

1 A bill to be entitled

2 An act relating to vacation and timeshare plans; amending
3 s. 721.03, F.S.; revising the formula for funding reserve
4 accounts for conversions; authorizing a seller to offer
5 timeshare interests in a timeshare plan located outside of
6 this state without filing a public offering statement for
7 such out-of-state timeshare plan; providing criteria for
8 such offers; requiring certain notice; providing for a
9 fee; conforming cross-references and terminology; amending
10 s. 721.05, F.S.; revising the definition of the term "one-
11 to-one purchaser to accommodation ratio"; providing
12 definitions for the terms "lead dealer," "personal contact
13 information," and "resale service provider"; amending s.
14 721.07, F.S.; revising information required to be
15 contained in filed public offering statements for certain
16 timeshare plans; authorizing the Division of Florida Land
17 Sales, Condominiums, and Mobile Homes to accept alternate
18 forms of timeshare disclosure statements; conforming
19 cross-references; amending s. 721.075, F.S.; conforming
20 terminology; amending s. 721.11, F.S.; revising provisions
21 relating to advertising and oral statements to include
22 those made by resale service providers; providing that a
23 seller or resale service provider may not misrepresent or
24 falsely imply that the resale service provider is
25 affiliated with, or obtained personal contact information
26 from, a developer, managing entity, or exchange company;
27 creating s. 721.121, F.S.; providing recordkeeping
28 requirements for resale service providers and lead

29 | dealers; providing that the failure to produce such
30 | records in any civil or criminal action relating to the
31 | wrongful possession or wrongful use of personal contact
32 | information shall lead to a presumption that the personal
33 | contact information was wrongfully obtained; providing
34 | what constitutes wrongful use of such personal contact
35 | information; providing for recovery of certain damages and
36 | attorney's fees and costs; amending s. 721.13, F.S.;
37 | providing that failure to obtain and maintain required
38 | insurance coverage constitutes a breach of the managing
39 | entity's fiduciary duty; authorizing funding of reserve
40 | accounts to be waived or reduced; providing the managing
41 | entity with certain rights and powers; providing language
42 | to be included in public offering statements; providing
43 | recordkeeping requirements; requiring the managing entity
44 | to make certain records available to the division under
45 | certain circumstances; conforming cross-references;
46 | amending s. 721.15, F.S.; providing that amounts expended
47 | for any insurance coverage required by law or by the
48 | timeshare instrument to be maintained by the owners'
49 | association shall be exempt from assessment of common
50 | expenses; providing that any determination by a timeshare
51 | association of whether assessments exceed 115 percent of
52 | assessments for the prior fiscal year shall exclude
53 | anticipated expenses for required insurance coverage;
54 | amending s. 721.165, F.S.; revising provisions relating to
55 | insurance; requiring managing entities to use due
56 | diligence to obtain certain types of insurance; providing

57 factors that a managing entity must take into account in
 58 determining whether the insurance obtained is adequate;
 59 providing that insurance coverage may be subject to
 60 certain requirements; authorizing the managing entity to
 61 apply any existing reserves for certain purposes; amending
 62 ss. 721.55 and 721.552, F.S.; conforming cross-references
 63 and terminology; amending s. 721.97, F.S.; authorizing the
 64 Governor to appoint commissioners of deeds to take
 65 acknowledgments, proofs of execution, or oaths in
 66 international waters; providing an effective date.

67

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

69

70 Section 1. Paragraph (b) of subsection (1), paragraph (e)
 71 of subsection (3), and subsection (10) of section 721.03,
 72 Florida Statutes, are amended, and subsection (11) is added to
 73 that section, to read:

74 721.03 Scope of chapter.--

75 (1) This chapter applies to all timeshare plans consisting
 76 of more than seven timeshare periods over a period of at least 3
 77 years in which the accommodations and facilities, if any, are
 78 located within this state or offered within this state; provided
 79 that:

80 (b) With respect to a timeshare plan containing
 81 accommodations or facilities located in this state which is
 82 offered for sale outside the jurisdictional limits of the United
 83 States, such offer or sale shall be exempt from the requirements
 84 of this chapter, provided that the developer shall either file

85 the timeshare plan with the division for approval pursuant to
 86 this chapter, or pay an exemption registration fee of \$100 and
 87 file the following minimum information pertaining to the
 88 timeshare plan with the division for approval:

- 89 1. The name and address of the timeshare plan.
- 90 2. The name and address of the developer and seller, if
 91 any.
- 92 3. The location and a brief description of the
 93 accommodations and facilities, if any, that are located in this
 94 state.
- 95 4. The number of timeshare interests and timeshare periods
 96 to be offered.
- 97 5. The term of the timeshare plan.
- 98 6. A copy of the timeshare instrument relating to the
 99 management and operation of accommodations and facilities, if
 100 any, that are located in this state.
- 101 7. A copy of the budget required by s. 721.07(5) (t) ~~(u)~~ or
 102 s. 721.55(4)(h)5., as applicable.
- 103 8. A copy of the management agreement and any other
 104 contracts regarding management or operation of the
 105 accommodations and facilities, if any, that are located in this
 106 state, and which have terms in excess of 1 year.
- 107 9. A copy of the provision of the purchase contract to be
 108 utilized in offering the timeshare plan containing the following
 109 disclosure in conspicuous type immediately above the space
 110 provided for the purchaser's signature:

111

112 The offering of this timeshare plan outside the jurisdictional
113 limits of the United States of America is exempt from regulation
114 under Florida law, and any such purchase is not protected by the
115 State of Florida. However, the management and operation of any
116 accommodations or facilities located in Florida is subject to
117 Florida law and may give rise to enforcement action regardless
118 of the location of any offer.

