

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 575 Vacation and Timeshare Plans

SPONSOR(S): Regulatory Reform Subcommittee, McClain

TIED BILLS: **IDEN./SIM. BILLS:** SB 1216

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	16 Y, 0 N, As CS	Thompson	Anstead
2) Civil Justice & Property Rights Subcommittee	16 Y, 0 N	Mawn	Jones
3) Commerce Committee			

SUMMARY ANALYSIS

A “timeshare plan” is any arrangement, plan, scheme, or similar device, other than an exchange program, whereby a purchaser, for consideration, receives ownership rights in or a right to use accommodations and facilities for a period of time less than a full year during any given year, but not necessarily for consecutive years. The term includes personal property timeshare and real property timeshare plans. 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 and prospective purchasers. The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation (DBPR) administers the Act.

CS/HB 575 amends the Act to:

- Allow timeshare developers to electronically deliver certain documents and notices.
- Eliminate certain requirements for the offering of incidental benefits in the sale of a timeshare plan.
- Allow a purchaser to assign incidental benefits without the approval of the provider.
- Revise the requirements for the cancellation of a timeshare plan by clarifying that the term “execution date” refers to the execution date of the contract.
- Extend the period for voiding a contract where closing occurred before the expiration of the cancellation period from one year to five years but keep the period for voiding a contract where a prohibited attempt has been made to obtain a cancellation right waiver at one year.
- Expand the definition of the term “advertising material” to include any message, text, picture, video, or other content made available, delivered, or shared electronically through the Internet or any other Internet-based access.
- Exempt electronic advertising materials from required disclosures if such disclosures are given before a purchaser takes any affirmative action pursuant to a promotion.
- Revise the provisions for resolving disputes related to the allocation of the share of the net proceeds from the disposition of the timeshare property in a termination.
- Allow board of administration and owners’ association meetings to be conducted electronically.
- Authorize the managing entity of a timeshare plan and the board of an owners’ association to exercise specified emergency powers in certain circumstances.
- Allow timeshare estates and timeshare licenses to be offered in a nonspecific multisite timeshare plan.
- Revise certain foreclosure procedures.

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

The effective date of the bill is upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Vacation Plan and Timesharing Act

A “timeshare plan” is any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, or right-to-use agreement or by any other means, where a purchaser, for consideration, receives ownership rights in or a right to use accommodations and facilities, if any, for a period of time less than a full year during any given year, but not necessarily for consecutive years.¹ The term includes both personal property timeshare and real property timeshare plans.²

Chapter 721, F.S., the Florida Vacation Plan and Timesharing Act (Act), administered by the Division of Florida Condominiums, Timeshares, and Mobile Homes (Division) within the Department of Business and Professional Regulation (DBPR), establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers and prospective purchasers.³ The Act applies to all timeshare plans consisting of more than seven timeshare periods over a period of at least three years when the accommodations and facilities are located or offered within Florida, with exceptions.⁴

Under the Act, a:

- “Timeshare unit” means an accommodation of a timeshare plan which is divided into timeshare periods.⁵
- “Timeshare period” means the period of time when a purchaser of a timeshare interest is afforded the opportunity to use a timeshare plan’s accommodations.⁶
- “Timeshare interest” means a timeshare estate, a personal property timeshare interest, or a timeshare license.⁷
- “Timeshare estate” means 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 or a specified portion thereof;
 - An ownership interest in a condominium or cooperative unit; or
 - A direct or indirect beneficial interest in a trust, provided that the trust does not contain any personal property timeshare interests.⁸
- “Timeshare license” means the right to occupy a timeshare unit, which right is not a personal property timeshare interest or a timeshare estate.⁹
- “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.¹⁰

Vacation Clubs

¹ S. 721.05(39), F.S.

² A “personal property timeshare plan” is a timeshare plan in which the accommodations are comprised of personal property that is not permanently affixed to real property. A “real property timeshare plan” is a timeshare plan in which the accommodations of the timeshare plan are comprised of or permanently affixed to real property. *Id.*

³ S. 721.02(2) and (3), F.S.

⁴ S. 721.03, F.S.

⁵ See ss. 721.05(41) and 718.103(26), F.S.

⁶ S. 721.05(38), F.S.

⁷ S. 721.05(36), F.S.

⁸ A timeshare estate is a parcel of real property under state law. S. 721.05(34), F.S.

⁹ S. 721.05(37), F.S.

¹⁰ S. 721.05(28), F.S.

Part II of the Act governs vacation plans and multisite timeshare plans, known as vacation clubs.¹¹ 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 or more than one component site, only through use of a reservation system, whether or not the purchaser may elect to cease participating in the plan.¹² However, this term does not include any method, arrangement, or procedure wherein:

- The contractually specified maximum total financial obligation is \$3,000 or less during the plan’s entire term; or
- The term is for a period of three years or less.¹³

A multisite timeshare plan must meet all the requirements of a traditional timeshare plan and additional requirements specific to multisite timeshare plans.¹⁴ Any offering that does not comply with these additional requirements is deemed to be an offering of a timeshare license.¹⁵

A multisite timeshare plan may be specific or non-specific. A “specific multisite timeshare plan” is a multisite timeshare plan where a purchaser receives a specific right to use accommodations and facilities, if any, at one component site of a multisite timeshare plan, together with use rights in other accommodations and facilities of the plan created by or acquired through the reservation system.¹⁶ When a timeshare estate is offered in a specific multisite timeshare plan, the timeshare instrument must contain or provide for all of the following matters:

- The purchaser will receive a timeshare estate in one of the component sites of the specific plan. The use rights in the other component sites must be made available to the purchaser through the reservation system pursuant to the timeshare instrument.
- If the reservation system is terminated or otherwise becomes unavailable for any reason before the plan expires:
 - The purchaser will be able to continue to use the accommodations and facilities of the component site in which she or he has been conveyed a timeshare estate in the manner described in the timeshare instrument for that component site for the remaining term of the timeshare estate; and
 - Any use rights in that component site which had previously been made available through the reservation system to purchasers of the plan who were not offered a timeshare estate at that component site will terminate when the reservation system is terminated or otherwise becomes unavailable for any reason.¹⁷

Conversely, a “nonspecific multisite timeshare plan” is a multisite timeshare plan where a purchaser receives a right to use all of the accommodations and facilities, if any, of the multisite timeshare plan through the reservation system, but no specific right to use any particular accommodations and facilities for the remaining term of the plan if the reservation system is terminated for any reason before the plan expires.¹⁸

Application of the Condominium and Cooperative Acts

In addition to regulation under the Act, a timeshare plan may also be subject to ch. 718, F.S. (the Condominium Act) or ch. 719, F.S. (the Cooperative Act); where this is the case, the timeshare plan must meet the requirements of both chapters unless an exemption applies.¹⁹ Specifically, if a timeshare plan subject to either ch. 718 or ch. 719, F.S. is fully compliant with the Act, the timeshare plan is exempt from certain provisions of chs. 718 or 719, F.S., including provisions relating to:

- Sales or reservation deposits prior to closing;

¹¹ Ch. 721, F.S.

¹² Ss. 721.52(8) and 721.52(4), F.S.

¹³ S. 721.52(4), F.S.

¹⁴ S. 721.57(1), F.S.

¹⁵ *Id.*

¹⁶ S. 721.52(7), F.S.

¹⁷ S. 721.57(2), F.S.

¹⁸ S. 721.52(5), F.S.

¹⁹ S. 721.03(2), F.S.

- Filing prior to sale or lease;
- Disclosures prior to sale;
- The prospectus or offering circular; and
- Conversions to the condominium or cooperative form of ownership.²⁰

Timeshares Under the Condominium Act

Timeshare estates may not be created with respect to any condominium unit except pursuant to provisions in the declaration of condominium expressly permitting the creation of such estates.²¹ A declaration must, if timeshare estates will or may be created with respect to any condominium unit:

- Provide a statement in conspicuous type declaring that timeshare estates will or may be created with respect to units in the condominium; and
- Define and describe in detail the degree, quantity, nature, and extent of the timeshare estates that will or may be created.²²

Unless otherwise provided in the declaration as originally recorded, an amendment to the declaration may not authorize a timeshare estate to be created in any condominium unit unless the record owner of each condominium unit and of liens on each condominium unit join in the amendment's execution.²³

Timeshares Under the Cooperative Act

Original cooperative documents²⁴ must describe whether or not timeshare estates will or may be created with respect to any cooperative units and, if so, the degree, quantity, nature, and extent of such estates, specifying the minimum duration of the recurring periods of rights of use, possession or occupancy that may be established with respect to any unit.²⁵ Unless the creation of timeshare estates in any cooperative unit is authorized by the original cooperative documents an amendment adding phases to a cooperative that authorizes the creation of timeshare estates in any unit of the additional phase requires the execution or consent by all unit owners other than the developer.²⁶

Public Offering Statement

Timeshare Plans

Current law requires a developer to submit a public offering statement to the Division before any timeshare plan is offered for sale, which public offering statement must contain specified information.²⁷ The Division may prescribe the form of the public offering statement and generally must approve the public offering statement before it is delivered to prospective purchasers, except that an unapproved public offering statement may be delivered to prospective purchasers after filing with the Division if specific notice is given and the developer delivers a fully completed and executed copy of the purchase contract containing a specific statement in conspicuous type.²⁸

Specified documents must be included as exhibits to the filed public offering statement, if applicable.²⁹

The Developer must also furnish each purchaser with the following:

- A copy of the purchaser public offering statement text in the form approved by the Division for delivery to purchasers.
- Copies of the exhibits to the public offering statement required to be filed with the Division.

²⁰ S. 721.03(3), F.S.

²¹ The "declaration of condominium" is the instrument creating the condominium, as it is amended from time to time. Ss. 718.103(15) and 718.1045, F.S.

²² S. 718.104(4)(o), F.S.

²³ S. 718.110(8), F.S.

²⁴ "Cooperative documents" means the documents: creating the cooperative; evidencing a unit owner's membership or share in the association; or recognizing a unit owner's title or right of possession to his or her unit. S. 719.103(13), F.S.

²⁵ S. 719.403(2)(f), F.S.

²⁶ S. 719.403(6)(e), F.S.

²⁷ S. 721.07, F.S.

²⁸ S. 721.07(2) and (6), F.S.

²⁹ S. 721.07(7)(ff), F.S.

- A receipt for timeshare plan documents and a list describing any exhibit to the filed public offering statement filed with the Division which is not delivered to the purchaser.
 - The Division is authorized to prescribe by rule the form of the receipt for timeshare plan documents and the description of exhibits list that must be furnished to the purchaser.
 - The description of documents list utilized by a developer must be filed with the Division for review as part of the filed public offering statement.
 - The developer must provide the managing entity with a copy of the approved filed public offering statement and any approved amendments to be maintained by the managing entity as part of the books and records of the timeshare plan.
- Any other exhibit which the developer includes as part of the purchaser public offering statement, provided that the developer first files the exhibit with the Division.
- An executed copy of any document which the purchaser signs.
- A fully executed paper copy of the purchase contract.³⁰

Multisite Timeshare Plans

Each public offering statement for a multisite timeshare plan must comply with the offering statement requirements for a traditional timeshare plan and contain additional information and disclosures, including a description of each component site, which description may be disclosed in a written, graphic, tabular, or other form approved by the Division.³¹ Specified documents must also be included as exhibits to the filed multisite timeshare plan public offering statement, if applicable.³²

Incidental Benefits

Current law allows the offering of specified incidental benefits to purchasers of timeshare interests in certain circumstances.³³ “Incidental benefit” means:³⁴

...an accommodation, product, service, discount, or other benefit which is offered to a prospective purchaser of a timeshare plan or to a purchaser of a timeshare plan prior to the expiration of his or her initial 10-day voidability period pursuant to s. 721.10[, F.S.]; which is not an exchange program as defined in [s. 721.05(16), F.S.]; and which complies with the provisions of s. 721.075[, F.S.] The term shall not include an offer of the use of the accommodations and facilities of the timeshare plan on a free or discounted one-time basis.

