

Amendment No. 4

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

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1 Committee/Subcommittee hearing bill: Commerce Committee  
 2 Representative McClain offered the following:

**Amendment (with title amendment)**

Between lines 161 and 162, insert:

Section 8. Section 721.075, Florida Statutes, is amended to read:

721.075 Incidental benefits.—Incidental benefits shall be offered only as provided in this section.

(1) Accommodations, facilities, products, services, discounts, or other benefits which satisfy the requirements of this subsection are ~~shall be~~ subject to ~~the provisions of~~ this section and exempt from the other provisions of this chapter which would otherwise apply to such accommodations or facilities if and only if:

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16 (a) The use of or participation in the incidental benefit  
17 by the prospective purchaser is completely voluntary, and  
18 payment of any fee or other cost associated with the incidental  
19 benefit is required only upon such use or participation.

20 (b) The ~~No~~ costs of acquisition, operation, maintenance,  
21 or repair of the incidental benefit may not be ~~are~~ passed on to  
22 purchasers of the timeshare plan as common expenses of the  
23 timeshare plan or as common expenses of a component site of a  
24 multisite timeshare plan.

25 (c) The continued availability of the incidental benefit  
26 is not necessary in order for any accommodation or facility of  
27 the timeshare plan to be available for use by purchasers of the  
28 timeshare plan in a manner consistent in all material respects  
29 with the manner portrayed by any promotional material,  
30 advertising, or purchaser public offering statement.

31 (d) The continued availability to purchasers of timeshare  
32 plan accommodations on no greater than a one-to-one use right to  
33 use night requirement ratio is not dependent upon continued  
34 availability of the incidental benefit.

35 (e) The incidental benefit will continue to be available  
36 in the manner represented to prospective purchasers for up to 3  
37 years ~~or less~~ after the first date that the timeshare plan is  
38 available for use by the purchaser. Nothing herein prevents  
39 ~~shall prevent~~ the renewal or extension of the availability of an  
40 incidental benefit.

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41 ~~(f) The aggregate represented value of all incidental~~  
42 ~~benefits offered by a developer to a purchaser may not exceed 15~~  
43 ~~percent of the purchase price paid by the purchaser for his or~~  
44 ~~her timeshare interest.~~

45 ~~(f)(g)~~ The incidental benefit is filed with the division  
46 for review in conjunction with the filing of a timeshare plan or  
47 in connection with a previously filed timeshare plan.

48 (2) Each purchaser shall execute a separate acknowledgment  
49 and disclosure statement with respect to all incidental  
50 benefits, which statement must ~~shall~~ include the following  
51 information:

52 (a) A fair description of the incidental benefit,  
53 including, but not limited to, any user fees or costs associated  
54 therewith and any restrictions upon use or availability.

55 (b) A statement that use of or participation in the  
56 incidental benefit by the prospective purchaser is completely  
57 voluntary, and that payment of any fee or other cost associated  
58 with the incidental benefit is required only upon such use or  
59 participation.

60 (c) A statement that the incidental benefit is not  
61 assignable or otherwise transferable by the prospective  
62 purchaser or purchaser without the approval of the provider of  
63 the incidental benefit.

64 (d) The following disclosure in conspicuous type  
65 immediately above the space for the purchaser's signature:

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66  
67 The incidental benefit[s] described in this statement is  
68 [are] offered to prospective purchasers of the timeshare plan  
69 [or other permitted reference under ~~pursuant to~~ s.  
70 721.11(5) (a)]. This [These] benefit[s] is [are] available for  
71 your use for [some period up to 3 years ~~or less~~] after the first  
72 date that the timeshare plan is available for your use. The  
73 availability of the incidental benefit[s] may or may not be  
74 renewed or extended. You should not purchase an interest in the  
75 timeshare plan in reliance upon the continued availability or  
76 renewal or extension of this [these] benefit[s].

77 ~~(c) A statement indicating the source of the services,~~  
78 ~~points, or other products that constitute the incidental~~  
79 ~~benefit.~~

80  
81 The acknowledgment and disclosure statement for any incidental  
82 benefit shall be filed with the division before ~~prior to~~ use.  
83 Each purchaser must ~~shall~~ receive a copy of his or her executed  
84 acknowledgment and disclosure statement as a document required  
85 to be provided to him or her under ~~pursuant to~~ s. 721.10(1)(b).