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

122 (e) Part VI of chapter 718 and part VI of chapter 719,
123 relating to conversion of existing improvements to the
124 condominium or cooperative form of ownership, respectively,
125 provided that a developer converting existing improvements to a
126 timeshare condominium or timeshare cooperative must comply with
127 ss. 718.606, 718.608, 718.61, and 718.62, or ss. 719.606,
128 719.608, 719.61, and 719.62, if applicable, and, if the existing
129 improvements received a certificate of occupancy more than 18
130 months before such conversion, one of the following:

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

139 2. The developer shall fund reserve accounts for capital
140 expenditures and deferred maintenance for the roof, plumbing,
141 air-conditioning, and any component of the structure the useful
142 life of which is less than the useful life of the overall
143 structure. The reserve accounts shall be funded for each
144 component in an amount equal to the product of the estimated
145 current replacement cost of such component as of the date of
146 such conversion (as disclosed and substantiated by a certificate
147 under the seal of an architect or engineer authorized to
148 practice in this state) multiplied by a fraction, the numerator
149 of which shall be the age ~~remaining life~~ of the component in
150 years (as disclosed and substantiated by a certificate under the
151 seal of an architect or engineer authorized to practice in this
152 state) and the denominator of which shall be the total useful
153 life of the component in years (as disclosed and substantiated
154 by a certificate under the seal of an architect or engineer
155 authorized to practice in this state). Alternatively, the
156 reserve accounts may be funded for each component in an amount
157 equal to the amount that, except for the application of this
158 subsection, would be required to be maintained pursuant to s.
159 718.618(1) or s. 719.618(1). The developer shall fund the
160 reserve accounts contemplated in this subparagraph out of the
161 proceeds of each sale of a timeshare interest, on a pro rata
162 basis, in an amount not less than a percentage of the total
163 amount to be deposited in the reserve account equal to the
164 percentage of ownership allocable to the timeshare interest
165 sold. When an owners' association makes an expenditure of
166 reserve account funds before the developer has initially sold

167 all timeshare interests, the developer shall make a deposit in
 168 the reserve account if the reserve account is insufficient to
 169 pay the expenditure. Such deposit shall be at least equal to
 170 that portion of the expenditure which would be charged against
 171 the reserve account deposit that would have been made for any
 172 such timeshare interest had the timeshare interest been
 173 initially sold. When a developer deposits amounts in excess of
 174 the minimum reserve account funding, later deposits may be
 175 reduced to the extent of the excess funding.

176 3. The developer shall provide each purchaser with a
 177 warranty of fitness and merchantability pursuant to s.
 178 718.618(6) or s. 719.618(6).

179 (10) A developer or seller may not offer any number of
 180 timeshare interests that would cause the total number of
 181 timeshare interests offered to exceed a one-to-one use right
 182 ~~purchaser to use night requirement accommodation~~ ratio.

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

188 1. The seller shall provide a disclosure statement to each
 189 prospective purchaser of such out-of-state timeshare plan. The
 190 disclosure statement for a single-site timeshare plan shall
 191 contain information otherwise required under s. 721.07(5)(e) -
 192 (cc) and the exhibits required by s. 721.07(5)(ff)1., 2., 3.,
 193 4., 5., 7., 8., and 20. The disclosure statement for a multisite
 194 timeshare plan shall contain information otherwise required

195 under s. 721.55(4) and (5) and the exhibits required under s.
196 721.55(7). If a developer has, in good faith, attempted to
197 comply with the requirements of this subsection and if the
198 developer has substantially complied with the disclosure
199 requirements of this subsection, nonmaterial errors or omissions
200 shall not be actionable. With respect to any offer for an out-
201 of-state timeshare plan made pursuant to this subsection, the
202 delivery by the seller to a prospective purchaser of the
203 disclosure statement required by this subparagraph shall be
204 deemed to satisfy any requirement of this chapter regarding a
205 public offering statement.

206 2. The seller shall utilize and furnish to each purchaser
207 of an out-of-state timeshare plan offered under this subsection
208 a fully completed and executed copy of a purchase contract that
209 contains the statement set forth in s. 721.065(2)(c) in
210 conspicuous type located immediately prior to the space in the
211 contract reserved for the purchaser's signature. The purchase
212 contract shall also contain the initial purchase price and any
213 additional charges to which the purchaser may be subject in
214 connection with the purchase of the timeshare plan, such as
215 financing, or that will be collected from the purchaser on or
216 before closing, such as the current year's annual assessment for
217 common expenses.

218 3. All purchase contracts for out-of-state timeshare plans
219 offered under this subsection must also contain the following
220 statements in conspicuous type:
221

222 This timeshare plan has not been reviewed or approved by
223 the State of Florida.

224
225 The timeshare interest you are purchasing requires certain
226 procedures to be followed in order for you to use your
227 interest. These procedures may be different from those
228 followed in other timeshare plans. You should read and
229 understand these procedures prior to purchasing.

230
231 4.a. An out-of-state timeshare plan may only be offered
232 pursuant to this subsection by the seller on behalf of:

233 (I) The developer of a timeshare plan that has been
234 approved by the division within the preceding 7 years pursuant
235 to s. 721.07 or s. 721.55, or concerning which an amendment by
236 the developer has been approved by the division within the
237 preceding 7 years, which timeshare plan has been neither
238 terminated nor withdrawn; or

239 (II) A developer under common ownership or control with a
240 developer described in sub-sub-subparagraph (I), provided that
241 any common ownership shall constitute at least a 50-percent
242 ownership interest.

243 b. An out-of-state timeshare plan may only be offered
244 pursuant to this subsection to a person who already owns a
245 timeshare interest in a timeshare plan filed by a developer
246 described in sub-subparagraph a.

247 5. Any seller of an out-of-state timeshare plan offered
248 pursuant to this subsection shall be required to provide notice
249 of such plan to the division on a form prescribed by the

250 division, along with payment of a one-time fee not to exceed
 251 \$1,000 per filing.

252 (b) Timeshare plans offered pursuant to this subsection
 253 shall be exempt from the requirements of ss. 721.06, 721.065,
 254 721.07, 721.27, 721.55, and 721.58 in addition to the exemptions
 255 otherwise applicable to accommodations and facilities located
 256 outside of the state pursuant to subparagraph (1)(c)1.

257 (c) Any escrow account required to be established by s.
 258 721.08 for any out-of-state timeshare plan offered under this
 259 subsection may be maintained in the situs jurisdiction provided
 260 the escrow agent submits to personal jurisdiction in this state
 261 in a form satisfactory to the division.

