

By the Committee on Regulated Industries; and Senator Webster

580-2249-06

1 A bill to be entitled
2 An act relating to vacation and timeshare
3 plans; amending s. 721.03, F.S.; revising the
4 formula for funding reserve accounts;
5 authorizing a seller to offer timeshare
6 interests in timeshare plans located outside of
7 this state without filing a public offering
8 statement for such out-of-state timeshare plan;
9 providing criteria for such offers; requiring
10 certain notice; providing for a fee; amending
11 s. 721.05, F.S.; revising the definition of the
12 term "one-to-one purchaser to accommodation
13 ratio"; amending s. 721.13, F.S.; providing
14 conditions under which certain timeshare
15 condominium associations and timeshare
16 cooperative associations are subject to certain
17 provisions relating to transfer of association
18 control; authorizing funding of reserve
19 accounts to be waived or reduced; amending s.
20 721.165, F.S.; authorizing certain insurance to
21 include reasonable deductibles as determined
22 initially by the seller and thereafter by the
23 managing entity; providing an effective date.
24
25 Be It Enacted by the Legislature of the State of Florida:
26
27 Section 1. Paragraph (e) of subsection (3) of section
28 721.03, Florida Statutes, is amended, and subsection (11) is
29 added to that section, to read:
30 721.03 Scope of chapter.--
31

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

5 (e) Part VI of chapter 718 and part VI of chapter 719,
6 relating to conversion of existing improvements to the
7 condominium or cooperative form of ownership, respectively,
8 provided that a developer converting existing improvements to
9 a timeshare condominium or timeshare cooperative must comply
10 with ss. 718.606, 718.608, 718.61, and 718.62, or ss. 719.606,
11 719.608, 719.61, and 719.62, if applicable, and, if the
12 existing improvements received a certificate of occupancy more
13 than 18 months before such conversion, one of the following:

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

22 2. The developer shall fund reserve accounts for
23 capital expenditures and deferred maintenance for the roof,
24 plumbing, air-conditioning, and any component of the structure
25 the useful life of which is less than the useful life of the
26 overall structure. The reserve accounts shall be funded for
27 each component in an amount equal to the product of the
28 estimated current replacement cost of such component as of the
29 date of such conversion (as disclosed and substantiated by a
30 certificate under the seal of an architect or engineer
31 authorized to practice in this state) multiplied by a

1 fraction, the numerator of which shall be the age remaining
2 ~~life~~ of the component in years (as disclosed and substantiated
3 by a certificate under the seal of an architect or engineer
4 authorized to practice in this state) and the denominator of
5 which shall be the total useful life of the component in years
6 (as disclosed and substantiated by a certificate under the
7 seal of an architect or engineer authorized to practice in
8 this state). Alternatively, the reserve accounts may be funded
9 for each component in an amount equal to the amount that,
10 except for the application of this subsection, would be
11 required to be maintained pursuant to s. 718.618(1) or s.
12 719.618(1). The developer shall fund the reserve accounts
13 contemplated in this subparagraph out of the proceeds of each
14 sale of a timeshare interest, on a pro rata basis, in an
15 amount not less than a percentage of the total amount to be
16 deposited in the reserve account equal to the percentage of
17 ownership allocable to the timeshare interest sold. When an
18 owners' association makes an expenditure of reserve account
19 funds before the developer has initially sold all timeshare
20 interests, the developer shall make a deposit in the reserve
21 account if the reserve account is insufficient to pay the
22 expenditure. Such deposit shall be at least equal to that
23 portion of the expenditure which would be charged against the
24 reserve account deposit that would have been made for any such
25 timeshare interest had the timeshare interest been initially
26 sold. When a developer deposits amounts in excess of the
27 minimum reserve account funding, later deposits may be reduced
28 to the extent of the excess funding.

29 3. The developer shall provide each purchaser with a
30 warranty of fitness and merchantability pursuant to s.
31 718.618(6) or s. 719.618(6).

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

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

14 (b) With respect to any offer for an out-of-state
15 timeshare plan made pursuant to this subsection, the delivery
16 by the seller to a prospective purchaser of the disclosure
17 statement required by paragraph (a) shall be deemed to satisfy
18 any requirement of this chapter regarding a public offering
19 statement.

20 (c) The seller shall utilize and furnish to each
21 purchaser of an out-of-state timeshare plan offered pursuant
22 to this subsection a fully completed and executed copy of a
23 purchase contract that contains the statement set forth in s.
24 721.065(2)(c) in conspicuous type located immediately prior to
25 the space in the contract reserved for the purchaser's
26 signature. The contract shall also contain the initial
27 purchase price and any additional charges to which the
28 purchaser may be subject in connection with the purchase of
29 the timeshare plan, such as financing, or that will be
30 collected from the purchaser on or before closing, such as the
31 current year's annual assessment for common expenses.

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

4
5 This timeshare plan has not been reviewed or
6 approved by the State of Florida.

7
8 The timeshare interest you are purchasing
9 requires certain procedures to be followed in
10 order for you to use your interest. These
11 procedures may be different from those followed
12 in other timeshare plans. You should read and
13 understand these procedures prior to
14 purchasing.

