

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 829 Timeshare Plans
SPONSOR(S): Civil Justice & Claims Subcommittee; La Rosa
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 818

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Property Rights Subcommittee	15 Y, 0 N	Cooper	Smith
2) Civil Justice & Claims Subcommittee	15 Y, 0 N, As CS	Stranburg	Bond
3) Commerce Committee			

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 the Act 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 Act:

- Revises the term “interestholder” with respect to a multisite timeshare plan by excluding certain entities from the definition;
- Revises requirements for instruments that establish or govern a component site property regime, including the requirement to issue or provide certain documents to creditors;
- Revises requirements for terminations of timeshare plans;
- Revises requirements for extensions of timeshare plans;
- Allows reasonable termination expenses to be paid pro rata by owners of former timeshare properties; and
- Amends requirements for voting upon an extension of a term of a timeshare plan, including meeting notices, voter eligibility, proxies, and quorum requirements.

The bill does not appear to have a fiscal impact on state or local governments. The bill may have an indeterminate effect on the private sector.

The bill provides an effective date of upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background on Timeshares, In General

Chapter 721, F.S., the Florida Vacation Plan and Timeshare Act (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

Some timeshares are purchased as part of vacation clubs. A vacation club is a multisite timeshare.⁵ A multisite timeshare plan is any method, arrangement, or procedure with respect to which a purchaser obtains, by any means, a recurring right to use and occupy accommodations or facilities of more than one component site,⁶ only through use of a reservation system, whether or not the purchaser is able to elect to cease participating in the plan.⁷

Definition of Interestholder

An interestholder is a developer, an owner of the underlying fee or owner of the underlying personal property, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the accommodations or facilities of the timeshare plan.⁸ The bill amends the definition of interestholder to exclude certain persons that have interests in a multisite timeshare plan that has a component site that is also part of a single-site timeshare plan, condominium, or other property regime. Those excluded as interestholders in a multisite timeshare plan with a component site property regime are:

- A developer;
- An owner of the underlying fee or personal property;
- A mortgagee, judgment creditor, or other lienor; or
- Any other person having an interest in or lien or encumbrance against a timeshare interest in a single-site timeshare plan, or an interest in or lien or encumbrance against a unit in a

¹ s. 721.02, F.S.

² s. 721.05(41), F.S.

³ s. 718.103(26), F.S.

⁴ s. 721.05(39), F.S.

⁵ s. 721.52(8), F.S.

⁶ "Component site" means a specific geographic site where a portion of the accommodations and facilities of the multisite timeshare plan are located. s. 721.52(2), F.S.

⁷ s. 721.52(4), F.S.

⁸ s. 721.05(21), F.S.

condominium or property regime, unless the timeshare interest⁹ or the unit is “specifically subject to, or otherwise dedicated to, the multisite timeshare plan.”

The effect of this change is that persons who own a single-site timeshare interest or a unit in a component site would not be actual interestholders with respect to a multisite timeshare plan simply because they own such interests in a component site. Thus, an owner of a single-site timeshare interest in a component site cannot take action that would result in the loss of the use of the accommodations and facilities of a multisite timeshare plan by purchasers of interests in such plans. Whereas currently all owners of timeshare interests or units in the component site need to consent to an individual’s participation in a multisite timeshare plan, the bill allows only those purchasers directly affected by the multisite timeshare plan to consent.

The bill states that the revision to the existing definition of interestholder is a clarification of existing law.

Escrow Accounts, Non-Disturbance Instruments and Notice to Creditors

The bill provides that a timeshare instrument,¹⁰ declaration of condominium,¹¹ or other instrument establishing or governing a component site property regime is not an encumbrance¹² under ch. 721, F.S. It also states such documents do not require a nondisturbance and notice to creditors instrument under s. 721.08, F.S. Also, for each accommodation or facility of multisite timeshare plan involving a component site property regime, a subordination and notice to creditors instrument is not required from the managing entity, owners’ association, or any other person. As with the changes regarding the definition of interestholder the bill states the revision here is a clarification of existing law.

Termination or Extension of Timeshare Plans

Section 721.125, F.S., created in 2015,¹³ specifies procedures for the extension or termination of timeshare plans. This section applies only to a timeshare plan that has been in existence for at least 25 years as of the effective date of specified termination or extension vote or consent requirements.¹⁴ It allows for a vote or written consent, or a combination thereof, of 60 percent of all voting interests in a timeshare plan to extend or terminate the term of the timeshare plan.¹⁵

If the plan is extended, all rights privileges, duties, and obligations created by applicable law or the timeshare instrument continue in full force as if the extended termination date were the original termination date of the timeshare plan.¹⁶ If the plan is terminated, the termination has immediate effect pursuant to applicable law and the timeshare instrument as if the date of termination were the original date of termination.¹⁷ If the vote or consent for termination or extension is proposed for a component site of a multisite timeshare plan located in the state, the proposed termination or extension is only effective if the person authorized to make additions or substitutions of accommodations and facilities also approves the termination or extension.¹⁸

⁹ “Timeshare interest” means a timeshare estate, a personal property timeshare interest, or a timeshare license. s. 721.05(36), F.S.

¹⁰ “Timeshare instrument” means one or more documents, by whatever name denominated, creating or governing the operation of a timeshare plan. s. 721.05(35), F.S.

¹¹ “Declaration of condominium” means the instrument or instruments by which a condominium is created, as they are from time to time amended. s. 718.103 (15), F.S.

¹² “Encumbrance” means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property. s. 679.1021(1)(ff), F.S.

¹³ ch. 2015-144, L.O.F.

¹⁴ s. 721.125(3), F.S.

¹⁵ s. 721.125(1), F.S.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ s. 721.125(2), F.S.

Effect of the Bill on Termination of a Timeshare Plan

The bill deletes all references to extension of timeshare plans in s. 721.125, F.S. Consequently, the current law and the changes to this section in the bill will only apply to termination of time share plans and not extensions. However, the bill does create a new section of Florida Statutes, in s. 721.1255, F.S., relating to extension of timeshare plans.

Regarding termination, the bill provides if a timeshare property is managed by an owners' association that is separate from any underlying condominium, cooperative, or homeowners association, the termination of the timeshare plan does not change the corporate status of the owners' association and the following provisions apply:

- The owners' association will continue to exist to conclude its affairs, prosecute and defend actions by or against it, collect and discharge obligations, dispose of and convey its property, and collect and divide its assets. However, the owners' association may not act except as necessary to conclude its affairs and to carry out the provisions of this subsection.
- After termination of a timeshare plan, the board of administration of the owners' association must serve as the termination trustee, and may bring an action in partition on behalf of the tenants in common in each former timeshare property or sell the former timeshare property in any manner and to any person who is approved by a majority of all such tenants in common.
- The termination trustee has all powers reasonably necessary to partition or sell the former timeshare property, including the power to maintain the property during the pendency of any partition action or sale.
- All reasonable expenses incurred by the termination trustee relating to the performance of its duties, including the reasonable fees of attorneys and other professionals, must be paid by the tenants in common in the former timeshare property being partitioned or sold in proportion to their respective ownership interests.
- The termination trustee is also required to adopt reasonable procedures to implement the partition or sale of the former timeshare property and the other termination provisions.

If a timeshare plan is terminated in a timeshare condominium or timeshare cooperative and the underlying condominium or cooperative is not simultaneously terminated, a majority of the tenants in common in each former timeshare unit present and voting in person or by proxy at a meeting of such tenants in common conducted by the termination trustee, or conducted by the board of administration of the condominium or cooperative association if such association managed the former timeshare property, must :

- Designate a voting representative for the unit and file a voting certificate with the condominium or cooperative association.
- Allow the voting representative to vote on all matters at meetings of the condominium or cooperative association, including termination of the condominium or cooperative.

Effect of the Bill on Extension of a Timeshare Plan

The bill creates s. 721.1255, F.S., relating to the extension of timeshare plans. The bill makes the following findings regarding extension of timeshare plans:

- That timeshare plans are authorized by general law and many older timeshare plans are based on a condominium structure and are approaching their termination dates.
- That many older timeshare plans located in Florida have been well-maintained and continue to be financially supported, used, and enjoyed by their owners, exchangers, guests, renters, and others.
- That in order to preserve the continued use, enjoyment, tax values, and overall viability of these timeshare properties, the public policy of this state requires the creation of a general law to

enable the owners of these timeshare properties to extend the terms of their timeshare plans, notwithstanding contrary provisions in the timeshare instruments which may create uncertainty for purchasers, prospective purchasers, and lenders, and which may discourage the ongoing maintenance, refurbishment, and improvement of these timeshare properties.

These findings apply to all Florida timeshare properties. Allowing owners to extend the terms of their plans notwithstanding contrary provisions in the timeshare instruments raises issues of impairment of contracts.

The bill changes the voting and eligibility requirements for an extension of the term of a timeshare plan. The bill provides that unless the timeshare instrument specifically provides a lower percentage, the vote or written consent, or both, of at least 66 percent of all eligible voting interests is required for an extension to a timeshare plan. The voting interests may be present in person or by proxy at a duly noticed, called, and constituted meeting of the owners' association.

The bill revises the quorum requirement for a timeshare extension vote. The bill provides that unless the timeshare instrument specifically provides for a lower quorum, the quorum for an owners' association meeting is 50 percent of all eligible voting interests in the timeshare plan.

The bill also provides that 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 to the same extent as if the extended termination date of the timeshare plan were the original termination date of the timeshare plan. This provision is in current law and is moved to this section.

Although these changes regarding quorum and voting to extend timeshare plans would seem to increase the number of voters necessary for taking action, the effect may be the opposite. The current law mandates a floor for quorums and voting; the bill establishes a ceiling. According to representatives of the timeshare industry most timeshare instruments require a much higher percentage for obtaining a quorum and for voting and in many cases require a 100 percent vote of all timeshare owners. Thus, one effect of the bill is that there should be greater opportunities for owners to extend their use of such plans. On the other hand, those who desire for the timeshare plan to terminate rather than extend might experience increased difficulty in achieving that objective.

For meetings to vote whether to extend a timeshare plan, the bill provides that a duly called and constituted meeting may be held at any time before the termination of the plan, thereby allowing more scheduling flexibility than currently available in some timeshare instruments. The bill also provides that the board of administration of the owners' association may determine that any person or entity holding a voting interest that is delinquent in the payment of more than two years of assessments is ineligible to vote on any extension of the timeshare plan unless the delinquency is paid in full before the vote. Finally, regarding voting procedures, the bill provides that a proxy for a vote to extend a timeshare plan may be valid for a period of up to three years and is revocable unless it states that it is irrevocable. Currently, the duration and revocability of proxies for voting on matters respecting timeshare plans are not addressed in statute.

The bill provides that an extension for a component site of a multisite timeshare plan is effective only if the extension is approved by the person authorized to make additions or substitutions of accommodations and facilities pursuant to the timeshare instrument.

B. SECTION DIRECTORY:

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

Section 2 amends s. 721.08, F.S., relating to escrow accounts; nondisturbance instruments; alternate security arrangements; transfer of legal title.

Section 3 amends s. 721.125, F.S., relating to extension and termination of timeshare plans.

Section 4 creates s. 721.1255, F.S., relating to extension of timeshare plans.

Section 5 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

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:

For timeshare owners wishing to extend their plans, the bill may allow them to continue to use and enjoy their property without facing termination. For those owners who want their plan to terminate they may face having to sell or forfeit their interest to avoid paying additional maintenance fees.

D. FISCAL COMMENTS:

The Department of Business and Professional Regulation notes there is no fiscal impact to the private sector or to state government.¹⁹

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:

Article I, Section 10, of the Florida Constitution provides, in relevant part, “[n]o . . . law impairing the obligation of contracts shall be passed.” This provision empowers the courts to strike laws that retroactively burden or alter contractual relations.²⁰ Not all contractual impairments warrant overturning an otherwise valid law. Contract rights are clearly subject to the state’s power of

¹⁹ Florida Department of Business and Professional Regulation, Agency Analysis of 2017 House Bill 829, p. 4 (March 2, 2017).

²⁰ *In re Advisory Op. to the Governor*, 509 So.2d 292 (Fla. 1987); *Daytona Beach Racing & Recreational Facilities Dist. v. Volusia Cnty.*, 372 So.2d 419 (Fla. 1979); *Dewberry v. Auto Owners Ins. Co.*, 363 So.2d 1077 (Fla. 1978).

taxation.²¹ Also, the state has some ability to modify contractual remedies without transgressing the Contract Clause. In *Ruhl v. Perry*,²² the Florida Supreme Court stated “[i]t is well established that, by legislative enactment, a state may modify existing remedies, including a statute of limitations, without impairing the obligation of contracts so long as a sufficient remedy is left or another sufficient remedy is provided.”²³

State statutes that impair contractual obligations are measured on a sliding scale of scrutiny. The degree of contractual impairment permitted is delineated by the importance of the governmental interests advanced.²⁴ The court, in *Pomponio v. Claridge of Pompano Condo., Inc.*,²⁵ enumerated several factors it might weigh when making such determinations:

- a. Whether the law was enacted to deal with a broad economic or social problem;
- b. Whether the law operates in an area that was already subject to state regulation at the time the contract was entered into; and
- c. Whether the effect on the contractual relationship is temporary; not severe, permanent, immediate, and retroactive.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2017, the Civil Justice & Claims Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed a provision that the extension of a timeshare plan language applies to all timeshare properties in the state; and
- Made grammatical changes to the bill.

This analysis is drafted to the committee substitute as passed by the Civil Justice & Claims Subcommittee.

²¹ *Straughn v. Camp*, 293 So.2d 689 (Fla. 1974).

²² 390 So.2d 353 (Fla. 1980).

²³ *Id.* at 355

²⁴ *Yellow Cab Co. of Dade Cnty. v. Dade Cnty.*, 412 So.2d 395 (Fla. 3d DCA 1982).

²⁵ 378 So.2d 774 (Fla. 1980).