

By Senator Webster

9-1180B-06

See HB

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

27  
28 Be It Enacted by the Legislature of the State of Florida:

29  
30           Section 1. Subsection (11) is added to section 721.03,  
31 Florida Statutes, to read:

1           721.03 Scope of chapter.--

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

7           (a) The seller shall provide a disclosure statement to  
8 each prospective purchaser of such out-of-state timeshare  
9 plan. The disclosure statement shall contain information that  
10 is substantively equivalent to the disclosures required to be  
11 provided for similar timeshare plans pursuant to s. 721.07 or  
12 s. 721.55, whichever is applicable. The disclosure statement  
13 shall also include the exhibits that are required by s.  
14 721.07(5)(ff)1., 2., 3., 4., 5., 7., 8., and 20.

15           (b) With respect to any offer for an out-of-state  
16 timeshare plan made pursuant to this subsection, the delivery  
17 by the seller to a prospective purchaser of the disclosure  
18 statement required by paragraph (a) shall be deemed to satisfy  
19 any requirement of this chapter regarding a public offering  
20 statement. The disclosure statement and any other required  
21 documents may be delivered by means of alternative media as  
22 otherwise permitted by this chapter.

23           (c) The seller shall utilize and furnish to each  
24 purchaser of an out-of-state timeshare plan offered pursuant  
25 to this subsection a fully completed and executed copy of a  
26 purchase contract that contains the statement set forth in s.  
27 721.065(2)(c) in conspicuous type located immediately prior to  
28 the space in the contract reserved for the purchaser's  
29 signature. The contract shall also contain the initial  
30 purchase price and any additional charges to which the  
31 purchaser may be subject in connection with the purchase of

1 the timeshare plan, such as financing, or that will be  
2 collected from the purchaser on or before closing, such as the  
3 current year's annual assessment for common expenses.

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

7  
8 This timeshare plan has not been reviewed or approved by the  
9 State of Florida.

10  
11 The timeshare interest you are purchasing requires certain  
12 procedures to be followed in order for you to use your  
13 interest. These procedures may be different from those  
14 followed in other timeshare plans. You should read and  
15 understand these procedures prior to purchasing.

16  
17 (e)1. An out-of-state timeshare plan may only be  
18 offered pursuant to this subsection by the seller on behalf  
19 of:

20 a. The developer of a timeshare plan that has been  
21 approved by the division within the preceding 7 years pursuant  
22 to s. 721.07 or s. 721.55, or concerning which an amendment by  
23 the developer has been approved by the division within the  
24 preceding 7 years, which timeshare plan has neither been  
25 terminated nor withdrawn; or

26 b. A developer under common ownership or control with  
27 a developer described in sub-subparagraph a., provided that  
28 any common ownership shall constitute at least a 50-percent  
29 ownership interest.

30 2. An out-of-state timeshare plan may only be offered  
31 pursuant to this subsection to a person who already owns a

1 timeshare interest in a timeshare plan filed by a developer  
2 described in subparagraph 1.

3 (f)1. Except for ss. 721.06, 721.065, 721.07, 721.27,  
4 721.55, and 721.58, any out-of-state timeshare plan offered  
5 pursuant to this subsection must meet all requirements of this  
6 chapter. The out-of-state timeshare plan shall also be  
7 eligible for any exemptions provided by this chapter.

8 2. Any escrow account required to be established by s.  
9 721.08 for any out-of-state timeshare plan offered under this  
10 subsection may be maintained in the situs jurisdiction.

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

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

18 721.05 Definitions.--As used in this chapter, the  
19 term:

20 (25) "One-to-one purchaser to accommodation ratio"  
21 means the ratio of the number of purchasers eligible to use  
22 the accommodations of a timeshare plan on a given day to the  
23 number of accommodations available for use within the plan on  
24 that day, such that the total number of purchasers eligible to  
25 use the accommodations of the timeshare plan during any  
26 12-month period ~~a given calendar year~~ never exceeds the total  
27 number of accommodations available for use in the timeshare  
28 plan during that 12-month period ~~year~~. For purposes of  
29 calculation under this subsection, each purchaser must be  
30 counted at least once, and no individual timeshare unit may be  
31 counted more than 365 times per 12-month period ~~calendar year~~

1 (or more than 366 times per leap year). A purchaser who is  
2 delinquent in the payment of timeshare plan assessments shall  
3 continue to be considered eligible to use the accommodations  
4 of the timeshare plan for purposes of this subsection  
5 notwithstanding any application of s. 721.13(6).

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

9 721.07 Public offering statement.--Prior to offering  
10 any timeshare plan, the developer must submit a filed public  
11 offering statement to the division for approval as prescribed  
12 by s. 721.03, s. 721.55, or this section. Until the division  
13 approves such filing, any contract regarding the sale of that  
14 timeshare plan is subject to cancellation by the purchaser  
15 pursuant to s. 721.10.