262 Section 2. Subsection (25) of section 721.05, Florida
 263 Statutes, is amended, and subsections (42), (43), and (44) are
 264 added to that section, to read:

265 721.05 Definitions.--As used in this chapter, the term:

266 (25) "One-to-one use right purchaser to use night
 267 requirement accommodation ratio" means that the sum of the
 268 nights that owners are entitled to use in a given 12-month
 269 period shall not exceed the number of nights available for use
 270 by those owners during the same 12-month period. No individual
 271 timeshare unit may be counted as providing more than 365 use
 272 nights per 12-month period or more than 366 use nights per 12-
 273 month period that includes February 29. The use rights of each
 274 owner shall be counted without regard to whether the owner's use
 275 rights have been suspended for failure to pay assessments or
 276 otherwise the ratio of the number of purchasers eligible to use
 277 the accommodations of a timeshare plan on a given day to the

278 ~~number of accommodations available for use within the plan on~~
279 ~~that day, such that the total number of purchasers eligible to~~
280 ~~use the accommodations of the timeshare plan during a given~~
281 ~~calendar year never exceeds the total number of accommodations~~
282 ~~available for use in the timeshare plan during that year. For~~
283 ~~purposes of calculation under this subsection, each purchaser~~
284 ~~must be counted at least once, and no individual timeshare unit~~
285 ~~may be counted more than 365 times per calendar year (or more~~
286 ~~than 366 times per leap year). A purchaser who is delinquent in~~
287 ~~the payment of timeshare plan assessments shall continue to be~~
288 ~~considered eligible to use the accommodations of the timeshare~~
289 ~~plan for purposes of this subsection notwithstanding any~~
290 ~~application of s. 721.13(6).~~

291 (42) "Lead dealer" means any person who sells or otherwise
292 provides a resale service provider or any other person with
293 personal contact information for five or more owners of
294 timeshare interests. In the event a lead dealer is not a natural
295 person, the term shall also include the natural person providing
296 personal contact information to a resale service provider or
297 other person on behalf of the lead dealer entity. The term does
298 not include developers, managing entities, or exchange companies
299 to the extent they provide others with personal contact
300 information about owners of timeshare interests in their own
301 timeshare plans or members of their own exchange programs.

302 (43) "Personal contact information" means any information
303 that can be used to contact the owner of a specific timeshare
304 interest, including, but not limited to, the owner's name,
305 address, telephone number, and e-mail address.

306 (44) "Resale service provider" means any person who uses
 307 unsolicited telemarketing, direct mail, or e-mail in connection
 308 with the offering of resale brokerage or resale advertising
 309 services to owners of timeshare interests. The term does not
 310 include developers, managing entities, or exchange companies to
 311 the extent they offer resale brokerage or resale advertising
 312 services to owners of timeshare interests in their own timeshare
 313 plans or members of their own exchange programs.

314 Section 3. Paragraphs (n) through (v) of subsection (5) of
 315 section 721.07, Florida Statutes, are redesignated as paragraphs
 316 (m) through (u), present paragraphs (m), (v), and (ff) of that
 317 subsection are amended, and subsection (7) is added to that
 318 section, to read:

319 721.07 Public offering statement.--Prior to offering any
 320 timeshare plan, the developer must submit a filed public
 321 offering statement to the division for approval as prescribed by
 322 s. 721.03, s. 721.55, or this section. Until the division
 323 approves such filing, any contract regarding the sale of that
 324 timeshare plan is subject to cancellation by the purchaser
 325 pursuant to s. 721.10.

326 (5) Every filed public offering statement for a timeshare
 327 plan which is not a multisite timeshare plan shall contain the
 328 information required by this subsection. The division is
 329 authorized to provide by rule the method by which a developer
 330 must provide such information to the division.

331 ~~(m) A description of any financing to be offered to~~
 332 ~~purchasers by the developer or any person or entity in which the~~
 333 ~~developer has a financial interest, together with a disclosure~~

334 ~~that the description of such financing may be changed by the~~
 335 ~~developer and that any change in the financing offered to~~
 336 ~~prospective purchasers will not be deemed to be a material~~
 337 ~~change.~~

338 (u)~~(v)~~ For any timeshare plan for which the purchase or
 339 closing of timeshare interests is not subject to the
 340 requirements of the Real Estate Settlement Procedures Act, 12
 341 U.S.C. s. 2601 et seq., a schedule of estimated closing expenses
 342 to be paid by a purchaser or lessee of a timeshare interest.

343 (v) ~~and~~ A statement as to whether a title opinion or title
 344 insurance policy is available to the purchaser and, if so, at
 345 whose expense.

346 (ff) Copies of the following documents and plans, to the
 347 extent they are applicable, shall be included as exhibits to the
 348 filed public offering statement provided, if the timeshare plan
 349 has not been declared or created at the time of the filing, the
 350 developer shall provide proposed documents:

- 351 1. The declaration of condominium.
- 352 2. The cooperative documents.
- 353 3. The declaration of covenants and restrictions.
- 354 4. The articles of incorporation creating the owners'
 355 association.
- 356 5. The bylaws of the owners' association.
- 357 6. Any ground lease or other underlying lease of the real
 358 property associated with the timeshare plan. In the case of a
 359 personal property timeshare plan, any lease of the personal
 360 property associated with the personal property timeshare plan.

361 7. The management agreement and all maintenance and other
 362 contracts regarding the management and operation of the
 363 timeshare property which have terms in excess of 1 year.

364 8. The estimated operating budget for the timeshare plan
 365 and the required schedule of purchasers' expenses.

366 9. The floor plan of each type of accommodation and the
 367 plot plan showing the location of all accommodations and
 368 facilities declared as part of the timeshare plan and filed with
 369 the division.

370 10. The lease for any facilities.

371 11. A declaration of servitude of properties serving the
 372 accommodations and facilities, but not owned by purchasers or
 373 leased to them or the owners' association.

374 12. Any documents required by s. 721.03(3)(e) as the
 375 result of the inclusion of a timeshare plan in the conversion of
 376 the building to condominium or cooperative ownership.

377 13. The form of agreement for sale or lease of timeshare
 378 interests.

379 14. The executed agreement for escrow of payments made to
 380 the developer prior to closing and the form of any agreement for
 381 escrow of ad valorem tax escrow payments, if any, to be made
 382 into an ad valorem tax escrow account pursuant to s. 192.037(6).

