

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 429 Timeshare Properties

**SPONSOR(S):** Robinson, W.

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 756

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	13 Y, 0 N	Thompson	Anstead
2) Judiciary Committee	21 Y, 0 N	Mawn	Kramer
3) Commerce Committee			

### SUMMARY ANALYSIS

Chapter 721, F.S., the Florida Vacation Plan and Timesharing Act (Timeshare Act), administered by the Division of Florida Condominiums, Timeshares, and Mobile Homes (DFCT) 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.

The Timeshare Act authorizes the board of administration of any owners' association that operates a timeshare condominium, or a timeshare cooperative, to make "material alterations" or "substantial additions" to accommodations or facilities without the approval of the owners' association. However, current law does not authorize the board of administration to "delete" accommodations or facilities without the owners' association's approval.

The Timeshare Act requires the managing entity of a timeshare plan to provide an "assessment certificate" within 30 days after receiving a written request from a timeshare interest owner, an agent designated in writing by the timeshare interest owner, or a person providing resale transfer services for a consumer timeshare reseller. The assessment certificate must be signed by an officer or agent of the managing entity, be provided to the person requesting the certificate, and state the amount of any assessment, transfer fee, or other moneys currently owed to the managing entity or approved by the managing entity that will be due within the next 90 days. However, condominium and cooperative association purchasers are authorized to request that the seller provide an "estoppel certificate," from the condominium or cooperative association, which must be provided within 10 days after receiving a written request. An estoppel certificate certifies the amount of any total debt owed to the association for unpaid monetary obligations by a unit or parcel owner as of a specified date, and provides other information about recurring assessments and other monetary obligations.

Operators of public lodging establishments or public food service establishments are authorized to remove or refuse to accommodate persons for offenses such as drug use or intoxication. The Timeshare Act does not give the managing entity of a timeshare project these same rights.

HB 429 amends the Timeshare Act, as follows:

- Authorizes the board of administration for a condominium or cooperative association to "delete" accommodations or facilities without the approval of the members of the association.
- Grants the managing entity of a timeshare project all of the same rights and remedies to remove and refuse to accommodate that an operator of a public lodging establishment or public food service establishment has.
- Requires the managing entity of a timeshare condominium or timeshare cooperative to provide the assessment certificate required under the Timeshare Act in lieu of the estoppel certificate relating to condominium and cooperative associations.

The bill does not appear to have a fiscal impact on state or local governments. The effective date of the bill is July 1, 2024.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### **Florida Vacation Plan and Timesharing Act**

A timeshare interest is a form of ownership of real and personal property.<sup>1</sup> 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 (typically one week) during which the owner has the exclusive right to use the property.

Chapter 721, F.S., the Florida Vacation Plan and Timesharing Act (Timeshare Act), administered by the Division of Florida Condominiums, Timeshares, and Mobile Homes (DFCT) within the Department of Business and Professional Regulation (DBPR), is the chapter of Florida law that governs vacation plans and timesharing in the state. The purpose of the Timeshare Act is to:

- Recognize real and personal property timeshare plans in the state;
- Establish procedures for the creation, sale, exchange, promotion and operation of timeshare plans;
- Provide full and fair disclosure to purchasers and prospective purchasers of timeshare plans;
- Require every timeshare plan in the state to be subjected to the provisions of the chapter;
- Require full and fair disclosure of terms, conditions, and services by resale service providers; and
- Recognize that a uniform and consistent method of regulation is necessary to safeguard Florida's tourism industry and the state's economic well-being.<sup>2</sup>

The Timeshare 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 this state.<sup>3</sup> The Timeshare Act governs vacation plans and timesharing,<sup>4</sup> and multisite vacation and timeshare plans that are also known as vacation clubs.<sup>5</sup>

The term “timeshare plan” means 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.<sup>6</sup> The term includes both personal property timeshare and real property timeshare plans.<sup>7</sup>

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.<sup>8</sup>

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.<sup>9</sup> The term also

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<sup>1</sup> See s. 721.05(36), F.S.