16 (6) The division is authorized to prescribe by rule  
17 the form of the approved purchaser public offering statement  
18 that must be furnished by the developer to each purchaser. The  
19 form of the purchaser public offering statement must provide  
20 fair, meaningful, and effective disclosure of all aspects of  
21 the timeshare plan. For timeshare plans filed pursuant to this  
22 part, the developer shall furnish each purchaser with the  
23 following:

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

26 (7)(a) A developer may provide a purchaser with the  
27 option of receiving through alternative media, in any  
28 commercially acceptable format, any document required by this  
29 chapter to be delivered to a purchaser in lieu of delivering a  
30 paper copy of such document to the purchaser. The purchaser's  
31 choice of the document format shall be set forth in writing on

1 a separate form that shall also disclose the system  
2 requirements necessary to view the alternative media and shall  
3 be signed by the purchaser. The form shall also state that the  
4 purchaser should not select alternative media unless the  
5 alternative media can be viewed by the purchaser prior to  
6 expiration of the 10-day cancellation period. The alternative  
7 media disclosure statement shall be listed on the receipt for  
8 timeshare documents pursuant to a form prescribed by the  
9 division.

10 (b) If a portion, but not all, of such documents is  
11 delivered to a purchaser through the use of alternative media,  
12 the developer shall identify which information appears in the  
13 alternative media and which information is being delivered in  
14 paper format in the applicable table of contents and in the  
15 receipt for timeshare documents.

16 (c) If a purchase contract is delivered by alternative  
17 media pursuant to this subsection, such alternative media  
18 shall contain substantially the following statement located on  
19 the outside of any compact disc or other alternative media  
20 jacket, sleeve, or other container:

21  
22 You may cancel your contract without any penalty or obligation  
23 within 10 calendar days after you sign the contract or on the  
24 date you receive the last of all documents required to be  
25 delivered to you. Refer to your purchase contract for more  
26 details.

27  
28 The division is authorized to prescribe by rule the prominent  
29 location where the statement shall be located.

30 (d) The order and content of a purchaser public  
31 offering statement or a multisite purchaser public offering

1 statement delivered through alternative media shall comply  
2 with rules adopted or issued by the division.

3 (e) Prior to delivery of the purchaser public offering  
4 statement through alternative media, the developer must submit  
5 to the division a copy of the purchaser public offering  
6 statement in the alternative media format proposed to be used  
7 by the developer together with an executed certificate, using  
8 forms prescribed by the division, certifying that the portion  
9 of the purchaser public offering statement delivered through  
10 the proposed alternative media format is an accurate  
11 representation of, and, where practical, identical to, the  
12 corresponding portion of the written purchaser public offering  
13 statement.

14 (f) The alternative media format used to display the  
15 purchaser public offering statement may also contain materials  
16 in addition to the purchaser public offering statement,  
17 including advertising materials. In the event that the  
18 alternative media contains materials other than the purchaser  
19 public offering statement, the location of the purchaser  
20 public offering statement in the alternative media must be  
21 specifically and prominently identified in the alternative  
22 media and easily accessed by the purchaser.

23 (g) If the developer subsequently amends the written  
24 purchaser public offering statement, the alternative media  
25 purchaser public offering statement must also be amended to  
26 conform to such amendment, and the developer shall file with  
27 the division an executed certificate, using forms prescribed  
28 by the division, certifying that the portions of the purchaser  
29 public offering statement set forth in alternative media  
30 format are identical to the corresponding portions of the  
31 written purchaser public offering statement, as amended.

1 Alternatively, the developer may provide paper copies of the  
2 amendments to the purchaser.

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

5 721.13 Management.--

6 (1)

7 (b)1. With respect to a timeshare plan which is also  
8 regulated under chapter 718 or chapter 719, or which contains  
9 a mandatory owners' association, the board of administration  
10 of the owners' association shall be considered the managing  
11 entity of the timeshare plan.

12 2. During any period of time in which such owners'  
13 association has entered into a contract with a manager or  
14 management firm to provide some or all of the management  
15 services to the timeshare plan, both the board of  
16 administration and the manager or management firm shall be  
17 considered the managing entity of the timeshare plan and shall  
18 be jointly and severally responsible for the faithful  
19 discharge of the duties of the managing entity.

20 3. An owners' association which is the managing entity  
21 of a timeshare plan that includes condominium units or  
22 cooperative units shall not be considered a condominium  
23 association pursuant to the provisions of chapter 718 or a  
24 cooperative association pursuant to the provisions of chapter  
25 719, unless such owners' association also operates the entire  
26 condominium pursuant to s. 718.111 or the entire cooperative  
27 pursuant to s. 719.104.

28 4. Notwithstanding anything to the contrary contained  
29 in chapter 718 or chapter 719, timeshare condominium  
30 associations and timeshare cooperative associations are not  
31 subject to the provisions of s. 718.301 or s. 719.301.



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

3           721.165 Insurance.--

4           (1) The seller, initially, and thereafter the managing  
5 entity, shall be responsible for obtaining insurance to  
6 protect the accommodations and facilities of the timeshare  
7 plan in an amount equal to the replacement cost of such  
8 accommodations and facilities. Any insurance, regardless of  
9 any requirement in the timeshare instrument for coverage for  
10 "full insurable value," "replacement cost," or the like, may  
11 include reasonable deductibles as determined initially by the  
12 seller and thereafter by the managing entity. Failure to  
13 obtain and maintain the insurance required by this subsection  
14 during any period of developer control of the managing entity  
15 shall constitute a breach of s. 721.13(2)(a) by the managing  
16 entity, unless the managing entity can show that, despite such  
17 failure, it exercised due diligence to obtain and maintain the  
18 insurance required by this subsection.

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