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2013 Legislature

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2 An act relating to charitable contributions; amending
3 s. 726.102, F.S.; defining the terms "charitable
4 contribution" and "qualified religious or charitable
5 entity or organization"; amending s. 726.109, F.S.;
6 providing that a transfer of a charitable contribution
7 that is received in good faith by a qualified
8 religious or charitable entity or organization is not
9 a fraudulent transfer; providing exceptions; amending
10 ss. 213.758, 718.704, and 721.05, F.S.; conforming
11 cross-references; providing for applicability;
12 providing an effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Subsections (3), (4), (5), (6), (7), (8), (9),
17 (10), (11), (12), and (13) of section 726.102, Florida Statutes,
18 are renumbered as subsections (4), (5), (6), (7), (8), (9),
19 (10), (11), (13), (14), and (15), respectively, and new
20 subsections (3) and (12) are added to that section to read:

21 726.102 Definitions.—As used in ss. 726.101-726.112:

22 (3) "Charitable contribution" means a charitable
23 contribution as that term is defined in s. 170(c) of the
24 Internal Revenue Code of 1986, if that contribution consists of:

25 (a) A financial instrument as defined in s. 731(c)(2)(C)
26 of the Internal Revenue Code of 1986; or

27 (b) Cash.

28 (12) "Qualified religious or charitable entity or

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29 organization" means:

30 (a) An entity described in s. 170(c)(1) of the Internal
31 Revenue Code of 1986; or

32 (b) An entity or organization described in s. 170(c)(2) of
33 the Internal Revenue Code of 1986.

34 Section 2. Subsection (7) is added to section 726.109,
35 Florida Statutes, to read:

36 726.109 Defenses, liability, and protection of
37 transferee.—

38 (7) (a) The transfer of a charitable contribution that is
39 received in good faith by a qualified religious or charitable
40 entity or organization is not a fraudulent transfer under s.
41 726.105(1)(b).

42 (b) However, a charitable contribution from a natural
43 person is a fraudulent transfer if the transfer was received on,
44 or within 2 years before, the earlier of the date of
45 commencement of an action under this chapter, the filing of a
46 petition under the federal Bankruptcy Code, or the commencement
47 of insolvency proceedings by or against the debtor under any
48 state or federal law, including the filing of an assignment for
49 the benefit of creditors or the appointment of a receiver,
50 unless:

51 1. The transfer was consistent with the practices of the
52 debtor in making the charitable contribution; or

53 2. The transfer was received in good faith and the amount
54 of the charitable contribution did not exceed 15 percent of the
55 gross annual income of the debtor for the year in which the
56 transfer of the charitable contribution was made.

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57 Section 3. Paragraph (c) of subsection (1) of section
58 213.758, Florida Statutes, is amended to read:

59 213.758 Transfer of tax liabilities.—

60 (1) As used in this section, the term:

61 (c) "Insider" means:

62 1. Any person included within the meaning of insider as
63 used in s. 726.102~~(7)~~; or

64 2. A manager of, a managing member of, or a person who
65 controls a transferor that is a limited liability company, or a
66 relative as defined in s. 726.102~~(11)~~ of any such persons.

67 Section 4. Subsection (4) of section 718.704, Florida
68 Statutes, is amended to read:

69 718.704 Assignment and assumption of developer rights by
70 bulk assignee; bulk buyer.—

71 (4) An acquirer of condominium parcels is not a bulk
72 assignee or a bulk buyer if the transfer to such acquirer was
73 made:

74 (a) Before the effective date of this part;

75 (b) With the intent to hinder, delay, or defraud any
76 purchaser, unit owner, or the association; or

77 (c) By a person who would be considered an insider under
78 s. 726.102~~(7)~~.

79 Section 5. Subsection (10) of section 721.05, Florida
80 Statutes, is amended to read:

81 721.05 Definitions.—As used in this chapter, the term:

82 (10) "Developer" includes:

83 (a) 1. A "creating developer," which means any person who
84 creates the timeshare plan;

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85 ~~2.(b)~~ A "successor developer," which means any person who
86 succeeds to the interest of the persons in this subsection by
87 sale, lease, assignment, mortgage, or other transfer, but the
88 term includes only those persons who offer timeshare interests
89 in the ordinary course of business; and

90 ~~3.(e)~~ A "concurrent developer," which means any person
91 acting concurrently with the persons in this subsection with the
92 purpose of offering timeshare interests in the ordinary course
93 of business.

94 ~~(b)(d)~~ The term "developer" does not include:

95 1. An owner of a timeshare interest who has acquired the
96 timeshare interest for his or her own use and occupancy and who
97 later offers it for resale; provided that a rebuttable
98 presumption exists ~~shall exist~~ that an owner who has acquired
99 more than seven timeshare interests did not acquire them for his
100 or her own use and occupancy;

101 2. A managing entity, not otherwise a developer, that
102 offers, or engages a third party to offer on its behalf,
103 timeshare interests in a timeshare plan which it manages,
104 provided that such offer complies with the provisions of s.
105 721.065;

106 3. A person who owns or is conveyed, assigned, or
107 transferred more than seven timeshare interests and who
108 subsequently conveys, assigns, or transfers all acquired
109 timeshare interests to a single purchaser in a single
110 transaction, which transaction may occur in stages; or

111 4. A person who acquires ~~has acquired~~ or has the right to
112 acquire more than seven timeshare interests from a developer or

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113 other interestholder in connection with a loan, securitization,
114 conduit, or similar financing arrangement transaction and who
115 subsequently arranges for all or a portion of the timeshare
116 interests to be offered by a developer ~~one or more developers~~ in
117 the ordinary course of business on its ~~their~~ own behalf ~~behalfes~~
118 or on behalf of such person.

119 (c) ~~(e)~~ A successor or concurrent developer is ~~shall be~~
120 exempt from any liability inuring to a predecessor or concurrent
121 developer of the same timeshare plan, except as provided in s.
122 721.15(7) ., ~~provided that~~ This exemption does ~~shall~~ not apply to
123 any of the successor or concurrent developer's responsibilities,
124 duties, or liabilities with respect to the timeshare plan which
125 ~~that~~ accrue after the date the successor or concurrent developer
126 became a successor or concurrent developer, and ~~provided that~~
127 such transfer does not constitute a fraudulent transfer. ~~In~~
128 ~~addition to other provisions of law,~~ A transfer by a predecessor
129 developer to a successor or concurrent developer shall be deemed
130 fraudulent if the predecessor developer made the transfer:

131 1. With actual intent to hinder, delay, or defraud any
132 purchaser or the division; or

133 2. To a person that would constitute an insider under s.
134 726.102 ~~(7)~~.

135
136 ~~The provisions of~~ This paragraph does ~~shall~~ not be construed to
137 relieve any successor or concurrent developer from the
138 obligation to comply with the provisions of any applicable
139 timeshare instrument.

140 Section 6. This act shall take effect July 1, 2013, and

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141 | applies to all charitable contributions made on or after that
142 | date.