Examples of incidental benefits include exchange rights, travel insurance, bonus weeks, referral awards, and golf and tennis packages.³⁵

Incidental benefits are subject to required disclosures and restrictions, including a limit on the aggregate represented value of all incidental benefits offered by a developer to a purchaser of not more than 15 percent of the purchase price. The incidental benefits must be filed with the Division for review in conjunction with the filing of a timeshare plan or in connection with a previously filed timeshare plan.³⁶ Additionally, each timeshare plan purchaser must execute a separate acknowledgment and disclosure statement with respect to all incidental benefits, which statement must include:

- A fair description of the incidental benefit, including any user fees or costs associated with the benefit and use or availability restrictions;

³⁰ S. 721.07(6), F.S.

³¹ S. 721.55, F.S.

³² S. 721.55(7), F.S.

³³ S. 721.075, F.S.

³⁴ S. 721.05(19), F.S.

³⁵ Law Insider, *Incidental Benefit Definition*, <https://www.lawinsider.com/dictionary/incidental-benefit#:~:text=Incidental%20benefit%20means%20an%20accommodation,voidability%20period%20pursuant%20to%20s> (last visited Feb. 16, 2022).

³⁶ S. 721.075(2), F.S.

- A statement that the use of or participation in the incidental benefit is completely voluntary, and that payment of any fee or other cost associated with the benefit is required only upon such use or participation;
- A statement that the incidental benefit is not assignable or otherwise transferable by the prospective purchaser or purchaser;
- A statutorily-prescribed disclosure statement; and
- A statement indicating the source of the services, points or other products constituting the incidental benefit.³⁷

The acknowledgement and disclosure statement must be filed with the Division before use,³⁸ and the developer must promptly notify the Division upon learning of any incidental benefit's unavailability.³⁹

Cancellations

Under current law, a timeshare plan purchaser may cancel the purchase contract until midnight of the tenth calendar day after whichever of the following occurs later:

- The execution date; or
- The date on which the purchaser received the last of all documents required to be given pursuant to s. 721.07(2)(d)2., F.S.⁴⁰

Further, if the developer delivers to the purchaser a filed but unapproved public offering statement, the purchaser may cancel the purchase contract within 10 calendar days after the purchaser signs the purchase contract or receives the last of all documents required to be given under s. 721.07(6), F.S., whichever is later.⁴¹

It is unlawful to attempt to obtain a waiver of the timeshare plan purchaser's cancellation right or to hold the closing before the cancellation period's expiration, and such premature and unlawful closing is voidable at the option of the purchaser for a period of one year after the expiration of the cancellation period.⁴²

Advertising Materials

Current law provides for the regulation of advertising materials used in connection with the sale of a timeshare plan.⁴³ The term "advertising material" includes a variety of materials and advertising methods, including promotional brochures, pamphlets, and radio and television advertisements.⁴⁴

No written advertising material, including any lodging certificate, gift award, premium, discount, or display booth, may be used unless each prospective purchaser is given a disclosure in conspicuous type in substantially the following form:⁴⁵

This advertising material is being used for the purpose of soliciting sales of timeshare interests; or This advertising material is being used for the purpose of soliciting sales of a vacation (or vacation membership or vacation ownership) plan.

Such disclosure typically must only be provided on one piece of advertising for each advertising promotion or marketing campaign, and it must be provided before the purchaser is required to take any affirmative action pursuant to the promotion.⁴⁶

³⁷ *Id.*

³⁸ *Id.*

³⁹ S. 721.075(3)(a), F.S.

⁴⁰ S. 721.10(1), F.S.

⁴¹ S. 721.07(2)(d), F.S.

⁴² S. 721.10(1), F.S.

⁴³ S. 721.11, F.S.

⁴⁴ See s. 721.11(2), F.S.

⁴⁵ The Division may approve the use of an alternate disclosure. S. 721.11(5)(a), F.S.