<sup>2</sup> S. 721.02, F.S.

<sup>3</sup> S. 721.03, F.S.

<sup>4</sup> Ch. 721, part I, F.S.

<sup>5</sup> Ch. 721, part II, F.S.

<sup>6</sup> S. 721.05(39), F.S.

<sup>7</sup> S. 721.05(39)(a), F.S., defines a “personal property timeshare plan,” as a timeshare plan in which the accommodations are comprised of personal property that is not permanently affixed to real property. Section 721.05(39)(b), F.S., defines a “real property timeshare plan,” as a timeshare plan in which the accommodations of the timeshare plan are comprised of or permanently affixed to real property.

<sup>8</sup> See ss. 721.05(41) and 718.103(26), F.S.

<sup>9</sup> S. 721.05(34), F.S.

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.

A "timeshare license" is the right to occupy a timeshare unit, which right is not a personal property timeshare interest or a timeshare estate.<sup>10</sup>

A "timeshare interest" is a timeshare estate, a personal property timeshare interest, or a timeshare license.<sup>11</sup>

### **Board of Administration**

Each condominium, cooperative, and homeowners' association is governed by a board of administration elected by the association's members or appointed by a developer prior to turnover of the association. The board has those duties described in statute and in the association's governing documents, including association administration, policy development, and property maintenance.<sup>12</sup> A board director also has a fiduciary responsibility to the association's members and must use the highest degree of good faith in placing the interests of the members above his or her own personal interests.<sup>13</sup>

To ensure that a director is able to faithfully and competently exercise his or her duties, within 90 days of being elected or appointed to the board, each newly elected or appointed director must:

- Certify in writing that he or she has read the association's governing documents; will work to uphold the governing documents to the best of his or her ability; and will faithfully discharge his or her fiduciary responsibility to the association's members; or
- Submit a certificate showing he or she satisfactorily completed the educational curriculum administered by a DFCT-approved<sup>14</sup> education provider within one year before or 90 days after his or her election or appointment date.<sup>15</sup>

### **Application of the Condominium and Cooperative Acts**

In addition to regulation under the Timeshare 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 all applicable chapters unless an exemption applies.<sup>16</sup> Specifically, if a timeshare plan subject to either the Condominium Act or the Cooperative Act is fully compliant with the Timeshare Act, the timeshare plan is exempt from certain provisions of the Condominium Act or the Cooperative Act, including provisions relating to:

- Sales or reservation deposits prior to closing;
- 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.<sup>17</sup>

### **Timeshares Under the Condominium Act**

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<sup>10</sup> S. 721.05(37), F.S.

<sup>11</sup> S. 721.05(36), F.S.

<sup>12</sup> See generally chs. 718, 719, and 720, F.S.; Florida DBPR, *FAQs*, <http://www.myfloridalicense.com/DBPR/condominiums-and-cooperatives/faqs/#1492784365590-e9ec1083-2ca1> (last visited Jan. 24, 2024).

<sup>13</sup> *Id.*

<sup>14</sup> A DFCT-approved provider must cover specified topics in its education program, which may include budgets; reserves; elections; financial reporting; association operations; dispute resolution; and records maintenance. For a list of DFCT-approved education providers, see <http://www.myfloridalicense.com/dbpr/lsc/documents/CondoCOOPListofApprovedProviders2015.pdf> (last visited Jan. 24, 2024). 61B-19.001 and 61B-75.0051, F.A.C.

<sup>15</sup> This requirement does not apply to the board of directors for a commercial condominium. Ss. 718.112(2)(d), 719.106(1)(d), and 720.3033(1)(a)-(c), F.S.

<sup>16</sup> S. 721.03(2), F.S.

<sup>17</sup> S. 721.03(3), F.S.