86 (3)(a) In the event that an incidental benefit becomes  
87 unavailable to purchasers in the manner represented by the  
88 developer in the acknowledgment and disclosure statement, the  
89 developer shall pay the purchaser the greater of twice the  
90 verifiable retail value or twice the represented value of the

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91 unavailable incidental benefit in cash within 30 days after ~~of~~  
92 the date that the unavailability of the incidental benefit was  
93 made known to the developer, unless the developer has reserved a  
94 substitution right under ~~pursuant to~~ paragraph (b) and timely  
95 makes the substitution as required by paragraph (b). ~~The~~  
96 ~~developer shall promptly notify the division upon learning of~~  
97 ~~the unavailability of any incidental benefit.~~

98 (b) If an incidental benefit becomes unavailable as a  
99 result of events beyond the control of the developer, the  
100 developer may reserve the right to substitute a replacement  
101 incidental benefit of a type, quality, value, and term  
102 reasonably similar to the unavailable incidental benefit. If the  
103 developer reserves the right to substitute, the acknowledgment  
104 and disclosure statement required under ~~pursuant to~~ paragraph  
105 (2) (a) must ~~shall~~ contain the following conspicuous disclosure:  
106

107 In the event any incidental benefit described in this  
108 statement becomes unavailable as a result of events beyond the  
109 control of the developer, the developer reserves the right to  
110 substitute a replacement incidental benefit of a type, quality,  
111 value, and term reasonably similar to the unavailable incidental  
112 benefit.

113  
114 The substituted incidental benefit must ~~shall~~ be made available  
115 ~~delivered~~ to the purchaser within 30 days after the date that

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116 the unavailability of the incidental benefit was made known to  
117 the developer.

118 (4) All purchaser remedies under ~~pursuant to~~ s. 721.21 are  
119 ~~shall be~~ available for any violation of ~~the provisions of~~ this  
120 section.

121 Section 9. Subsections (2) and (3) of section 721.10,  
122 Florida Statutes, are renumbered as subsections (3) and (4),  
123 respectively, subsection (1) is amended, and a new subsection  
124 (2) is added to that section, to read:

125 721.10 Cancellation.—

126 (1) A purchaser has the right to cancel the contract until  
127 midnight on ~~of~~ the 10th calendar day after the later of  
128 ~~following whichever of the following days occurs later:~~

129 (a) The execution date of the contract; or

130 (b) The day on which the purchaser received the last of  
131 all documents required to be provided to him or her, including  
132 the notice required by s. 721.07(2)(d)2., if applicable.

133 (2) This right of cancellation may not be waived by any  
134 purchaser or by any other person on behalf of the purchaser, and  
135 any attempt to obtain a waiver of the cancellation right of the  
136 purchaser is unlawful. If a purchaser waives, knowingly or  
137 unknowingly, his or her right of cancellation and a closing  
138 occurs, such closing is voidable at the option of the purchaser  
139 for up to 1 year after the date that would have been the  
140 expiration of the cancellation period under subsection (1).

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141 Furthermore, a ~~no~~ closing may not occur until the cancellation  
142 period of the ~~timeshare~~ purchaser has expired, and if a closing  
143 occurs before the expiration of the cancellation period, ~~Any~~  
144 ~~attempt to obtain a waiver of the cancellation right of the~~  
145 ~~timeshare purchaser, or to hold a closing prior to the~~  
146 ~~expiration of the cancellation period, is unlawful and such~~  
147 closing is voidable at the option of the purchaser for up to 5  
148 years after such closing ~~a period of 1 year after the expiration~~  
149 ~~of the cancellation period.~~ However, nothing in this section  
150 precludes the execution of documents in advance of closing for  
151 delivery after expiration of the cancellation period.

152 Section 10. Paragraphs (b) and (e) of subsection (6) of  
153 section 721.11, Florida Statutes, are amended to read:

154 721.11 Advertising materials; oral statements.—

155 (6) Failure to provide cancellation rights or disclosures  
156 as required by this subsection in connection with the sale of a  
157 regulated short-term product constitutes misrepresentation in  
158 accordance with paragraph (4)(a). Any agreement relating to the  
159 sale of a regulated short-term product must be regulated as  
160 advertising material and is subject to the following:

161 (b) A purchaser of a regulated short-term product has the  
162 right to cancel the agreement until midnight of the 10th  
163 calendar day following the execution date of the agreement. The  
164 right of cancellation may not be waived by the prospective  
165 purchaser or by any other person on behalf of the prospective

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166 purchaser. Notice of cancellation must be given in the same  
167 manner prescribed for giving notice of cancellation under s.  
168 721.10(3) ~~s. 721.10(2)~~. If the prospective purchaser gives a  
169 valid notice of cancellation or is otherwise entitled to cancel  
170 the sale, the funds or other property received from or on behalf  
171 of the prospective purchaser, or the proceeds thereof, must be  
172 returned to the prospective purchaser. Such refund must be made  
173 in the same manner prescribed for refunds under s. 721.10.