⁴⁶ *Id.*

Termination of Timeshare Plans

Current law provides for termination of timeshare plans upon the vote or written consent of 60 percent of all the voting interests in the timeshare plan, unless the timeshare instrument provides otherwise.⁴⁷ After termination of a timeshare plan, the board of administration of the owners' association (board) serves as the termination trustee. In that fiduciary capacity, the board may bring a partition action on behalf of the tenants in common in each former timeshare property, or may sell the former timeshare property in any manner and to any person approved by a majority of all the tenants in common. The board also has all other powers reasonably necessary to accomplish the partition or sale, including the power to maintain the property while the partition action or sale is pending, and must adopt reasonable procedures to implement the partition or sale and comply with statutory requirements.⁴⁸ All reasonable expenses incurred by the board relating to the performance of its trustee duties, including reasonable fees of attorneys and other professionals, must be paid by the tenants in common, in proportion to their respective ownership interests.⁴⁹

The timeshare plan termination provisions apply to timeshare plans that have existed for at least 25 years as of the effective date of the termination vote or consent.⁵⁰

Management of a Timeshare Plan

Current law requires the developer to provide a managing entity for each timeshare plan, which entity may be the developer, a separate manager or management company, or an owners' association.⁵¹ Any owner's association must be created before the first closing of the sale of a timeshare interest.⁵² However, with respect to a timeshare plan which is also regulated under chs. 718 or 719, F.S., or which contains a mandatory owner's association, the board of administration of the owner's association is the timeshare plan's managing entity.⁵³

The duties of a managing entity include:

- Management and maintenance of all accommodations and facilities constituting the timeshare plan;
- Collection of all assessments for common expenses;
- Providing an itemized annual budget to all purchasers;
- Maintaining all books and records concerning the timeshare plan and making such books and records reasonably available for inspection by any purchaser;
- Arranging for an annual audit of the timeshare plan's financial statement;
- Scheduling timeshare unit occupancy in certain circumstances;
- Performing any other functions and duties necessary to maintain the accommodations or facilities; and
- Entering into ad valorem tax escrow agreements before the receipt of any ad valorem tax escrow payments under certain conditions.

Managing Entity Emergency Powers

Florida law provides for the exercise of specified emergency powers by the boards of condominium, cooperative, and homeowners' associations in response to damage or injury caused by or anticipated in connection with a declared state of emergency.⁵⁴ Such emergency powers include, unless prohibited by other law or the association's governing documents, the power to:

⁴⁷ S. 721.125, F.S.

⁴⁸ S. 721.125(3)(a)1., F.S.

⁴⁹ S. 721.125(3)(a)2., F.S.

⁵⁰ S. 721.125(4), F.S.

⁵¹ "Owners' association" means an association made up of all owners of timeshare interests in a timeshare plan, including developers and timeshare plan purchasers. Ss. 721.05(27) and 721.13, F.S.

⁵² *Id.*

⁵³ S. 721.13(1), F.S.

⁵⁴ Ss. 718.1265, 719.128, and 720.316, F.S.

- Conduct board meetings, elections, and membership meetings by telephone, real-time videoconferencing, or similar real-time electronic or video communication with notice given as practicable;
- Cancel and reschedule any association meeting;
- Name as assistant officers person who are not board directors;
- Relocate the association's principal office or designate alternative principal offices;
- Enter into agreements with local governments to assist with debris removal;
- Implement a disaster or emergency plan that may include, but is not limited to, shutting down or off elevators; electricity; water, sewer, or security systems; or air conditioners;
- Determine any portion of the association property is unavailable for entry or occupancy in certain circumstances;
- Require the evacuation of association property in certain circumstances;
- Determine that association property can be safely inhabited, accessed, or occupied, in certain circumstances;
- Mitigate further damage, injury, or contagion;
- Contract for items or services for which the owners are otherwise individually responsible, but which are necessary to prevent further injury, contagion, or damage, and obtain reimbursement;
- Levy special assessments without an owner vote; and
- Borrow money or pledge association assets as collateral to fund emergency repairs and carry out association duties when operating funds are insufficient.⁵⁵

However, the Act does not provide comparable emergency powers for a timeshare plan's managing entity.

Foreclosures

Part III of the Act provides specific guidelines for the foreclosure of liens on timeshare interests, recognizing that such interests are used for vacation rather than for homestead or investment purposes.⁵⁶ Under this part, a complaint in a foreclosure proceeding involving timeshare interests may join in a single action multiple obligors and junior interest-holders of separate timeshare interests if:

- The proceeding involves a single timeshare property;
- The proceeding is filed by a single plaintiff;
- The default and remedy provisions in the written instruments on which the proceeding is based are substantially the same for each defendant;
- The nature of the defaults alleged is the same for each defendant; and
- No more than 15 timeshare interest are joined within the same consolidated foreclosure action.⁵⁷

