominator of
26 which shall be the total useful life of the component in years
27 (as disclosed and substantiated by a certificate under the
28 seal of an architect or engineer authorized to practice in
29 this state). Alternatively, the reserve accounts may be funded
30 for each component in an amount equal to the amount that,
31 except for the application of this subsection, would be

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1 required to be maintained pursuant to s. 718.618(1) or s.
 2 719.618(1). The developer shall fund the reserve accounts
 3 contemplated in this subparagraph out of the proceeds of each
 4 sale of a timeshare interest, on a pro rata basis, in an
 5 amount not less than a percentage of the total amount to be
 6 deposited in the reserve account equal to the percentage of
 7 ownership allocable to the timeshare interest sold. When an
 8 owners' association makes an expenditure of reserve account
 9 funds before the developer has initially sold all timeshare
 10 interests, the developer shall make a deposit in the reserve
 11 account if the reserve account is insufficient to pay the
 12 expenditure. Such deposit shall be at least equal to that
 13 portion of the expenditure which would be charged against the
 14 reserve account deposit that would have been made for any such
 15 timeshare interest had the timeshare interest been initially
 16 sold. When a developer deposits amounts in excess of the
 17 minimum reserve account funding, later deposits may be reduced
 18 to the extent of the excess funding.

19 3. The developer shall provide each purchaser with a
 20 warranty of fitness and merchantability pursuant to s.
 21 718.618(6) or s. 719.618(6).

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

27 (a) The seller shall provide a disclosure statement to
 28 each prospective purchaser of such out-of-state timeshare
 29 plan. The disclosure statement shall contain information that
 30 is substantively equivalent to the disclosures required to be
 31 provided for similar timeshare plans pursuant to s. 721.07 or

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1 s. 721.55, whichever is applicable. The disclosure statement
2 shall also include the exhibits that are required by s.
3 721.07(5)(ff)1., 2., 3., 4., 5., 7., 8., and 20.

4 (b) With respect to any offer for an out-of-state
5 timeshare plan made pursuant to this subsection, the delivery
6 by the seller to a prospective purchaser of the disclosure
7 statement required by paragraph (a) shall be deemed to satisfy
8 any requirement of this chapter regarding a public offering
9 statement.

10 (c) The seller shall utilize and furnish to each
11 purchaser of an out-of-state timeshare plan offered pursuant
12 to this subsection a fully completed and executed copy of a
13 purchase contract that contains the statement set forth in s.
14 721.065(2)(c) in conspicuous type located immediately prior to
15 the space in the contract reserved for the purchaser's
16 signature. The contract shall also contain the initial
17 purchase price and any additional charges to which the
18 purchaser may be subject in connection with the purchase of
19 the timeshare plan, such as financing, or that will be
20 collected from the purchaser on or before closing, such as the
21 current year's annual assessment for common expenses.

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

25
26 This timeshare plan has not been reviewed or
27 approved by the State of Florida.

28
29 The timeshare interest you are purchasing
30 requires certain procedures to be followed in
31 order for you to use your interest. These

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1 procedures may be different from those followed
 2 in other timeshare plans. You should read and
 3 understand these procedures prior to
 4 purchasing.

5
 6 (e)1. An out-of-state timeshare plan may only be
 7 offered pursuant to this subsection by the seller on behalf
 8 of:

9 a. The developer of a timeshare plan that has been
 10 approved by the division within the preceding 7 years pursuant
 11 to s. 721.07 or s. 721.55, or concerning which an amendment by
 12 the developer has been approved by the division within the
 13 preceding 7 years, which timeshare plan has been neither
 14 terminated nor withdrawn; or

15 b. A developer under common ownership or control with
 16 a developer described in sub-subparagraph a., provided that
 17 any common ownership shall constitute at least a 50-percent
 18 ownership interest.

19 2. An out-of-state timeshare plan may only be offered
 20 pursuant to this subsection to a person who already owns a
 21 timeshare interest in a timeshare plan filed by a developer
 22 described in subparagraph 1.

23 (f)1. Except for ss. 721.06, 721.065, 721.07, 721.27,
 24 721.55, and 721.58, any out-of-state timeshare plan offered
 25 pursuant to this subsection must meet all requirements of this
 26 chapter. The out-of-state timeshare plan shall also be
 27 eligible for any exemptions provided by this chapter.

28 2. Any escrow account required to be established by s.
 29 721.08 for any out-of-state timeshare plan offered under this
 30 subsection may be maintained in the situs jurisdiction.

