HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 801 Valuation of Timeshare Units
SPONSOR(S): Fine
TIED BILLS: **IDEN./SIM. BILLS:** SB 1132

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ways & Means Committee	13 Y, 2 N	Davis	Aldridge
2) Commerce Committee			

SUMMARY ANALYSIS

This bill provides that upon an appeal of a property appraiser's valuation of timeshare property, the number of resales is deemed to be adequate if the taxpayer asserts that there is a reasonable number of resales as supported by the Uniform Standards of Professional Appraisal Practice. Current law requires a property appraiser to first look to the resale market to value timeshare property. If there is an inadequate number of resales for arriving at the value, the property appraiser must use the original purchase price of the timeshare and deduct "usual and reasonable fees and costs of the sale."

The Revenue Estimating Conference estimated that the bill would have a recurring negative impact on local government property tax revenues of $190.5 million ($69.8 million school taxes; $118.7 non-school taxes), beginning in FY 2023-24.

The bill is effective July 1, 2022.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Timeshares

A timeshare interest is a form of ownership of real and personal property.[1] In a timeshare, multiple parties hold the right to use a condominium unit or a cooperative unit. Each owner of a timeshare interest is allotted a period of time during which the owner has the exclusive right to use the property.

The Florida Vacation Plan and Timesharing Act, ch. 721, F.S., 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.[2] Chapter 721, F.S., applies to all timeshare plans consisting of more than seven timeshare periods over a period of at least three years in which the accommodations and facilities are located within this state or offered within this state.[3] Part I of ch. 721, F.S., relates to vacation plans and timesharing, and Part II of chapter 721, F.S., relates to multisite vacation and timeshare plans that are also known as vacation clubs.

A timeshare unit is an accommodation of a timeshare plan which is divided into timeshare periods or a condominium unit in which timeshare estates have been created.[4]

A "timeshare estate" is 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.[5] The term also includes an interest in a condominium unit, a cooperative unit, or a trust. Whether the term includes both direct and indirect interests in trusts is not specified. An example of an indirect interest in a trust is the interest of a trust beneficiary's spouse or other dependent.

The "managing entity" for a timeshare property is the person who operates or maintains the timeshare plan pursuant to s. 721.13(1), F.S., which defines the managing entity as either the developer, a separate manager or management firm, or an owners' association.[6]

Tax Assessments

Section 192.037, F.S., governs the ad valorem taxation of fee timeshare real property.[7] The managing entity responsible for operating and maintaining fee timeshare real property is considered the taxpayer as an agent of the timeshare period titleholder.[8]

The managing entity responsible for operating and maintaining the timesharing plan and each person having a fee interest in a timeshare unit or timeshare period may contest or appeal an ad valorem tax assessment in the same manner as other property owners under ch. 194, F.S., which relates to the administrative and judicial review of property taxes assessed by the property appraiser.[9]

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[1] See s. 721.05(36), F.S.
[2] S. 721.02(2) and (3), F.S.
[3] S. 721.03, F.S.
[4] See ss. 721.05(41) and 718.103(26), F.S.
[5] S. 721.05(34), F.S.
[6] See s. 721.02(22), F.S., defining the term "managing entity."
[7] S. 192.001(14), F.S., defines the term "fee timeshare real property" to mean "the land and buildings and other improvements to land that are subject to timeshare interests which are sold as a fee interest in real property."
[8] S. 192.001(15), F.S., defines the term "timeshare period titleholder" to mean "the purchaser of a timeshare period sold as a fee interest in real property, whether organized under ch. 718, F.S., relating to condominium associations, or ch. 721, F.S, relating to timeshares and vacation plans.
[9] S. 192.037(4), F.S.