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.<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</sup>

### **Timeshares Under the Cooperative Act**

Original cooperative documents<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup>

### **Public Offering Statement**

Prior to offering any timeshare plan, a developer must submit a public offering statement,<sup>24</sup> which must include certain information and disclosures, to the DFCT.<sup>25</sup> Any amendment to an approved offering statement must be filed with the DFCT for approval prior to becoming effective.<sup>26</sup>

### **Extension or Termination of Timeshare Plans**

The Timeshare Act provides 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.<sup>27</sup>

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.<sup>28</sup>

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.<sup>29</sup>

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<sup>18</sup> 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.

<sup>19</sup> S. 718.104(4)(o), F.S.

<sup>20</sup> S. 718.110(8), F.S.

<sup>21</sup> "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.

<sup>22</sup> S. 719.403(2)(f), F.S.

<sup>23</sup> S. 719.403(6)(e), F.S.

<sup>24</sup> "Public offering statement" means the written materials describing a single-site timeshare plan or a multisite timeshare plan, including a text and any exhibits attached thereto as required by ss. 721.07, 721.55, and 721.551. S. 721.05(29), F.S.

<sup>25</sup> Ss. 721.07 and 721.55, F.S.

<sup>26</sup> S. 721.07(3)(a)1., F.S.

<sup>27</sup> S. 721.125, F.S.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

After termination of a timeshare plan, the 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.<sup>30</sup> 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.<sup>31</sup>

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, are required to:<sup>32</sup>

- 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.

### **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.<sup>33</sup> Any owner's association must be created before the first closing of the sale of a timeshare interest.<sup>34</sup> 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 is the timeshare plan's managing entity.<sup>35</sup>

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**

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<sup>30</sup> S. 721.125(3)(a)1., F.S.

<sup>31</sup> S. 721.125(3)(a)2., F.S.

<sup>32</sup> *Id.*

<sup>33</sup> "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.

<sup>34</sup> S. 721.13(1)(a), F.S.

<sup>35</sup> S. 721.13(1)(b), F.S.

The Timeshare Act requires the developer to provide a managing entity for each timeshare plan. The managing entity operates or maintains the timeshare plan.<sup>36</sup> The managing entity may be the developer, a separate manager or management firm, or an owners' association.<sup>37</sup>

The duties of the managing entity include, but are not limited to:<sup>38</sup>

- Management and maintenance of all accommodations and facilities constituting the timeshare plan.
- Collection of all assessments for common expenses.
- Providing annually to all purchasers an itemized annual budget that includes estimated revenues and expenses.
- Maintenance of books and records concerning the timeshare plan so that all such books and records are reasonably available for inspection by any purchaser or their authorized agent.
- Arranging for an annual audit of the financial statements of the timeshare plan by a certified public accountant licensed by the Board of Accountancy of DBPR, in accordance with generally accepted auditing standards as defined by the rules of the Board of Accountancy of DBPR.
- Making available for inspection by the DFCT any books and records of the timeshare plan upon the request of the DFCT.
- Scheduling occupancy of the timeshare units, when purchasers are not entitled to use specific timeshare periods, so that all purchasers will be provided the use and possession of the accommodations and facilities of the timeshare plan which they have purchased.
- Performing any other functions and duties which are necessary and proper to maintain the accommodations or facilities, as provided in the contract and as advertised.
- Entering into an ad valorem tax escrow agreement prior to the receipt of any ad valorem tax escrow payments into the ad valorem tax escrow account, as long as an independent escrow agent is required by s. 192.037, F.S., and submitting to the DFCT the statement of receipts and disbursements regarding the ad valorem tax escrow account.

### **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.<sup>39</sup> Such emergency powers include, unless prohibited by other law or the association's governing documents, the power to:

- 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

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<sup>36</sup> See s. 721.05(22), F.S., defining the term "managing entity."

<sup>37</sup> S. 721.13(1)(a), F.S.