31 (g) Any seller of an out-of-state timeshare plan

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1 offered pursuant to this subsection shall be required to
 2 provide notice of such plan to the division on a form
 3 prescribed by the division, along with payment of a one-time
 4 fee not to exceed \$1,000 per filing.

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

7 721.05 Definitions.--As used in this chapter, the
 8 term:

9 (25) "One-to-one purchaser to accommodation ratio"
 10 means the ratio of the number of purchasers eligible to use
 11 the accommodations of a timeshare plan on a given day to the
 12 number of accommodations available for use within the plan on
 13 that day, such that the total number of purchasers eligible to
 14 use the accommodations of the timeshare plan during any
 15 12-month period ~~a given calendar year~~ never exceeds the total
 16 number of accommodations available for use in the timeshare
 17 plan during that 12-month period ~~year~~. For purposes of
 18 calculation under this subsection, each purchaser must be
 19 counted at least once, and no individual timeshare unit may be
 20 counted more than 365 times per 12-month period ~~calendar year~~
 21 (or more than 366 times per leap year). A purchaser who is
 22 delinquent in the payment of timeshare plan assessments shall
 23 continue to be considered eligible to use the accommodations
 24 of the timeshare plan for purposes of this subsection
 25 notwithstanding any application of s. 721.13(6).

26 Section 3. Paragraph (b) of subsection (1) and
 27 paragraph (c) of subsection (3) of section 721.13, Florida
 28 Statutes, are amended to read:

29 721.13 Management.--

30 (1)

31 (b)1. With respect to a timeshare plan which is also

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1 regulated under chapter 718 or chapter 719, or which contains
2 a mandatory owners' association, the board of administration
3 of the owners' association shall be considered the managing
4 entity of the timeshare plan.

5 2. During any period of time in which such owners'
6 association has entered into a contract with a manager or
7 management firm to provide some or all of the management
8 services to the timeshare plan, both the board of
9 administration and the manager or management firm shall be
10 considered the managing entity of the timeshare plan and shall
11 be jointly and severally responsible for the faithful
12 discharge of the duties of the managing entity.

13 3. An owners' association which is the managing entity
14 of a timeshare plan that includes condominium units or
15 cooperative units shall not be considered a condominium
16 association pursuant to the provisions of chapter 718 or a
17 cooperative association pursuant to the provisions of chapter
18 719, unless such owners' association also operates the entire
19 condominium pursuant to s. 718.111 or the entire cooperative
20 pursuant to s. 719.104.

21 4.a. Notwithstanding anything to the contrary
22 contained in chapter 718 or chapter 719, timeshare condominium
23 associations and timeshare cooperative associations created
24 after July 1, 2006, are not subject to the provisions of s.
25 718.301(1) and (2) or s. 719.301(1) and (2) unless a majority
26 of those present at a duly called meeting of the association
27 other than any developer, which majority shall constitute at
28 least 15 percent of the total voting interests other than
29 those owned by any developer, vote to hold a
30 transfer-of-control election. A meeting to decide whether to
31 have a transfer-of-control election shall be conducted upon

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1 the written request of 15 percent of the total voting
 2 interests other than those owned by any developer. If a
 3 transfer-of-control election is approved, that election, when
 4 held, shall entitle purchasers other than a developer to elect
 5 a majority of the members of the board of administration of
 6 the association.

7 b. No transfer-of-control election held pursuant to
 8 this subparagraph shall be held prior to the time that
 9 transfer of majority control of the members of the board of
 10 administration of the association would otherwise be required
 11 by the provisions of s. 718.301(1) or s. 719.301(1). After
 12 such time, the election approved under sub-subparagraph a.
 13 shall be held with 75 days after the vote authorizing a
 14 transfer-of-control election. After purchasers other than a
 15 developer vote to elect a majority of the members of the board
 16 of administration of the association, a developer may exercise
 17 the right to vote any developer-owned timeshare interests in
 18 the same manner as any purchaser except for purposes of
 19 reacquiring control of the association or electing a majority
 20 of the members of the board of administration.