174 (e) If the seller provides the purchaser with the right to  
175 cancel the purchase of a regulated short-term product at any  
176 time up to 7 days prior to the purchaser's reserved use of the  
177 accommodations, but in no event less than 10 days, and if the  
178 seller refunds the total amount of all payments made by the  
179 purchaser reduced by the proportion of any benefits the  
180 purchaser has actually received prior to the effective date of  
181 the cancellation, the specific value of which has been agreed to  
182 between the purchaser and the seller, the short-term product  
183 offer shall be exempt from the requirements of paragraphs (b),  
184 (c), and (d). An agreement relating to the sale of the regulated  
185 short-term product made pursuant to this paragraph must contain  
186 a statement setting forth the cancellation and refund rights of  
187 the prospective purchaser in a manner that is consistent with  
188 this section and s. 721.10, including a description of the  
189 length of the cancellation right, a statement that the  
190 purchaser's intent to cancel must be in writing and sent to the

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191 seller at a specified address, a statement that the notice of  
192 cancellation is effective upon the date sent, and a statement  
193 that any attempt to waive the cancellation right is unlawful.  
194 The right of cancellation provided to the purchaser pursuant to  
195 this paragraph may not be waived by the prospective purchaser or  
196 by any other person on behalf of the prospective purchaser.  
197 Notice of cancellation must be given in the same manner  
198 prescribed for giving notice of cancellation pursuant to s.  
199 721.10(3) ~~s. 721.10(2)~~. If the prospective purchaser gives a  
200 valid notice of cancellation, or is otherwise entitled to cancel  
201 the sale, the funds or other property received from or on behalf  
202 of the prospective purchaser, or the proceeds thereof, shall be  
203 returned to the prospective purchaser. Such refund shall be made  
204 in the manner prescribed for refunds under s. 721.10.

205 Section 11. Paragraph (1) of subsection (4) and paragraph  
206 (1) of subsection (7) of section 721.55, Florida Statutes, are  
207 amended to read:

208 721.55 Multisite timeshare plan public offering  
209 statement.—Each filed public offering statement for a multisite  
210 timeshare plan shall contain the information required by this  
211 section and shall comply with the provisions of s. 721.07,  
212 except as otherwise provided therein. The division is authorized  
213 to provide by rule the method by which a developer must provide  
214 such information to the division. Each multisite timeshare plan

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215 filed public offering statement shall contain the following  
216 information and disclosures:

217 (4) A text, which shall include, where applicable, the  
218 information and disclosures set forth in paragraphs (a)-(1).

219 (1) A description of each component site, which  
220 description may be disclosed in a written, graphic, tabular, or  
221 other form approved by the division or provided to the purchaser  
222 electronically, including, but not limited to, through a website  
223 or other Internet-based access. The description of each  
224 component site must ~~shall~~ include all of the following  
225 information:

226 1. The name and address of each component site.

227 2. The number of accommodations, timeshare interests, and  
228 timeshare periods, expressed in periods of 7-day use  
229 availability, committed to the multisite timeshare plan and  
230 available for use by purchasers.

231 3. Each type of accommodation in terms of the number of  
232 bedrooms, bathrooms, sleeping capacity, and whether or not the  
233 accommodation contains a full kitchen. As used in ~~For purposes~~  
234 ~~of this subparagraph description,~~ the term "full kitchen" means  
235 ~~a full kitchen shall mean~~ a kitchen with at least having a  
236 ~~minimum of~~ a dishwasher, range, sink, oven, and refrigerator.

237 4. A description of facilities available for use by the  
238 purchaser at each component site, including the following:

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239 a. The intended use of the facility, if not apparent from  
240 the description.

241 b. Any user fees associated with a purchaser's use of the  
242 facility.

243 5. A cross-reference to the location in the public  
244 offering statement of the description of any priority  
245 reservation features which may affect a purchaser's ability to  
246 obtain a reservation in the component site.

247 (7) The following documents shall be included as exhibits  
248 to the filed public offering statement, if applicable:

249 (1)1. If the multisite timeshare plan contains any  
250 component sites located in the ~~this~~ state, the information  
251 required by s. 721.07(5) pertaining to each such component site,  
252 unless exempt under ~~pursuant to~~ s. 721.03.

253 2. If the purchaser will receive an interest in a specific  
254 multisite timeshare plan component site located outside of the  
255 ~~this~~ state but which is offered in the ~~this~~ state, the  
256 information required by s. 721.07(5) pertaining to that  
257 component site. ~~., provided,~~ However, for purposes of this  
258 paragraph, that the provisions of s. 721.07(5)(t) shall only  
259 requires require disclosure of information related to the  
260 estimated budget for the timeshare plan and purchaser's expenses  
261 as required by the jurisdiction in which the component site is  
262 located.

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264 A developer is not required to file a separate public offering  
265 statement for any component site located within or outside the  
266 state in order to include the component site in the multisite  
267 timeshare plan.

268

269 -----

270 **T I T L E A M E N D M E N T**

271 Remove line 32 and insert:

272 participant weights; amending s. 721.075, F.S.; revising  
273 language with respect to incidental benefits; amending s.  
274 721.10, F.S.; revising language with respect to cancellations;  
275 amending s. 721.11, F.S.; conforming cross-references; amending  
276 s. 721.55, F.S.; revising disclosure requirements for a  
277 multisite timeshare plan public offering statement; providing an  
278 effective date.