383 15. The documents containing any restrictions on use of
 384 the property required by paragraph (r) ~~(s)~~.

385 16. A letter from the escrow agent or filing attorney
 386 confirming that the escrow agent and its officers, directors, or
 387 other partners are independent pursuant to the requirements of
 388 this chapter.

389 17. Any nondisturbance and notice to creditors instrument
 390 required by s. 721.08.

391 18. In the case of any personal property timeshare plan in
 392 which the accommodations and facilities are located on or in a
 393 documented vessel or foreign vessel as provided in s.
 394 721.08(2)(c)3.e., a copy of the certificate of ownership of such
 395 vessel and either a copy of the certificate of documentation or
 396 certificate of registry of such vessel.

397 19. An executed affidavit given under oath by an attorney
 398 licensed to practice law in any jurisdiction in the United
 399 States stating that the attorney has researched the applicable
 400 laws of the jurisdiction in which governing law has been
 401 established and the laws of the jurisdiction in which the vessel
 402 is registered, and has found that the timeshare instrument
 403 complies with the provisions of s. 721.08(2)(c)3.e.(II)(C) and
 404 (III).

405 20. Any other documents or instruments creating the
 406 timeshare plan.

407 (7) The division may accept an alternate form of timeshare
 408 disclosure statement under an agreement with another state. At a
 409 minimum, the alternate form of timeshare disclosure statement
 410 must have provisions substantially similar to this section. The
 411 division may adopt rules pursuant to ss. 120.536(1) and 120.54
 412 to implement this subsection.

413 Section 4. Paragraph (d) of subsection (1) of section
 414 721.075, Florida Statutes, is amended to read:

415 721.075 Incidental benefits.--Incidental benefits shall be
 416 offered only as provided in this section.

417 (1) Accommodations, facilities, products, services,
 418 discounts, or other benefits which satisfy the requirements of
 419 this subsection shall be subject to the provisions of this
 420 section and exempt from the other provisions of this chapter
 421 which would otherwise apply to such accommodations or facilities
 422 if and only if:

423 (d) The continued availability to purchasers of timeshare
 424 plan accommodations on no greater than a one-to-one use right
 425 ~~purchaser~~ to use night requirement accommodation ratio is not
 426 dependent upon continued availability of the incidental benefit.

427 Section 5. Subsection (4) of section 721.11, Florida
 428 Statutes, is amended to read:

429 721.11 Advertising materials; oral statements.--

430 (4) No advertising or oral statement made by any seller or
 431 resale service provider shall:

432 (a) Misrepresent a fact or create a false or misleading
 433 impression regarding the timeshare plan or promotion thereof.

434 (b) Make a prediction of specific or immediate increases
 435 in the price or value of timeshare interests.

436 (c) Contain a statement concerning future price increases
 437 by a seller which are nonspecific or not bona fide.

438 (d) Contain any asterisk or other reference symbol as a
 439 means of contradicting or substantially changing any previously
 440 made statement or as a means of obscuring a material fact.

441 (e) Describe any facility that is not required to be built
 442 or that is uncompleted unless the improvement is conspicuously
 443 labeled as "NEED NOT BE BUILT," "PROPOSED," or "UNDER
 444 CONSTRUCTION." If the facility is labeled "NEED NOT BE BUILT" or

445 "PROPOSED," the seller may indicate the estimated date that such
446 facility will be made part of the timeshare plan. If the
447 facility is labeled "UNDER CONSTRUCTION," the estimated date of
448 completion must be included.

449 (f) Misrepresent the size, nature, extent, qualities, or
450 characteristics of the offered accommodations or facilities.

451 (g) Misrepresent the amount or period of time during which
452 the accommodations or facilities will be available to any
453 purchaser.

454 (h) Misrepresent the nature or extent of any incidental
455 benefit.

456 (i) Make any misleading or deceptive representation with
457 respect to the contents of the public offering statement and the
458 contract or the rights, privileges, benefits, or obligations of
459 the purchaser under the contract or this chapter.

460 (j) Misrepresent the conditions under which a purchaser
461 may exchange the right to use accommodations or facilities in
462 one location for the right to use accommodations or facilities
463 in another location.

464 (k) Misrepresent the availability of a resale or rental
465 program or resale or rental opportunity ~~offered by or on behalf~~
466 ~~of the developer.~~

467 (l) Contain an offer or inducement to purchase which
468 purports to be limited as to quantity or restricted as to time
469 unless the numerical quantity or time limit applicable to the
470 offer or inducement is clearly stated.

471 (m) Imply that a facility is available for the exclusive
 472 use of purchasers if the facility will actually be shared by
 473 others or by the general public.

474 (n) Purport to have resulted from a referral unless the
 475 name of the person making the referral can be produced upon
 476 demand of the division.

477 (o) Misrepresent the source of the advertising or
 478 statement by leading a prospective purchaser to believe that the
 479 advertising material is mailed by a governmental or official
 480 agency, credit bureau, bank, or attorney, if that is not the
 481 case.

482 (p) Misrepresent the value of any prize, gift, or other
 483 item to be awarded in connection with any prize and gift
 484 promotional offer, as described in s. 721.111, or any incidental
 485 benefit.

486 (q) Misrepresent or falsely imply that the resale service
 487 provider is affiliated with, or obtained personal contact
 488 information from, a developer, managing entity, or exchange
 489 company.

490 Section 6. Section 721.121, Florida Statutes, is created
 491 to read:

492 721.121 Recordkeeping by resale service providers and lead
 493 dealers.--

494 (1) Resale service providers and lead dealers shall
 495 maintain the following records for a period of 5 years from the
 496 date each piece of personal contact information is obtained:

497 (a) The name, home address, work address, home telephone
 498 number, work telephone number, and cellular telephone number of

499 the lead dealer from which the personal contact information was
500 obtained.

501 (b) A copy of a current government-issued photographic
502 identification for the lead dealer from which the personal
503 contact information was obtained, such as a driver's license,
504 passport, or military identification card.

505 (c) The date, time, and place of the transaction at which
506 the personal contact information was obtained, along with the
507 amount of consideration paid and a signed receipt from the lead
508 dealer or copy of a canceled check.

509 (d) A copy of all pieces of personal contact information
510 obtained in the exact form and media in which they were
511 received.