The managing entity is required to collect and remit the taxes and special assessments due on fee timeshare real property. In allocating taxes, special assessments, and common expenses to individual timeshare period titleholders, the managing entity must clearly label the portion of any amounts due which are attributable to ad valorem taxes and special assessments.[10]

A property appraiser must first look to the resale market for determining the value of timeshare property.[11] In order for resales to meet the definition of "fair market" value, those resales must constitute arms-length transactions.[12] If the property appraiser finds an inadequate number of resales exists for such a determination, the property appraiser must determine the value by deducting the "usual and reasonable fees and costs of the sale" from the original purchase price.[13]

The term "usual and reasonable fees and costs of the sale" for timeshare real property includes all marketing costs, atypical financing costs, and those costs attributable to the right of a timeshare unit owner or user to participate in an exchange network of resorts.[14] For timeshare real property, the "usual and reasonable fees and costs of the sale" is presumed to be 50 percent of the original purchase price, but that presumption is rebuttable.[15]

Litigation

The valuation of timeshare properties has been the subject of recent litigation. In Star Island v. Scarborough, 313 So.3d 1168, (DCA 5th Fla 2021), the Fifth District Court of Appeal per curiam affirmed the ruling of the circuit court that the resale market of timeshares does not provide a sufficient basis for obtaining reliable resale data.[16] In the case, the Property Appraiser presented evidence that during the year at issue (2014), out of approximately 25,000 total sales of timeshares, only 3,790 were classified as resales.[17] Of those resales, approximately 90% were transacted for nominal amounts which removed them from consideration for valuation purposes.[18] The Property Appraiser also presented evidence that the exceedingly large number of resales at nominal amounts reflected significant financial distress in the overall market.[19] The remaining number of resales constituted less than 1.7% of the total timeshare sales market each year.[20] When evaluating the sales from the viewpoint of total sales consideration, the resale market constituted less than 1% of the total sales of timeshares.[21] While there are hundreds of developer sales each year that clearly qualify as arms-length transactions reflective of just value, the resales show no consistent trend in pricing, and in sum, the court agreed with the Property Appraiser that there were not a sufficient number (only 4 resales potentially qualified as arms-length transactions) to support an accurate, credible, and reliable value conclusion.[22] The court concluded that the resale market does not provide a sufficient basis for obtaining reliable sales data.[23]

Effect of Proposed Changes

The bill amends s. 192.037, F.S., to provide that in any tax appeal regarding a timeshare unit, if the taxpayer asserts that there is an adequate number of resales to provide a basis for arriving at value conclusions, the number of resales shall be considered adequate if the taxpayer provides a reasonable

[10] S. 192.037(5), F.S.
[11] S. 192.037(10), F.S.
[12] Star Island v. Scarborough, case no. 2016-CA-1006-OC, 9th Cir. Ct. Fla. 2019.
[13] S. 192.037(11), F.S.
[14] S. 192.037(11), F.S.
[15] S. 192.037(11), F.S.
[16] Star Island v. Scarborough, case no. 2016-CA-1006-OC, 9th Cir. Ct. Fla. 2019.
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*

number of resales and such number is supported by the most recent standards adopted by the Uniform Standards of Professional Appraisal Practice.[24]

The bill further provides that this method meets the requirement of just valuation of all property, as provided in s. 4, Art. VII of the State Constitution.

The bill is effective July 1, 2022.

B. SECTION DIRECTORY:

Section 1: Amends s. 192.037, F.S., relating to the number of adequate resales in the valuation of timeshare property.

Section 2: Provides an effective date.

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 Revenue Estimating Conference estimated that the bill would have a recurring negative impact on local government property tax revenues of $190.5 million ($69.8 million school taxes; $118.7 non-school taxes), beginning in FY 2023-24. There is no cash impact in FY 2022-23.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals having an interest in a timeshare unit or timeshare period may benefit from a reduction in assessed ad valorem taxes.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

[24] The Uniform Standards of Professional Appraisal Practice provide ethical and performance standards for the appraisal profession in the United States. See The Appraisal Foundation, What is UPAP?, available at: https://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/Uniform_Standards_of_Professional_Appraisal Practice/TAF/USPAP.aspx (last visited February 14, 2022).

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill may reduce the authority of cities and counties to raise total aggregate revenues. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

The bill provides that the valuation methodology provided for in the bill meets the requirement of just valuation of all property, as provided in s. 4, Art. VII of the State Constitution. The power to conclusively make this determination appertains to the judicial branch of state government. See, e.g., s. 3, Art. II of the State Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES