

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 453 Timeshares

SPONSOR(S): Government Operations Appropriations Subcommittee; Civil Justice Subcommittee; Eisnaugle

TIED BILLS: None **IDEN./SIM. BILLS:** SB 932

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 2 N, As CS	Malcolm	Bond
2) Government Operations Appropriations Subcommittee	10 Y, 0 N, As CS	Topp	Topp
3) Judiciary Committee	15 Y, 1 N	Malcolm	Havlicak

SUMMARY ANALYSIS

The Florida Vacation Plan and Timesharing Act (Act) establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers. Authority to implement these regulations has been granted to the Division of Florida Condominiums, Timeshares and Mobile Homes (Division) within the Department of Business and Professional Regulation. The bill makes the following changes to the Florida Vacation Plan and Timesharing Act:

- Provides that an ownership interest in a condominium or cooperative unit or a beneficial interest in a timeshare trust is required for such interests to qualify as timeshare estates;
- Expands the definitions of nonspecific and specific multisite timeshare plans provide that the plans may include interests other than timeshare licenses or personal property timeshare interests;
- Limits the required disclosure of public offering statements and amendments to timeshare instruments for component sites located in this state;
- Expands the limitation on liability for developers who, in good faith, attempt to and substantially comply with all the provisions of the Act;
- Requires the disclosure of unexpired lease terms in timeshare trusts;
- Repeals the requirement for judicial approval of transactions involving timeshare trust property;
- Creates a procedure for the extension or termination of certain timeshare plans;
- Creates new procedure for the transfer of reservation system and owner data when a managing entity is terminated;
- Requires all multisite timeshare plans to disclose the term of each component site plan and prominently disclose the term of component sites that are shorter than the term of the plan;
- Excludes component site common expenses and ad valorem expenses from the cap on annual increases in common expense assessments;
- Allows for substitute and replacement accommodations that are better than the existing accommodations; and
- Revises the limitations on substitute accommodations.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides and effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 721, F.S., the Florida Vacation Plan and Timeshare Act, governs vacation plans and timesharing. The purposes of the chapter are to: 1) recognize real and personal property timeshare plans in the state; 2) establish procedures for the creation, sale, exchange, promotion and operation of timeshare plans; 3) provide full and fair disclosure to the purchasers and prospective purchasers of timeshare plans; 4) require every timeshare plan in the state to be subjected to the provisions of the chapter; 5) require full and fair disclosure of terms, conditions, and services by resale service providers; and 6) recognize that a uniform and consistent method of regulation is necessary in order to safeguard Florida's tourism industry and the state's economic well-being.¹

A timeshare unit is an accommodation of a timeshare plan which is divided into timeshare periods² or a condominium unit in which timeshare estates have been created.³ A timeshare plan is any arrangement, plan, or similar device in which a purchaser gives consideration for ownership rights in, or a right to use, any accommodations and facilities for less than a full year during any given year, but not necessarily for consecutive years.⁴

Definition of "Timeshare Estate"

A "timeshare estate" is currently defined in s. 721.05(34), F.S., as a right to occupy a timeshare unit coupled with a freehold estate or an estate for years with a future interest in a timeshare property. The term includes an interest in a condominium unit, a cooperative unit, or a direct or indirect interest in a timeshare trust, provided that the trust does not contain any personal property timeshare interests. A timeshare estate is considered to be real property under Florida law.

The bill modifies the definition of "timeshare estate" in s. 721.05(34), F.S., to provide that an *ownership* interest in a condominium or cooperative unit or a *beneficial* interest in a timeshare trust coupled with a right to occupy a timeshare unit is required for such interest to qualify as a timeshare estate. The bill also provides that a beneficial trust in a qualifying multisite timeshare trust is also a timeshare estate.

Definitions of "Nonspecific Multisite Timeshare Plan" and "Specific Multisite Timeshare Plan"

A "nonspecific multisite timeshare plan" is defined as a multisite timeshare plan⁵ containing timeshare licenses⁶ or personal property timeshare interests⁷, in which a purchaser receives a right to use all of the accommodations and facilities of the multisite timeshare plan through the reservation system, but no specific right to use any particular accommodations and facilities.⁸

A "specific multisite timeshare plan" is defined as a multisite timeshare plan containing timeshare licenses or personal property timeshare interests, in which a purchaser receives a specific right to use

¹ Section 721.02, F.S.