512 (e) If personal contact information was directly
513 researched and assembled by the resale service provider or lead
514 dealer and not obtained from another lead dealer, a complete
515 written description of the sources from which personal contact
516 information was obtained, the methodologies used for researching
517 and assembling it, the items set forth in paragraphs (a) and (b)
518 for the individuals who performed the work, and the date such
519 work was done.

520 (2) In any civil or criminal action relating to the
521 wrongful possession or wrongful use of personal contact
522 information by a resale service provider or lead dealer, any
523 failure by a resale service provider or lead dealer to produce
524 the records required by subsection (1) shall lead to a
525 presumption that the personal contact information was wrongfully
526 obtained.

527 (3) Any use by a resale service provider or lead dealer of
528 personal contact information that is wrongfully obtained
529 pursuant to this section shall be considered wrongful use of
530 such personal contact information by the resale service provider
531 or lead dealer, as applicable. Any party who establishes that a
532 resale service provider or lead dealer wrongfully obtained or
533 wrongfully used personal contact information with respect to
534 owners of a timeshare plan or members of an exchange program
535 shall, in addition to any other remedies that may be available
536 in law or equity, be entitled to recover from such resale
537 service provider or lead dealer an amount equal to \$1,000 for
538 each owner about whom personal contact information was
539 wrongfully obtained or used. Upon prevailing, the plaintiff in
540 any such action shall also be entitled to recover reasonable
541 attorney's fees and costs.

542 Section 7. Paragraph (c) is added to subsection (2) of
543 section 721.13, Florida Statutes, paragraph (c) of subsection
544 (3) of that section is amended, and subsection (12) is added to
545 that section, to read:

546 721.13 Management.--

547 (2)

548 (c) Failure by a managing entity to obtain and maintain
549 insurance coverage as required under s. 721.165 during any
550 period of developer control of the managing entity shall
551 constitute a breach of the managing entity's fiduciary duty.

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

554 (c)1. Providing each year to all purchasers an itemized
555 annual budget which shall include all estimated revenues and
556 expenses. The budget shall be in the form required by s.
557 721.07(5) (t) ~~(u)~~. The budget shall be the final budget adopted by
558 the managing entity for the current fiscal year. The final
559 adopted budget is not required to be delivered if the managing
560 entity has previously delivered a proposed annual budget for the
561 current fiscal year to purchasers in accordance with chapter 718
562 or chapter 719 and the managing entity includes a description of
563 any changes in the adopted budget with the assessment notice and
564 a disclosure regarding the purchasers' right to receive a copy
565 of the adopted budget, if desired. The budget shall contain, as
566 a footnote or otherwise, any related party transaction
567 disclosures or notes which appear in the audited financial
568 statements of the managing entity for the previous budget year
569 as required by paragraph (e). A copy of the final budget shall
570 be filed with the division for review within 30 days after the
571 beginning of each fiscal year together with a statement of the
572 number of periods of 7-day annual use availability that exist
573 within the timeshare plan, including those periods filed for
574 sale by the developer but not yet committed to the timeshare
575 plan, for which annual fees are required to be paid to the
576 division under s. 721.27.

577 2. Notwithstanding anything contained in chapter 718 or
578 chapter 719 to the contrary, the board of administration of an
579 owners' association which serves as the managing entity may from
580 time to time reallocate reserves for deferred maintenance and
581 capital expenditures required by s. 721.07(5) (t) ~~(u)~~ 3.a. (XI) from

582 any deferred maintenance or capital expenditure reserve account
583 to any other deferred maintenance or capital expenditure reserve
584 account or accounts in its discretion without the consent of
585 purchasers of the timeshare plan. Funds in any deferred
586 maintenance or capital expenditure reserve account may not be
587 transferred to any operating account without the consent of a
588 majority of the purchasers of the timeshare plan. The managing
589 entity may from time to time transfer excess funds in any
590 operating account to any deferred maintenance or capital
591 expenditure reserve account without the vote or approval of
592 purchasers of the timeshare plan. In the event any amount of
593 reserves for accommodations and facilities of a timeshare plan
594 containing timeshare licenses or personal property timeshare
595 interests exists at the end of the term of the timeshare plan,
596 such reserves shall be refunded to purchasers on a pro rata
597 basis.

598 3. With respect to any timeshare plan that has a managing
599 entity that is an owners' association, reserves may be waived or
600 reduced by a majority vote of those voting interests that are
601 present, in person or by proxy, at a duly called meeting of the
602 owners' association. If a meeting of the purchasers has been
603 called to determine whether to waive or reduce the funding of
604 reserves and no such result is achieved or a quorum is not
605 attained, the reserves as included in the budget shall go into
606 effect.

607 (12) (a) In addition to any other rights granted by the
608 rules and regulations of the timeshare plan, the managing entity
609 of a timeshare plan is authorized to manage the reservation and

610 use of accommodations using those processes, analyses,
611 procedures, and methods that are in the best interests of the
612 owners as a whole to efficiently manage the timeshare plan and
613 encourage the maximum use and enjoyment of the accommodations
614 and other benefits made available through the timeshare plan.
615 The managing entity shall have the right to forecast anticipated
616 reservation and use of the accommodations, including the right
617 to take into account current and previous reservation and use of
618 the accommodations, information about events that are scheduled
619 to occur, seasonal use patterns, and other pertinent factors
620 that affect the reservation or use of the accommodations. In
621 furtherance of the provisions of this subsection, the managing
622 entity is authorized to reserve accommodations, in the best
623 interests of the owners as a whole, for the purposes of
624 depositing such reserved use with an affiliated exchange program
625 or renting such reserved accommodations in order to facilitate
626 the use or future use of the accommodations or other benefits
627 made available through the timeshare plan.

628 (b) A statement in conspicuous type, in substantially the
629 following form, shall appear in the public offering statement as
630 provided in s. 721.07:

631
632 The managing entity shall have the right to forecast
633 anticipated reservation and use of the accommodations of
634 the timeshare plan and is authorized to reasonably reserve,
635 deposit, or rent the accommodations for the purpose of
636 facilitating the use or future use of the accommodations or
637 other benefits made available through the timeshare plan.