Service of process for a foreclosure proceeding involving a timeshare interest may be made by any means recognized by law, and substituted service on a purchaser who has appointed a registered agent may be made on such registered agent at the registered office.⁵⁸ Additionally, when using s. 48.194, F.S., relating to personal service outside the state, where only in rem or quasi in rem relief is sought:

- Service of process may be made on any person whether the person is located inside or outside the state, by certified mail, registered mail, or permitted delivery service, return receipt requested, addressed to the person to be served at the notice address, or on the person's duly registered agent; and
- Service is considered obtained upon the signing of the return receipt by any person at the notice address, or by the registered agent.⁵⁹

⁵⁵ The powers to require association property evacuation and to contract for items or services for which the owners are otherwise individually responsible are only held by condominium and cooperative associations.

⁵⁶ Ss. 721.80 through 721.86, F.S.

⁵⁷ S. 721.83(1), F.S.

⁵⁸ For methods of service authorized by law, see ch. 48, F.S., relating to process and service of process. A purchaser may appoint a registered agent under s. 721.84, F.S. S. 721.85(1), F.S.

⁵⁹ S. 721.85(1), F.S.

“Permitted delivery service” means any nationally recognized common carrier delivery service, international airmail service that allows for return receipt service, or a service recognized by an international jurisdiction as the equivalent of certified, registered mail for that jurisdiction.⁶⁰

Further, a lienholder in a trustee foreclosure proceeding for assessment liens may appoint a trustee at any time by recording a notice of appointment of trustee or notice of substitution of trustee in the official records of the county or counties in which the timeshare interest is located.⁶¹ A trustee must use good faith, skill, care, and diligence in discharging all of the trustee’s statutorily-imposed duties and deal honestly and fairly with the parties.⁶² Before initiating the trustee foreclosure procedure against any timeshare interest in a given timeshare plan, certain requirements must be met, including that a claim of lien must first be recorded.⁶³ Further, the trustee must notify the obligor of the proceeding by sending the obligor a written notice of default and intent to foreclose to the notice address of the obligor by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail, postage prepaid.⁶⁴

An obligor may object to the lienholder’s use of the trustee foreclosure proceeding for a specific default any time before the sale of the timeshare interest⁶⁵ by delivering a written objection to the trustee using the statutorily-provided objection form.⁶⁶ An obligor may also cure the default and redeem the timeshare interest by paying the amounts secured by the lien in cash or certified funds to the trustee before the trustee issues the certificate of sale.⁶⁷

Similar procedures exist in a trustee foreclosure proceeding for mortgage liens under the Act.⁶⁸

Effect of the Bill

Public Offering Statement

Timeshare Plans

CS/HB 575 allows a developer to provide each timeshare plan purchaser with the option to receive the approved public offering statement electronically, which electronic delivery may be made through a website or other Internet-based access. The bill authorizes the Division to prescribe by rule the form on which a purchaser may select the manner in which he or she wants to receive the approved public offering statement, and such form must:

- Disclose the system requirements necessary to view the approved statement electronically; and
- Advise the purchaser to not select an alternative method of receiving the approved statement unless he or she is able to review the approved statement before the 10-day cancellation period expires.

The bill also:

- Requires that a copy of the purchaser manner of delivery form be delivered to each timeshare plan purchaser; and
- Allows the documents that must be furnished to each timeshare plan purchaser to be furnished electronically through a website or other Internet-based access.

Multisite Timeshare Plans

⁶⁰ S. 721.82(11), F.S.

⁶¹ S. 721.855(1), F.S.

⁶² *Id.*

⁶³ S. 721.855(2), F.S.

⁶⁴ S. 721.855(5), F.S.

⁶⁵ Conditions on the trustee’s power to sell an encumbered timeshare interest can be found in s. 721.855(4), F.S.

⁶⁶ S. 721.855(3), F.S.

⁶⁷ *Id.*

⁶⁸ S. 721.856, F.S.

The bill allows the description of each component site that each filed public offering statement for a multisite timeshare plan must contain to be provided to the purchaser electronically, such as through a website or other Internet-based access. The bill also provides that a developer is not required to file a separate public offering statement for any component site located within or outside Florida in order to include the component site in the multistate timeshare plan.