<sup>38</sup> S. 721.13(3), F.S.

<sup>39</sup> Ss. 718.1265, 719.128, and 720.316, F.S.

- Borrow money or pledge association assets as collateral to fund emergency repairs and carry out association duties when operating funds are insufficient.<sup>40</sup>

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

### **Material Alterations or Substantial Additions to Accommodations or Facilities**

Notwithstanding anything to the contrary in s. 718.110, F.S.,<sup>41</sup> s. 718.113, F.S.,<sup>42</sup> s. 718.114, F.S.,<sup>43</sup> or s. 719.1055, F.S.,<sup>44</sup> the board of administration of any owners' association that operates a timeshare condominium pursuant to s. 718.111, F.S., or a timeshare cooperative pursuant to s. 719.104, F.S., has the power to make material alterations or substantial additions to the accommodations<sup>45</sup> or facilities<sup>46</sup> of such timeshare condominium or timeshare cooperative without the approval of the owners' association. However, current law does not give the board of administration the authority to "delete" accommodations or facilities without the approval of the owners' association.<sup>47</sup>

If the timeshare condominium or timeshare cooperative contains any residential units that are not subject to the timeshare plan, the board of administration for the condominium or cooperative must obtain the approval of a majority of the owners of such residential units before it can make any material alterations or substantial additions to the accommodations or facilities of such timeshare condominium or timeshare cooperative. However, unless otherwise provided in the timeshare instrument as originally recorded, an amendment may not change the configuration or size of any accommodation in any material fashion, or change the proportion or percentage by which a member of the owners' association shares the common expenses, unless the record owners of the affected units or timeshare interests and all record owners of liens on the affected units or timeshare interests join in the execution of the amendment.<sup>48</sup>

### **Assessment Certificates**

#### *Condominiums and Cooperatives*

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<sup>40</sup> 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.

<sup>41</sup> S. 718.110, F.S., provides for the amending of a declaration of condominium and, in part, prohibits any amendment that materially alters or substantially adds to the condominium property, unless all recorded unit owners and all record owners of liens join in and approve the execution of the amendment.

<sup>42</sup> Section 718.113, F.S., sets forth the responsibility of a condominium association to maintain the common elements of the condominium and, in relevant part, prohibits any material alteration or substantial additions to the common elements or to real property which is association property, except in a manner provided in the declaration as originally recorded or as amended under the procedures provided in the declaration. However, if the declaration as originally recorded or as amended does not specify the procedure for approval of material alterations or substantial additions, 75 percent of the total voting interests of the association must approve the alterations or additions before the material alterations or substantial additions are commenced.

<sup>43</sup> Section 718.114, F.S., authorizes condominium associations, with specified conditions, to "enter into agreements to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities, regardless of whether the lands or facilities are contiguous to the lands of the condominium, if such lands and facilities are intended to provide enjoyment, recreation, or other use or benefit to the unit owners."

<sup>44</sup> Section 719.1055, F.S., provides for the amendment of cooperative documents and, in part, prohibits any amendment that materially alters or substantially adds to the cooperative property, unless all recorded unit owners and all record owners of liens join in and approve the execution of the amendment.

<sup>45</sup> "Accommodation" means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, campground, cruise ship cabin, houseboat or other vessel, recreational or other motor vehicle, or any private or commercial structure which is real or personal property and designed for overnight occupancy by one or more individuals. The term does not include an incidental benefit as defined in this section. S. 721.05(1), F.S.

<sup>46</sup> "Facility" means any permanent amenity, including any structure, furnishing, fixture, equipment, service, improvement, or real or personal property, improved or unimproved, other than an accommodation of the timeshare plan, which is made available to the purchasers of a timeshare plan. The term does not include an incidental benefit as defined in this section. S. 721.05(17), F.S.

<sup>47</sup> S. 721.13(8), F.S.