638
639 (c) The managing entity shall maintain copies of all
640 records, data, and information supporting the processes,
641 analyses, procedures, and methods utilized by the managing
642 entity in its determination to reserve accommodations of the
643 timeshare plan pursuant to this subsection for a period of 5
644 years from the date of such determination. In the event of an
645 investigation by the division for failure of a managing entity
646 to comply with this subsection, the managing entity shall make
647 all such records, data, and information available to the
648 division for inspection, provided that if the managing entity
649 complies with the provisions of s. 721.071, any such records,
650 data, and information provided to the division shall constitute
651 a trade secret pursuant to that section.

652 Section 8. Paragraph (c) of subsection (2) of section
653 721.15, Florida Statutes, is amended, and subsection (11) is
654 added to that section, to read:

655 721.15 Assessments for common expenses.--

656 (2)

657 (c) For the purpose of calculating the obligation of a
658 developer under a guarantee pursuant to paragraph (b), amounts
659 expended for any insurance coverage required by law or by the
660 timeshare instrument to be maintained by the owners' association
661 and depreciation expenses related to real property shall be
662 excluded from common expenses incurred during the guarantee
663 period, except that for real property that is used for the
664 production of fees, revenues, or other income, depreciation
665 expenses shall be excluded only to the extent that they exceed

666 the net income from the production of such fees, revenues, or
 667 other income. Any special assessment imposed for amounts
 668 excluded from the developer guarantee pursuant to this paragraph
 669 shall be paid proportionately by all owners of timeshare
 670 interests, including the developer with respect to the timeshare
 671 interests owned by the developer, in accordance with the
 672 timeshare instrument.

673 (11) Notwithstanding any provision of chapter 718 or
 674 chapter 719 to the contrary, any determination by a timeshare
 675 association of whether assessments exceed 115 percent of
 676 assessments for the prior fiscal year shall exclude anticipated
 677 expenses for insurance coverage required by law or by the
 678 timeshare instrument to be maintained by the association.

679 Section 9. Section 721.165, Florida Statutes, is amended
 680 to read:

681 721.165 Insurance.--

682 (1) Notwithstanding any provision contained in the
 683 timeshare instrument or in this chapter, chapter 718, or chapter
 684 719 to the contrary, the seller, initially, and thereafter the
 685 managing entity, shall use due diligence to obtain adequate
 686 casualty ~~be responsible for obtaining~~ insurance as a common
 687 expense of the timeshare plan to protect the timeshare property
 688 against all reasonably foreseeable perils, in such covered
 689 amounts and subject to such reasonable exclusions and reasonable
 690 deductibles as are consistent with the provisions of this
 691 section ~~accommodations and facilities of the timeshare plan in~~
 692 an amount equal to the replacement cost of such accommodations
 693 and facilities. ~~Failure to obtain and maintain the insurance~~

694 ~~required by this subsection during any period of developer~~
695 ~~control of the managing entity shall constitute a breach of s.~~
696 ~~721.13(2)(a) by the managing entity, unless the managing entity~~
697 ~~can show that, despite such failure, it exercised due diligence~~
698 ~~to obtain and maintain the insurance required by this~~
699 ~~subsection.~~

700 (2) In making the determination as to whether the
701 insurance obtained pursuant to subsection (1) is adequate, the
702 managing entity shall take into account the following factors,
703 among others as may be applicable:

704 (a) Available insurance coverages and related premiums in
705 the marketplace.

706 (b) Amounts of any related deductibles, types of
707 exclusions, and coverage limitations; provided that, for
708 purposes of this paragraph, a deductible of 5 percent or less
709 shall be deemed to be reasonable per se.

710 (c) The probable maximum loss relating to the insured
711 timeshare property during the policy term.

712 (d) The extent to which a given peril is insurable under
713 commercially reasonable terms.

714 (e) Amounts of any deferred maintenance or replacement
715 reserves on hand.

716 (f) Geography and any special risks associated with the
717 location of the timeshare property.

718 (g) The age and type of construction of the timeshare
719 property.

720 (3) Notwithstanding any provision contained in this
721 section or in the timeshare instrument to the contrary,

722 insurance shall be procured and maintained by the managing
723 entity for the timeshare property as a common expense of the
724 timeshare plan against such perils, in such coverages, and
725 subject to such reasonable deductions or reasonable exclusions
726 as may be required by:

727 (a) An institutional lender to a developer, for so long as
728 such lender holds a mortgage encumbering any interest in or lien
729 against a portion of the timeshare property; or

730 (b) Any holder or pledgee of, or any institutional lender
731 having a security interest in, a pool of promissory notes
732 secured by mortgages or other security interests relating to the
733 timeshare plan, executed by purchasers in connection with such
734 purchasers' acquisition of timeshare interests in such timeshare
735 property, or any agent, underwriter, placement agent, trustee,
736 servicer, custodian, or other portfolio manager acting on behalf
737 of such holder, pledgee, or institutional lender, for so long as
738 any such notes and mortgages or other security interests remain
739 outstanding.

740 (4) Notwithstanding any provision contained in the
741 timeshare instrument or in this chapter, chapter 718, or chapter
742 719 to the contrary, the managing entity is authorized to apply
743 any existing reserves for deferred maintenance and capital
744 expenditures toward payment of insurance deductibles or the
745 repair or replacement of the timeshare property after a casualty
746 without regard to the purposes for which such reserves were
747 originally established.

748 (5)~~(2)~~ A copy of each policy of insurance in effect shall
749 be made available for reasonable inspection by purchasers and
750 their authorized agents.

751 Section 10. Paragraphs (f) and (h) of subsection (4) and
752 paragraph (1) of subsection (7) of section 721.55, Florida
753 Statutes, are amended to read:

754 721.55 Multisite timeshare plan public offering
755 statement.--Each filed public offering statement for a multisite
756 timeshare plan shall contain the information required by this
757 section and shall comply with the provisions of s. 721.07,
758 except as otherwise provided therein. The division is authorized
759 to provide by rule the method by which a developer must provide
760 such information to the division. Each multisite timeshare plan
761 filed public offering statement shall contain the following
762 information and disclosures:

763 (4) A text, which shall include, where applicable, the
764 information and disclosures set forth in paragraphs (a)-(1).