² Section 721.05(41), F.S.

³ Section 718.103(26), F.S.

⁴ Section 721.05(39), F.S.

⁵ "Multisite timeshare plan" means any method, arrangement, or procedure with respect to which a purchaser obtains a recurring right to use and occupy accommodations or facilities of more than one component site, only through use of a reservation system, whether or not the purchaser is able to elect to cease participating in the plan. Section 721.52(4), F.S.

⁶ "Timeshare license" means a right to occupy a timeshare unit, which right is not a personal property timeshare interest or a timeshare estate. Section 721.05(37), F.S.

⁷ "Personal property timeshare interest" means a right to occupy an accommodation located on or in or comprised of personal property that is not permanently affixed to real property, whether or not coupled with a beneficial or ownership interest in the accommodations or personal property. *Id.* at (28).

⁸ Section 721.52(5), F.S.

accommodations and facilities at one component site⁹ of a multisite timeshare plan, together with use rights in the other accommodations and facilities of the multisite timeshare plan.¹⁰

The bill amends the definitions of nonspecific and specific multisite timeshare plans to remove the requirement that the plans contain timeshare licenses or personal property timeshare interests.

Public Offering Statement

Prior to offering any timeshare plan, a developer must submit a public offering statement, which must include certain information and disclosures, to the Division.¹¹ Any amendment to an approved offering statement must be filed with the Division for approval prior to becoming effective.¹²

Currently, ss. 721.07(3) and 721.551(2), F.S., provide that public offering statements and amendments to timeshare instruments for component sites located in this state are not required to be provided to purchasers who do not receive a timeshare estate or an interest in a specific multisite timeshare plan in that component site.

The bill amends ss. 721.07(3) and 721.551(2), F.S., to provide that public offering statements and amendments to timeshare instruments for component sites located in this state are only required to be delivered to purchasers who receive a specific interest in that component site.

Currently, ss. 721.07(5) and 721.55(5), F.S., provide a limitation on liability for nonmaterial errors or omissions for any developer who, in good faith, attempts to comply with the requirements of ss. 721.07 or 721.55, F.S., related to public offering statements, if, in fact, he or she has substantially complied with the disclosure requirements of ch. 721, F.S.

The bill amends ss. 721.07(5) and 721.55(5), F.S., to expand the limitation on liability for developers who, in good faith attempted to and substantially complied with all the provisions of ch. 721, F.S., not just ss. 721.07 or 721.55, F.S. Any nonmaterial errors, omissions, or violations of ch. 721, F.S., for which a developer has limited liability under this section, are not considered violations of ch. 721, F.S., and do not give rise to any purchaser cancellation rights.

Leasehold Accommodations in a Timeshare Trust

Currently, ss. 721.08(2)(c) and 721.53(1)(e), F.S., which regulate timeshare trusts, are silent as to whether leasehold accommodations may be included in a timeshare trust and how they should be disclosed in a public offering statement or to interestholders.

The bill amends ss. 721.08(2)(c) and 721.53(1)(e), F.S., to provide that if the accommodations or facilities of a single-site timeshare trust plan are subject to a lease, the unexpired term of the lease must be disclosed as the term of the timeshare plan.

Disposition of Timeshare Trust Property

Currently ss. 721.08(2)(c) and 721.53(1)(e), F.S., require that any transfer or encumbrance of timeshare trust property approved by the voting interests of the timeshare plan must be approved by a court, and in the case of single site timeshare plans, the Division has standing to advise the court on its decision.

The bill deletes the requirement for judicial approval in ss. 721.08(2)(c) and 721.53(1)(e), F.S., and deletes the provision granting the Division standing in proceedings involving single site timeshare plans.

⁹ "Component site" means a specific geographic site where a portion of the accommodations and facilities of the multisite timeshare plan are located. Section 721.52, F.S.

¹⁰ Section 721.52(7), F.S.

¹¹ Sections 721.07 and 721.55, F.S.

¹² Section 721.07(3)(a)1., F.S.

The bill also provides that subject to the statutory provisions regulating changes to component site accommodations or facilities in s. 721.552, F.S., a vote of the voting interests of the timeshare plan is not required for substitution or automatic deletion of accommodations or facilities in timeshare trusts.

Extension or Termination of Timeshare Plans

Chapter 721, F.S., does not currently contain any provision addressing timeshare plans that are silent as to when the plan is terminated or when it can be extended.

The bill creates s. 721.125, F.S., to provide a statutory default provision for timeshare instruments that have been in existence for at least 25 years and are silent as to how the plan terminates or is extended. A vote or written consent of 60 percent of all the voting interests in the timeshare plan is required to extend or terminate the term of a timeshare plan.

If the term of a timeshare plan is extended, all rights, privileges, duties, and obligations created under applicable law or the timeshare instrument continue in full force. If a timeshare plan is terminated, the termination has immediate effect pursuant to applicable law and the timeshare instrument.

A termination, extension vote or consent proposed for a component site of a multisite timeshare plan located in this state is effective only if the person authorized to make additions or substitutions approves.

Transfer of Reservation System Following Discharge of Managing Entity

Currently, s. 721.56(5), F.S., provides that the reservation system of a nonspecific multisite timeshare plan is considered a facility of the timeshare plan. In the event that the managing entity of the timeshare plan is terminated, it must comply with statutory procedures that ensure the continued operation of the reservation system during the transition to a new reservation system by the new managing entity. In cases where the managing entity of a timeshare estate or specific multisite timeshare plan is terminated, the managing entity must transfer all relevant data from its reservation system to the managing entity of each component site.

Current law, s. 721.14, F.S., does not address what a managing entity of a single-site timeshare plan must do with the reservation system and owner data if the managing entity is terminated.

The bill deletes the provisions in s. 721.56(5), F.S., related to the transfer of reservation system and owner data for multisite timeshare plans and provides a new procedure in s. 721.14(4), F.S., for the transfer of reservation system and owner data from the managing entity to the owners' association. The new procedures apply to terminations of managing entities of single site or multisite timeshare plans.

If there is no agreement between the owners' association and managing entity that covers the transfer of relevant owner data and reservation system information, then the managing entity must transfer the information to the owners' association within 90 days of receiving notice of the termination vote. Within 10 days after the completed transfer of the data, the timeshare plan must reimburse the managing entity for all reasonable costs incurred in effecting the transfer of information.

Term of Multisite Timeshare Plans

Section 721.54, F.S., prohibits a person from representing to a purchaser of a nonspecific multisite timeshare plan that the term of the plan for that purchaser is longer than the shortest term of availability of any of the accommodations included in the plan at the time of purchase. However, for other types of multisite timeshare plans, s. 721.55(4)(a), F.S., only requires that the term of each component site within the timeshare plan be disclosed.

The bill deletes the prohibition in s. 721.54, F.S., and amends s. 721.55(4)(a), F.S., to require all multisite timeshare plans to disclose the term of each component site within the timeshare plan and disclose, in conspicuous type, the term of each component site that is shorter than the term of the timeshare plan.

Exceptions to the Limitation on Common Expense Assessments

Current law, s. 721.55(4)(h), F.S., caps the annual increase in common expense assessments for multisite timeshare plans in a given year at 125 percent of the previous year. There are currently no exceptions to the cap.

The bill amends s. 721.55(4)(h), F.S., to exclude component site common expenses and ad valorem expenses from the 125 percent cap on increases in common expense assessments for multisite timeshare plans.

Substitutions and Deletions for Multisite Timeshare Plans

Section 721.552(2), F.S., currently only allows substitutions of accommodations and facilities for nonspecific multisite timeshare plans that are "substantially similar" to the existing accommodations and facilities. Substitutions are limited to no more than 25 percent of the available accommodations at a given component site per year. Before a substitution occurs, notice must be provided to all the purchasers of the timeshare plan. However, under limited circumstances, a managing entity may substitute all accommodations in a given year if a written plan of substitution has been provided to each purchaser of the timeshare plan and approved by a majority of purchasers and a majority of the board of administration.