<sup>48</sup> *Id.*

“Common expenses” are all expenses and assessments properly incurred by a condominium or cooperative association.<sup>49</sup>

An assessment is a unit or parcel owner’s share of the funds required for the payment of the association’s common expenses.<sup>50</sup> A special assessment is any assessment levied against a unit or parcel owner other than the assessment adopted in the annual budget.<sup>51</sup>

Assessments that are unpaid may become a lien on the unit or parcel.<sup>52</sup> An owner is jointly and severally liable with the previous owner for all unpaid assessments that come due up to the time of transfer of title.<sup>53</sup> This liability is without prejudice to an owner’s right to recover from the previous owner the amounts paid that were assessed during the time that the previous owner owned the property.<sup>54</sup>

To protect against undisclosed financial obligations and to obtain title to the property free of any lien or encumbrance in favor of the association, purchasers may request that the seller provide an estoppel certificate, also known as an assessment certificate, from the condominium or cooperative association. An estoppel certificate certifies the amount of any total debt owed to the association for unpaid monetary obligations by a unit or parcel owner as of a specified date.<sup>55</sup>

Within 10 days after receiving a written request for an estoppel certificate, the association is required to provide an estoppel certificate signed by an officer or agent of the association stating all assessments and other moneys owed to the association by the owner with respect to the unit or parcel. In addition to specifying the amount of any debt owed to the association, an estoppel certificate must also include specific information about the association and the property to be purchased, including the amount of any regular periodic assessments or other fees.<sup>56</sup>

### *Timeshares*

A purchaser of a timeshare estate or timeshare license is personally liable for all assessments for common expenses which come due while the purchaser is the owner of such interest.<sup>57</sup> A successor in interest of a timeshare estate or timeshare license is jointly and severally liable with her or his predecessor in interest for all unpaid assessments against such predecessor up to the time of transfer of the timeshare interest to such successor, without prejudice to any right a successor in interest may have to recover from her or his predecessor in interest any amounts assessed against such predecessor and paid by such successor.<sup>58</sup>

The managing entity of a timeshare plan must provide an assessment certificate within 30 days after receiving a written request from:

- A timeshare interest owner;
- An agent designated in writing by the timeshare interest owner; or
- A person providing resale transfer services for a consumer timeshare reseller.

The assessment certificate must, with respect to the designated consumer resale timeshare interest:

- Be signed by an officer or agent of the managing entity;
- Be provided to the person requesting the certificate;
- State the amount of any assessment, transfer fee, or other moneys:
  - Currently owed to the managing entity; and

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<sup>49</sup> Ss. 718.103(10) and 719.103(9), F.S., relating to condominium and cooperative associations, respectively.

<sup>50</sup> Ss. 718.103(1) and 719.103(1), F.S., relating to condominium and cooperative associations, respectively.

<sup>51</sup> Ss. 718.103(24) and 719.103(23), F.S., relating to condominium and cooperative associations, respectively.

<sup>52</sup> Ss. 718.116(5) and 719.108(4), F.S., relating to condominium and cooperative associations, respectively.

<sup>53</sup> Ss. 718.116(1)(a) and 719.108(1), F.S., relating to condominium and cooperative associations, respectively.

<sup>54</sup> *Id.* The term “without prejudice” means “without loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party.” BLACK’S LAW DICTIONARY 770 (10th ed. 2014).

<sup>55</sup> Ss. 718.116(8) and 719.108(6), F.S., relating to condominium and cooperative associations, respectively.

<sup>56</sup> *Id.*

<sup>57</sup> S. 721.15(7), F.S.