15
16 (e)1. An out-of-state timeshare plan may only be
17 offered pursuant to this subsection by the seller on behalf
18 of:

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

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

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

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 (b) of subsection (1) and
7 paragraph (c) of subsection (3) of section 721.13, Florida
8 Statutes, are amended to read:

9 721.13 Management.--

10 (1)

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

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

24 3. An owners' association which is the managing entity
25 of a timeshare plan that includes condominium units or
26 cooperative units shall not be considered a condominium
27 association pursuant to the provisions of chapter 718 or a
28 cooperative association pursuant to the provisions of chapter
29 719, unless such owners' association also operates the entire
30 condominium pursuant to s. 718.111 or the entire cooperative
31 pursuant to s. 719.104.

1 4.a. Notwithstanding anything to the contrary
2 contained in chapter 718 or chapter 719, timeshare condominium
3 associations and timeshare cooperative associations created
4 after July 1, 2006, are not subject to the provisions of s.
5 718.301(1) and (2) or s. 719.301(1) and (2) unless a majority
6 of those present at a duly called meeting of the association
7 other than any developer, which majority shall constitute at
8 least 15 percent of the total voting interests other than
9 those owned by any developer, vote to hold a
10 transfer-of-control election. A meeting to decide whether to
11 have a transfer-of-control election shall be conducted upon
12 the written request of 15 percent of the total voting
13 interests other than those owned by any developer. If a
14 transfer-of-control election is approved, that election, when
15 held, shall entitle purchasers other than a developer to elect
16 a majority of the members of the board of administration of
17 the association.

18 b. No transfer-of-control election held pursuant to
19 this subparagraph shall be held prior to the time that
20 transfer of majority control of the members of the board of
21 administration of the association would otherwise be required
22 by the provisions of s. 718.301(1) or s. 719.301(1). After
23 such time, the election approved under sub-subparagraph a.
24 shall be held with 75 days after the vote authorizing a
25 transfer-of-control election. After purchasers other than a
26 developer vote to elect a majority of the members of the board
27 of administration of the association, a developer may exercise
28 the right to vote any developer-owned timeshare interests in
29 the same manner as any purchaser except for purposes of
30 reacquiring control of the association or electing a majority
31 of the members of the board of administration.

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

3 (c)1. Providing each year to all purchasers an
4 itemized annual budget which shall include all estimated
5 revenues and expenses. The budget shall be in the form
6 required by s. 721.07(5)(u). The budget shall be the final
7 budget adopted by the managing entity for the current fiscal
8 year. The final adopted budget is not required to be delivered
9 if the managing entity has previously delivered a proposed
10 annual budget for the current fiscal year to purchasers in
11 accordance with chapter 718 or chapter 719 and the managing
12 entity includes a description of any changes in the adopted
13 budget with the assessment notice and a disclosure regarding
14 the purchasers' right to receive a copy of the adopted budget,
15 if desired. The budget shall contain, as a footnote or
16 otherwise, any related party transaction disclosures or notes
17 which appear in the audited financial statements of the
18 managing entity for the previous budget year as required by
19 paragraph (e). A copy of the final budget shall be filed with
20 the division for review within 30 days after the beginning of
21 each fiscal year together with a statement of the number of
22 periods of 7-day annual use availability that exist within the
23 timeshare plan, including those periods filed for sale by the
24 developer but not yet committed to the timeshare plan, for
25 which annual fees are required to be paid to the division
26 under s. 721.27.

27 2. Notwithstanding anything contained in chapter 718
28 or chapter 719 to the contrary, the board of administration of
29 an owners' association which serves as the managing entity may
30 from time to time reallocate reserves for deferred maintenance
31 and capital expenditures required by s. 721.07(5)(u)3.a.(XI)

1 from any deferred maintenance or capital expenditure reserve
2 account to any other deferred maintenance or capital
3 expenditure reserve account or accounts in its discretion
4 without the consent of purchasers of the timeshare plan. Funds
5 in any deferred maintenance or capital expenditure reserve
6 account may not be transferred to any operating account
7 without the consent of a majority of the purchasers of the
8 timeshare plan. The managing entity may from time to time
9 transfer excess funds in any operating account to any deferred
10 maintenance or capital expenditure reserve account without the
11 vote or approval of purchasers of the timeshare plan. In the
12 event any amount of reserves for accommodations and facilities
13 of a timeshare plan containing timeshare licenses or personal
14 property timeshare interests exists at the end of the term of
15 the timeshare plan, such reserves shall be refunded to
16 purchasers on a pro rata basis.

17 3. With respect to any timeshare plan that has a
18 managing entity that is an owners' association, reserves may
19 be waived or reduced by a majority vote of those voting
20 interests that are present, in person or by proxy, at a duly
21 called meeting of the owners' association. If a meeting of the
22 purchasers has been called to determine whether to waive or
23 reduce the funding of reserves and no such result is achieved
24 or a quorum is not attained, the reserves as included in the
25 budget shall go into effect.

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

28 721.165 Insurance.--

29 (1) The seller, initially, and thereafter the managing
30 entity, shall be responsible for obtaining insurance to
31 protect the accommodations and facilities of the timeshare

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

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

14
15 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
16 COMMITTEE SUBSTITUTE FOR
17 Senate Bill 2630

18 The committee substitute revises the formula for funding
19 reserve accounts. It provides for timeshare condominiums and
20 cooperative associations to be exempted from the board
21 turnover provisions of ch. 719 and 719, F.S., unless a
22 majority of those present at a duly called meeting, other than
23 the developer, vote to hold a transfer of control election.
24 It deletes the provision that provided that a developer may
25 deliver documents required under ch 721, F.S., by alternative
26 media if agreed to and specified by the purchaser.
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