The bill amends s. 721.552(2), F.S., to allow for substitute accommodations that are better than the existing accommodations. It also modifies the notice required before a substitution will occur to include a statement that purchasers have the right to object to the proposed substitution. The 25 percent limitation on substitutions is repealed and replaced with the following provisions:

- If the developer is authorized to make substitutions, the developer is annually limited to substitution of 10 percent of the annual use availability in the multisite timeshare plan;
- If the managing entity is authorized to make substitutions, and the managing entity is under common ownership or control with the developer, the managing entity is annually limited to substitution of 10 percent of the annual use availability in the multisite timeshare plan;
- If the managing entity is authorized to make substitutions, and the managing entity is not under common ownership or control with the developer, the managing entity is annually limited to substitution of 25 percent of the annual use availability in the multisite timeshare plan; and
- If at least 10 percent of purchasers in the timeshare plan object to a proposed substitution, a meeting of the purchasers must be held. Unless the substitution is rejected by a majority of purchasers voting, it is deemed approved.

The bill replaces the provision in s. 721.552(2), F.S., that allows a managing entity to substitute all accommodations pursuant to a plan approved by a majority of purchasers and a majority of the board, with a provision that allows for unlimited substitutions by any authorized person if the proposed substitution is approved in advance by a majority of voting purchasers, provided at least 25 percent of purchasers vote.

Currently, s. 721.552(3), F.S., allows for the automatic deletion of component sites only if a sufficient number of purchasers of the plan will also be deleted to maintain a one-to-one right to use ratio. The bill

amends this provision to also allow for automatic deletions if replacement accommodations that are substantially similar to or better than the deleted accommodations are provided.

Other Effects of the Bill

The bill makes the procedures in s. 721.14, F.S., related to the discharge of a managing entity, applicable to personal property timeshare plans.

The bill makes a number of conforming changes to ch. 721, F.S., due to the change to the definitions of nonspecific and specific multisite timeshare plans in the bill.

The bill amends s. 721.57, F.S., to provide for timeshare estates in specific multisite timeshare plans.

The bill provides an effective date of July 1, 2015.

B. SECTION DIRECTORY:

Section 1 amends s. 721.05, F.S., related to definitions.

Section 2 amends s. 721.07, F.S., related to public offering statements.

Section 3 amends s. 721.08, F.S., related to escrow accounts, nondisturbance instruments, alternate security arrangements, and transfers of legal title.

Section 4 creates s. 721.125, F.S., related to the extension or termination of timeshare plans.

Section 5 amends s. 721.14, F.S., related to the discharge of a managing entity.

Section 6 amends s. 721.52, F.S., related to definitions.

Section 7 amends s. 721.53, F.S., related to subordination instruments and alternate security arrangements.

Section 8 repeals s. 721.54, F.S., related to terms of nonspecific timeshare plans.

Section 9 amends s. 721.55, F.S., related to multisite timeshare plan public offering statements.

Section 10 amends s. 721.551, F.S., related to the delivery of multisite timeshare plan purchaser public offering statements.

Section 11 amends s. 721.552, F.S., related to additions, substitutions or deletions of component site accommodations or facilities, and purchaser remedies for violations.

Section 12 amends s. 712.56, F.S., related to the management of multisite timeshare plans, reservation systems, and demand balancing.

Section 13 amends s. 712.57, F.S., related to the offering of timeshare estates in specific multisite timeshare plans and the required provisions in the timeshare instrument.

Section 14 provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to increase costs on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 17, 2015, the Civil Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by:

- Providing that the required delivery of public offering statements and amendments to timeshare instruments for component sites located in this state only applies to those filings subject to Part II of ch. 721, F.S.;
- Deleting a section of the bill that would have limited the time share solicitation advertising notice to only advertising material that required a mandatory tour or attendance at a timeshare presentation;
- Increasing from a simple majority to 60 percent of all voting interests the required vote for the extension or termination of a timeshare plan;

- Providing that the provision related to the required vote for the extension or termination of a timeshare plan only applies to plans in existence for at least 25 years;
- Retaining language that provides that the offering of timeshare estates in a specific multisite timeshare plan that do not comply with statutory requirements is deemed to be an offering of a timeshare license; and
- Making technical and drafting corrections.

On March 10, 2015, the Government Operations Appropriations Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. Specifically,

- The two amendments deleted sections 6 and 15 from the bill removing language related to the annual managing fee and thereby removing any negative fiscal impact from the bill.

This analysis is drafted to the CS/CS/HB 453 as passed by the Government Operations Appropriations Subcommittee.