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

23 (c)1. Providing each year to all purchasers an
 24 itemized annual budget which shall include all estimated
 25 revenues and expenses. The budget shall be in the form
 26 required by s. 721.07(5)(u). The budget shall be the final
 27 budget adopted by the managing entity for the current fiscal
 28 year. The final adopted budget is not required to be delivered
 29 if the managing entity has previously delivered a proposed
 30 annual budget for the current fiscal year to purchasers in
 31 accordance with chapter 718 or chapter 719 and the managing

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1 entity includes a description of any changes in the adopted
2 budget with the assessment notice and a disclosure regarding
3 the purchasers' right to receive a copy of the adopted budget,
4 if desired. The budget shall contain, as a footnote or
5 otherwise, any related party transaction disclosures or notes
6 which appear in the audited financial statements of the
7 managing entity for the previous budget year as required by
8 paragraph (e). A copy of the final budget shall be filed with
9 the division for review within 30 days after the beginning of
10 each fiscal year together with a statement of the number of
11 periods of 7-day annual use availability that exist within the
12 timeshare plan, including those periods filed for sale by the
13 developer but not yet committed to the timeshare plan, for
14 which annual fees are required to be paid to the division
15 under s. 721.27.

16 2. Notwithstanding anything contained in chapter 718
17 or chapter 719 to the contrary, the board of administration of
18 an owners' association which serves as the managing entity may
19 from time to time reallocate reserves for deferred maintenance
20 and capital expenditures required by s. 721.07(5)(u)3.a.(XI)
21 from any deferred maintenance or capital expenditure reserve
22 account to any other deferred maintenance or capital
23 expenditure reserve account or accounts in its discretion
24 without the consent of purchasers of the timeshare plan. Funds
25 in any deferred maintenance or capital expenditure reserve
26 account may not be transferred to any operating account
27 without the consent of a majority of the purchasers of the
28 timeshare plan. The managing entity may from time to time
29 transfer excess funds in any operating account to any deferred
30 maintenance or capital expenditure reserve account without the
31 vote or approval of purchasers of the timeshare plan. In the

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1 event any amount of reserves for accommodations and facilities
 2 of a timeshare plan containing timeshare licenses or personal
 3 property timeshare interests exists at the end of the term of
 4 the timeshare plan, such reserves shall be refunded to
 5 purchasers on a pro rata basis.

6 3. With respect to any timeshare plan that has a
 7 managing entity that is an owners' association, reserves may
 8 be waived or reduced by a majority vote of those voting
 9 interests that are present, in person or by proxy, at a duly
 10 called meeting of the owners' association. If a meeting of the
 11 purchasers has been called to determine whether to waive or
 12 reduce the funding of reserves and no such result is achieved
 13 or a quorum is not attained, the reserves as included in the
 14 budget shall go into effect.

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

17 721.165 Insurance.--

18 (1) The seller, initially, and thereafter the managing
 19 entity, shall be responsible for obtaining insurance to
 20 protect the accommodations and facilities of the timeshare
 21 plan in an amount equal to the replacement cost of such
 22 accommodations and facilities. Any insurance, regardless of
 23 any requirement in the timeshare instrument for coverage for
 24 "full insurable value," "replacement cost," or the like, may
 25 include reasonable deductibles as determined initially by the
 26 seller and thereafter by the managing entity. Failure to
 27 obtain and maintain the insurance required by this subsection
 28 during any period of developer control of the managing entity
 29 shall constitute a breach of s. 721.13(2)(a) by the managing
 30 entity, unless the managing entity can show that, despite such
 31 failure, it exercised due diligence to obtain and maintain the

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1 insurance required by this subsection.

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

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5 ===== T I T L E A M E N D M E N T =====

6 And the title is amended as follows:

7 Delete everything before the enacting clause

8

9 and insert:

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A bill to be entitled

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An act relating to vacation and timeshare

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plans; amending s. 721.03, F.S.; revising the

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formula for funding reserve accounts;

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authorizing a seller to offer timeshare

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interests in timeshare plans located outside of

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this state without filing a public offering

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statement for such out-of-state timeshare plan;

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providing criteria for such offers; requiring

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certain notice; providing for a fee; amending

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s. 721.05, F.S.; revising the definition of the

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term "one-to-one purchaser to accommodation

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ratio"; amending s. 721.13, F.S.; providing

23

conditions under which certain timeshare

24

condominium associations and timeshare

25

cooperative associations are subject to certain

26

provisions relating to transfer of association

27

control; authorizing funding of reserve

28

accounts to be waived or reduced; amending s.

29

721.165, F.S.; authorizing certain insurance to

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include reasonable deductibles as determined

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initially by the seller and thereafter by the

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1 managing entity; providing an effective date.

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