<sup>58</sup> *Id.*

- Approved by the managing entity that will be due within the next 90 days; and
- Include any information contained in the books and records of the timeshare plan regarding the legal description and use plan related to the designated consumer resale timeshare interest.<sup>59</sup>

The managing entity may charge a fee not to exceed \$150 for the preparation and delivery of the certificate, and the amount of the fee must be included on the certificate.<sup>60</sup>

## Public Lodging Establishments and Public Food Service Establishments

The Division of Hotels and Restaurants (DHR) within DBPR is charged with enforcing the provisions of ch. 509, F.S., relating to the regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare.<sup>61</sup>

Public lodging establishments are classified as a hotel, motel, non-transient apartment, transient apartment, bed and breakfast inn, timeshare project, or vacation rental.<sup>62</sup> A “timeshare project” is defined as “a timeshare property, as defined in ch. 721, F.S., that is located in this state and that is also a transient public lodging establishment.”<sup>63</sup>

The term “public lodging establishments” includes transient and non-transient public lodging establishments.<sup>64</sup> The principal differences between transient and non-transient public lodging establishments are the number of times that the establishments are rented in a calendar year and the duration of the rentals.

Specifically, a “transient public lodging establishment” is defined as:<sup>65</sup>

...any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings *which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.* (emphasis added)

A “non-transient public lodging establishment” is defined as:<sup>66</sup>

...any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings *which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.* (emphasis added)

## Removal or Refusal to Accommodate

Operators of public lodging establishments or public food service establishments are authorized to remove persons from their establishments, and to have a law enforcement officer remove persons from their establishments, as follows:

- **Operators may remove or cause to be removed** a person, including any guest of the establishment who, while on the premises of the establishment:<sup>67</sup>
  - Illegally possesses or deals in controlled substances as defined in ch. 893, F.S.;

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> S. 509.032(1), F.S.

<sup>62</sup> *See* s. 509.013(4)(b), F.S., which exempts the several types of establishments from the definition of “public lodging establishment.” S. 509.242(1), F.S.

<sup>63</sup> S. 509.242(1)(g), F.S.

<sup>64</sup> S. 509.013(4)(a), F.S.

<sup>65</sup> S. 509.013(4)(a)1., F.S.

<sup>66</sup> S. 509.013(4)(a)2., F.S.

<sup>67</sup> S. 509.141, F.S.

- Is intoxicated, profane, lewd, or brawling;
- Indulges in any language or conduct which disturbs the peace and comfort of other guests or which injures the reputation, dignity, or standing of the establishment;
- Fails to check out by the time agreed upon in writing by the guest and public lodging establishment at check-in unless an extension of time is agreed to by the public lodging establishment and guest prior to checkout;
- Fails to make payment for food, beverages, or services; or
- In the opinion of the operator, is a person the continued entertainment of whom would be detrimental to the establishment.
- **Operators may refuse accommodations or service** to any person who:<sup>68</sup>
  - Displays intoxication, profanity, lewdness, or brawling;
  - Indulges in language or conduct such as to disturb the peace or comfort of other guests;
  - Engages in illegal or disorderly conduct;
  - Illegally possesses or deals in controlled substances as defined in ch. 893, F.S.; or
  - Constitutes a nuisance.
- **Operators may take into custody and detain** a person in a reasonable manner and for a reasonable time if:
  - The operator has probable cause to believe that the person was engaging in disorderly conduct in violation of s. 877.03, F.S.,<sup>69</sup> on the premises of the licensed establishment; and
  - Such conduct was creating a threat to the life or safety of the person or others.<sup>70</sup>
- **Law enforcement officers or operators may take a person into custody** on the premises and detain such person in a reasonable manner and for a reasonable period of time if:
  - They have probable cause to believe that theft of personal property belonging to such establishment has been committed by a person; and
  - The officer or operator can recover such property or the reasonable value thereof by taking the person into custody for the purpose of attempting to affect such recovery or for prosecution.<sup>71</sup>

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<sup>68</sup> S. 509.142, F.S.

<sup>69</sup> Section 877.03, F.S., provides that a person is guilty of a misdemeanor of the second degree if they commit “such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct.”

<sup>70</sup> S. 509.143, F.S.