765 (f) If the provisions of s. 721.552 and the timeshare
766 instrument permit additions, substitutions, or deletions of
767 accommodations or facilities, the public offering statement must
768 include substantially the following information:

769 1. Additions.--

770 a. A description of the basis upon which new
771 accommodations and facilities may be added to the multisite
772 timeshare plan; by whom additions may be made; and the
773 anticipated effect of the addition of new accommodations and
774 facilities upon the reservation system, its priorities, its

775 rules and regulations, and the availability of existing
776 accommodations and facilities.

777 b. The developer must disclose the existence of any cap on
778 annual increases in common expenses of the multisite timeshare
779 plan that would apply in the event that additional
780 accommodations and facilities are made a part of the plan.

781 c. The developer shall also disclose any extent to which
782 the purchasers of the multisite timeshare plan will have the
783 right to consent to any proposed additions; if the purchasers do
784 not have the right to consent, the developer must include the
785 following disclosure in conspicuous type:

786
787 Accommodations and facilities may be added to this
788 multisite timeshare plan (or multisite vacation ownership plan
789 or multisite vacation plan or vacation club) without the consent
790 of the purchasers. The addition of accommodations and facilities
791 to the plan may result in the addition of new purchasers who
792 will compete with existing purchasers in making reservations for
793 the use of available accommodations and facilities within the
794 plan, and may also result in an increase in the annual
795 assessment against purchasers for common expenses.

796
797 2. Substitutions.--

798 a. A description of the basis upon which new
799 accommodations and facilities may be substituted for existing
800 accommodations and facilities of the multisite timeshare plan;
801 by whom substitutions may be made; the basis upon which the
802 determination may be made to cause such substitutions to occur;

803 and any limitations upon the ability to cause substitutions to
804 occur.

805 b. The developer shall also disclose any extent to which
806 purchasers will have the right to consent to any proposed
807 substitutions; if the purchasers do not have the right to
808 consent, the developer must include the following disclosure in
809 conspicuous type:

810

811 New accommodations and facilities may be substituted for
812 existing accommodations and facilities of this multisite
813 timeshare plan (or multisite vacation ownership plan or
814 multisite vacation plan or vacation club) without the consent of
815 the purchasers. The replacement accommodations and facilities
816 may be located at a different place or may be of a different
817 type or quality than the replaced accommodations and facilities.
818 The substitution of accommodations and facilities may also
819 result in an increase in the annual assessment against
820 purchasers for common expenses.

821

822 3. Deletions.--A description of any provision of the
823 timeshare instrument governing deletion of accommodations or
824 facilities from the multisite timeshare plan. If the timeshare
825 instrument does not provide for business interruption insurance
826 in the event of a casualty, or if it is unavailable, or if the
827 instrument permits the developer, the managing entity, or the
828 purchasers to elect not to reconstruct after casualty under
829 certain circumstances or to secure replacement accommodations or
830 facilities in lieu of reconstruction, the public offering

831 statement must contain a disclosure that during the
832 reconstruction, replacement, or acquisition period, or as a
833 result of a decision not to reconstruct, purchasers of the plan
834 may temporarily compete for available accommodations on a
835 greater than one-to-one use right purchaser to use night
836 requirement accommodation ratio.

837 (h) A description of the purchaser's liability for common
838 expenses of the multisite timeshare plan, including the
839 following:

840 1. A description of the common expenses of the plan,
841 including the method of allocation and assessment of such common
842 expenses, whether component site common expenses and real estate
843 taxes are included within the total common expense assessment of
844 the multisite timeshare plan, and, if not, the manner in which
845 timely payment of component site common expenses and real estate
846 taxes shall be accomplished.

847 2. A description of any cap imposed upon the level of
848 common expenses payable by the purchaser. In no event shall the
849 total common expense assessment for the multisite timeshare plan
850 in a given calendar year exceed 125 percent of the total common
851 expense assessment for the plan in the previous calendar year.

852 3. A description of the entity responsible for the
853 determination of the common expenses of the multisite timeshare
854 plan, as well as any entity which may increase the level of
855 common expenses assessed against the purchaser at the multisite
856 timeshare plan level.

857 4. A description of the method used to collect common
858 expenses, including the entity responsible for such collections,

859 and the lien rights of any entity for nonpayment of common
860 expenses. If the common expenses of any component site are
861 collected by the managing entity of the multisite timeshare
862 plan, a statement to that effect together with the identity and
863 address of the escrow agent required by s. 721.56(3).

864 5. If the purchaser will receive an interest in a
865 nonspecific multisite timeshare plan, a statement that a
866 multisite timeshare plan budget is attached to the public
867 offering statement as an exhibit pursuant to paragraph (7)(c).
868 The multisite timeshare plan budget shall comply with the
869 provisions of s. 721.07(5) (t) ~~(u)~~.

870 6. If the developer intends to guarantee the level of
871 assessments for the multisite timeshare plan, such guarantee
872 must be based upon a good faith estimate of the revenues and
873 expenses of the multisite timeshare plan. The guarantee must
874 include a description of the following:

875 a. The specific time period, measured in one or more
876 calendar or fiscal years, during which the guarantee will be in
877 effect.

878 b. A statement that the developer will pay all common
879 expenses incurred in excess of the total revenues of the
880 multisite timeshare plan, if the developer is to be excused from
881 the payment of assessments during the guarantee period.

882 c. The level, expressed in total dollars, at which the
883 developer guarantees the assessments. If the developer has
884 reserved the right to extend or increase the guarantee level, a
885 disclosure must be included to that effect.

886 7. If required under applicable law, the developer shall
887 also disclose the following matters for each component site:

888 a. Any limitation upon annual increases in common
889 expenses;

890 b. The existence of any bad debt or working capital
891 reserve; and

892 c. The existence of any replacement or deferred
893 maintenance reserve.

894 (7) The following documents shall be included as exhibits
895 to the filed public offering statement, if applicable:

896 (1)1. If the multisite timeshare plan contains any
897 component sites located in this state, the information required
898 by s. 721.07(5) pertaining to each such component site unless
899 exempt pursuant to s. 721.03.

900 2. If the purchaser will receive a timeshare estate
901 pursuant to s. 721.57, or an interest in a specific multisite
902 timeshare plan, in a component site located outside of this
903 state but which is offered in this state, the information
904 required by s. 721.07(5) pertaining to that component site,
905 provided, however, that the provisions of s. 721.07(5) (t) ~~(u)~~
906 shall only require disclosure of information related to the
907 estimated budget for the timeshare plan and purchaser's expenses
908 as required by the jurisdiction in which the component site is
909 located.

910 Section 11. Paragraph (b) of subsection (1), paragraph (g)
911 of subsection (2), and subsection (3) of section 721.552,
912 Florida Statutes, are amended to read:

913 721.552 Additions, substitutions, or deletions of
 914 component site accommodations or facilities; purchaser remedies
 915 for violations.--Additions, substitutions, or deletions of
 916 component site accommodations or facilities may be made only in
 917 accordance with the following:

918 (1) ADDITIONS.--

919 (b) Any person who is authorized by the timeshare
 920 instrument to make additions to the multisite timeshare plan
 921 pursuant to this subsection shall act as a fiduciary in such
 922 capacity in the best interests of the purchasers of the plan as
 923 a whole and shall adhere to the demand balancing standard set
 924 forth in s. 721.56(6) in connection with such additions.
 925 Additions that are otherwise permitted may be made only so long
 926 as a one-to-one use right purchaser to use night requirement
 927 ~~accommodation~~ ratio is maintained at all times.

928 (2) SUBSTITUTIONS.--

929 (g) The person who is authorized by the timeshare
 930 instrument to make substitutions to the multisite timeshare plan
 931 pursuant to this subsection shall act as a fiduciary in such
 932 capacity in the best interests of the purchasers of the plan as
 933 a whole and shall adhere to the demand balancing standard set
 934 forth in s. 721.56(6) in connection with such substitutions.
 935 Substitutions that are otherwise permitted may be made only so
 936 long as a one-to-one use right purchaser to use night
 937 requirement ~~accommodation~~ ratio is maintained at all times.

938 (3) DELETIONS.--

939 (a) Deletion by casualty.--

940 1. Pursuant to s. 721.165, the timeshare instrument
941 creating the multisite timeshare plan must provide for casualty
942 insurance for the accommodations and facilities of the multisite
943 timeshare plan in an amount equal to the replacement cost of
944 such accommodations or facilities. The timeshare instrument must
945 also provide that in the event of a casualty that results in
946 accommodations or facilities being unavailable for use by
947 purchasers, the managing entity shall notify all affected
948 purchasers of such unavailability of use within 30 days after
949 the event of casualty.

950 2. The timeshare instrument must also provide for the
951 application of any insurance proceeds arising from a casualty to
952 either the replacement or acquisition of additional similar
953 accommodations or facilities or to the removal of purchasers
954 from the multisite timeshare plan so that purchasers will not be
955 competing for available accommodations on a greater than one-to-
956 one use right purchaser to use night requirement accommodation
957 ratio.

958 3. If the timeshare instrument does not provide for
959 business interruption insurance, or if it is unavailable, or if
960 the instrument permits the developer, the managing entity, or
961 the purchasers to elect not to reconstruct after casualty under
962 certain circumstances or to secure replacement accommodations or
963 facilities in lieu of reconstruction, purchasers of the plan may
964 temporarily compete for available accommodations on a greater
965 than one-to-one use right purchaser to use night requirement
966 ~~accommodation~~ ratio. The decision whether or not to reconstruct
967 shall be made as promptly as possible under the circumstances.

968 4. Any replacement of accommodations or facilities
 969 pursuant to this paragraph shall be made upon the same basis as
 970 required for substitution as set forth in subparagraph (2)(b)2.

971 (b) Deletion by eminent domain.--

972 1. The timeshare instrument creating the multisite
 973 timeshare plan must also provide for the application of any
 974 proceeds arising from a taking under eminent domain proceedings
 975 to either the replacement or acquisition of additional similar
 976 accommodations or facilities or to the removal of purchasers
 977 from the multisite timeshare plan so that purchasers will not be
 978 competing for available accommodations on a greater than one-to-
 979 one use right purchaser to use night requirement accommodation
 980 ratio.

981 2. Any replacement of accommodations or facilities
 982 pursuant to this paragraph shall be made upon the same basis as
 983 required for substitution set forth in subparagraph (2)(b)2.

984 (c) Automatic deletion.--The timeshare instrument may
 985 provide that a component site will be automatically deleted upon
 986 the expiration of its term in a timeshare plan other than a
 987 nonspecific multisite timeshare plan or as otherwise provided in
 988 the timeshare instrument. However, the timeshare instrument must
 989 also provide that in the event a component site is deleted from
 990 the plan in this manner, a sufficient number of purchasers of
 991 the plan will also be deleted so as to maintain no greater than
 992 a one-to-one use right purchaser to use night requirement
 993 ~~accommodation~~ ratio.

994 Section 12. Subsection (1) of section 721.97, Florida
 995 Statutes, is amended to read:

996 721.97 Timeshare commissioner of deeds.--

997 (1) The Governor may appoint commissioners of deeds to
998 take acknowledgments, proofs of execution, or oaths in any
999 foreign country, in international waters, or in any possession,
1000 territory, or commonwealth of the United States outside the 50
1001 states. The term of office is 4 years. Commissioners of deeds
1002 shall have authority to take acknowledgments, proofs of
1003 execution, and oaths in connection with the execution of any
1004 deed, mortgage, deed of trust, contract, power of attorney, or
1005 any other writing to be used or recorded in connection with a
1006 timeshare estate, personal property timeshare interest,
1007 timeshare license, any property subject to a timeshare plan, or
1008 the operation of a timeshare plan located within this state;
1009 provided such instrument or writing is executed outside the
1010 United States. Such acknowledgments, proofs of execution, and
1011 oaths must be taken or made in the manner directed by the laws
1012 of this state, including but not limited to s. 117.05(4),
1013 (5)(a), and (6), Florida Statutes 1997, and certified by a
1014 commissioner of deeds. The certification must be endorsed on or
1015 annexed to the instrument or writing aforesaid and has the same
1016 effect as if made or taken by a notary public licensed in this
1017 state.

1018 Section 13. This act shall take effect July 1, 2007.