Incidental Benefits

The bill allows a purchaser to assign or transfer an incidental benefit without the approval of the provider of the incidental benefit. The bill also removes the:

- Limitation on the aggregate represented value of all incidental benefits.
- Requirement that an acknowledgement and disclosure statement indicate the source of the services, points, or other products that constitute the incidental benefit.
- Requirement that the developer promptly notify the division upon learning of the unavailability of any incidental benefit.

Cancellations

The bill clarifies the term “execution date” to mean the execution date “of the contract.” The bill also extends the period for voiding a contract for which the closing unlawfully occurred before the cancellation period’s expiration from one year to five years. However, the period for voiding a contract for which an attempt was made to obtain a cancellation right waiver remains at one year.

Advertising Materials

The bill expands the definition of the term “advertising material” to include any message, text, picture, video, or other content made available, delivered, or shared electronically through the Internet or any other Internet-based access. The bill also provides that such electronic advertising materials do not need to contain the mandatory disclosures if such disclosures are given to the purchaser before he or she takes any affirmative action pursuant to a promotion.

Termination of Timeshare Plans

The bill clarifies that the board of administration of the owners' association must serve as termination trustee for the purposes of implementing the plan’s termination, unless another person is appointed as the termination trustee during the termination or by the court. The bill also specifies that the termination trustee acts in a fiduciary capacity to the owners of timeshare interests in a timeshare plan and has all other powers necessary to comply with the trustee’s statutory requirements.

Further, the bill provides that, if an owner of a timeshare interest or any other person claiming an interest in the owner’s allocated share of the net proceeds from the timeshare property’s disposition disputes the distribution of such proceeds, the trustee may file an interpleader action in circuit court and deposit the disputed funds into the court registry, at which time the timeshare property and the proceeds distributed pursuant to its disposition are free of all claims and liens of the parties to the interpleader action.

The new termination procedures apply to all timeshare plans in the state in existence on or after July 1, 2022, provided that the timeshare plan has existed for at least 25 years as of the effective date of the timeshare plan’s termination.

Management of Timeshare Plans

The bill prohibits the managing entity of a timeshare plan from sending notices that must be sent to the owner of a timeshare interest pursuant to chs. 718, 719, or 721, F.S., to the address of the owner’s timeshare unit or timeshare plan. The bill also allows the board of administration or the members of an owners’ association to conduct board meetings or owners’ meetings electronically.

Managing Entity Emergency Powers

The bill authorizes the managing entity of a timeshare plan, including the board of an owners' association, to exercise specified emergency powers in response to an actual or anticipated emergency, as defined in s. 252.34(4), F.S., including, but not limited to, a state of emergency declared by the Governor for the location of the timeshare accommodations or facilities of the timeshare plan, to the extent allowed by law. Such authorized emergency powers include the power to:

- Cancel and reschedule any board of administration or owners' meeting;
- Name as assistant officers persons who are not directors of the owners' association;
- Temporarily relocate the managing entity's principal office or designate alternative principal offices;
- Enter into agreements with local government for assistance;
- Implement an emergency plan that may include shutting down or off elevators; electricity; water, sewer, or security systems; or air conditioners;
- Determine that all or any portion of the timeshare property is unavailable for entry, use, or occupancy to protect health, safety, or welfare or the accommodations or facilities of the timeshare plan;
- Require the evacuation of the timeshare property with proper notice;
- Determine if all or a portion of the timeshare property, including recreational and other accommodations or facilities, may be safely used, inhabited, or occupied, and whether all or a portion of such property needs to be closed for a period of time;
- Mitigate further damage, including by contracting for the removal of debris and preventing or mitigating the spread of fungus by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the timeshare property;
- Levy a special assessment without a vote of the owners even if such authority does not specifically appear in the timeshare instrument;
- Borrow money and pledge association assets without a vote of the unit owners;
- Issue emergency rules regarding the operation of the reservations systems and modify or suspend rights to use the timeshare property and the one-to-one right to use requirement;
- Transfer funds in any deferred maintenance or capital expenditure reserve account to any operating account without the consent of a majority of the purchasers of the timeshare plan; and
- Take any other actions reasonably necessary to protect the health, safety, and welfare of the owners and the owners' family members, tenants, guests, agents, invitees, exchangers, and other occupants or to protect the timeshare property.