<sup>71</sup> S. 509.162, F.S.

## **Effect of Proposed Changes**

### **Material Alterations, Additions, and Deletions to Accommodations or Facilities**

HB 429 expands the scope of 721.13, F.S., from applying to the board of administration for a timeshare condominium or timeshare cooperative to the board of administration for any timeshare plan, thus allowing the board of any other form of timeshare to make material alterations or substantial additions to the timeshare's accommodations or facilities without the owners' association's approval.

The bill also authorizes the board of administration for any timeshare plan to "delete" accommodations or facilities without the approval of the owners' association's members.

### **Removal and Refusal to Accommodate**

The bill gives the managing entity or manager of a timeshare project the same rights and remedies of an operator of any public lodging establishment or public food service establishment, as set forth in ss. 509.141, 509.142, 509.143, and 509.162, F.S., including the right to remove and the right to refuse to accommodate. The bill also entitles such persons to have a law enforcement officer take any action, including arrest or removal from the timeshare property, against any purchaser, including a deeded owner, or a guest or invitee thereof, who engages in conduct described in those sections or conduct that violates the timeshare instrument.<sup>72</sup>

### **Assessment Certificates**

The bill requires the managing entity of a timeshare condominium or timeshare cooperative to provide the assessment certificate required under s. 721.15, F.S., in lieu of the estoppel certificate required by s. 718.116(8), F.S., or s. 719.108(6), F.S., relating to condominium and cooperative associations, respectively.

#### **B. SECTION DIRECTORY:**

Section 1: Amends s. 721.13, F.S., relating to management.

Section 2: Amends s. 721.15, F.S., relating to assessments for common expenses.

Section 3: Provides an effective date of July 1, 2024.

## **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.

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<sup>72</sup> Section 721.05(35), F.S., defines the term "timeshare instrument" to mean one or more of the documents, by whatever name denominated, creating or governing the operation of a timeshare plan.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Authorizing the board of administration for a timeshare plan to “delete” accommodations or facilities without the approval of the members of the owners’ association may help alleviate costs to the association and its members, such as costs for labor and insurance associated with maintaining old or underutilized facilities. However, this may have a negative fiscal impact on the private sector to the extent that the deletion of any accommodations or facilities decreases the value of a timeshare interest.

Authorizing the managing entity of a timeshare project to have the same rights and remedies, regarding removal and refusal to accommodate, of an operator of a public lodging establishment or public food service establishment may have a positive economic impact on the private sector to the extent that the exercise of such authority reduces undesirable or illegal behavior or increases the public health and safety of the area, which in turn increases the value of a timeshare interest. However, the exercise of such authority may have a negative fiscal impact on the private sector to the extent it deprives the owner of a timeshare interest the right to fully utilize his or her interest and, therefore, receive a return on his or her investment.

FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

Article I, section 10, of the Florida Constitution provides, in relevant part, that “[n]o . . . law impairing the obligation of contracts shall be passed.” This provision empowers the courts to strike down laws that retroactively burden or alter contractual relations.<sup>73</sup> Not all contractual impairments warrant overturning an otherwise valid law; thus, state statutes that impair contractual obligations are measured on a sliding scale of scrutiny, where the degree of contractual impairment permitted is delineated by the importance of the governmental interests advanced.<sup>74</sup> The court, in *Pomponio v. Claridge of Pompano Condo., Inc.*,<sup>75</sup> 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.

The bill may modify the terms of or rights under existing contracts entered into by timeshare interest owners. To the extent that any such modifications impair the existing contracts, a court might find the offending provision inapplicable as to that contract.

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<sup>73</sup> *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).

<sup>74</sup> *Yellow Cab Co. of Dade Cnty. v. Dade Cnty.*, 412 So.2d 395 (Fla. 3d DCA 1982).

<sup>75</sup> 378 So.2d 774 (Fla. 1980).

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create the need for additional rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**