Foreclosures

The bill revises the term “permitted delivery service” to include delivery to an e-mail address, if provided by the obligor, with evidence that the lienholder received the e-mail. The bill also provides that permitted delivery service is only authorized for obligors who reside outside the United States.

Further, the bill:

- Requires the obligor to object to the lienholder's use of the trustee foreclosure procedure for a specific default within 30 days after receipt of the notice of default and intent to foreclose and modifies the notice to reflect this change.
- Specifies that the notice of default and intent to foreclose is considered perfected upon the trustees' timely receipt of the return receipt even where the:
 - Obligor or the junior interest-holder is not the person who signed the return receipt; or
 - Trustee cannot ascertain, in good faith, that the obligor or junior interest-holder is the person who signed the receipt because all or a portion of such person's name is not on the signed receipt or because the trustee cannot otherwise determine who signed the receipt.
- Modifies service requirements for the:
 - Notice of sale to require that the notice be sent by both permitted delivery service, if applicable, and first-class mail.
 - Certificate of sale to require that a copy of the notice be sent by certified or registered mail or by permitted delivery service, if applicable, and first-class mail.
- Provides that mediation, a settlement conference, or any other effort to resolve a foreclosure is not required once a default in a judicial foreclosure of an assessment lien or mortgage lien has been issued.
- Makes conforming changes.

Effective Date

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

B. SECTION DIRECTORY:

- Section 1: Amends s. 721.07, F.S., relating to public offering statement.
Section 2: Amends s. 72.075, F.S., relating to incidental benefits.
Section 3: Amends s. 721.10, F.S., relating to cancellation.
Section 4: Amends s. 721.11, F.S., relating to advertising materials; oral statements.
Section 5: Amends s. 721.125, F.S., relating to termination of timeshare plans.
Section 6: Amends s. 721.13, F.S., relating to management.
Section 7: Amends s. 721.131, F.S., relating to managing entity emergency powers.
Section 8: Amends s. 721.55, F.S., relating to multisite timeshare plan public offering statement.
Section 9: Amends s. 721.551, F.S., relating to delivery of multisite timeshare plan purchaser public offering statement.
Section 10: Amends s. 721.82, F.S., relating to definitions.
Section 11: Amends s. 721.855, F.S., relating to procedure for the trustee foreclosure of assessment liens.
Section 12: Amends s. 721.856, F.S., relating to procedure for the trustee foreclosure of mortgage liens.
Section 13: Amends s. 721.86, F.S., relating to miscellaneous provisions.
Section 14: Amends s. 721.09, F.S., relating to reservation agreements; escrows.
Section 15: Reenacting s. 721.111, F.S., relating to prize and gift promotional offers.
Section 16: Providing an effective date of upon becoming a law.

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:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Division of Florida Condominiums, Timeshares, and Mobile Homes to prescribe by rule a specified form on which a purchaser must select the manner in which he or she wants the approved purchaser public offering statement delivered.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 3, 2022, the Regulatory Reform Subcommittee considered a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from HB 575 in the following ways:

- Removed the provision creating additional exemptions for timeshare estates in a nonresidential condominium unit;
- Removed the provision that would have allowed a lower percentage of voting interests to terminate the timeshare plan.
- Removed the provision authorizing attorney fees and costs when a termination trustee files an interpleader action disputing the disposition of timeshare proceeds.

- Specified that managing entities can “temporarily” relocate offices during a state of emergency.
- Required managing entities to provide notice of evacuation to the timeshare owner or occupant during state of emergency.
- Removed the authority for managing entities to contract for emergency services on behalf of the owners and then require reimbursement including the use of lien authority.
- Removed the provision allowing timeshare estates or timeshare licenses to be offered in a nonspecific multisite timeshare plan.
- Revises the timeframe that an obligor has to object to the lienholder's use of the trustee foreclosure procedure from within 20 days after receipt of the notice of default and intent to foreclose, to instead within 30 days of such notice.
- Made other technical and clarifying changes.

The analysis is drafted to the committee substitute as passed by the Regulatory Reform Subcommittee.