

FLORIDA HOUSE OF REPRESENTATIVES BILL ANALYSIS

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BILL #: [HB 897](#)

TITLE: Timeshare Plan Management

SPONSOR(S): Berfield

COMPANION BILL: [SB 496](#) (McClain)

LINKED BILLS: None

RELATED BILLS: None

Committee References

[Housing, Agriculture & Tourism](#)



[Civil Justice & Claims](#)



[Commerce](#)

SUMMARY

Effect of the Bill:

The bill exempts community association managers (CAMs) and CAM firms that manage timeshare plans from certain requirements relating to conflicts of interest. The bill specifies that timeshare management firms and licensed CAMs who are employed by a timeshare management firm are governed by certain provisions in the Vacation Plan and Timesharing Act.

Additionally, the bill requires:

- Timeshare management firms and licensed CAMs that are employed by a timeshare management firm to discharge their duties in good faith, and exempts such firms and licensed CAMs from certain liability for monetary damages.
- The board of administration of a timeshare condominium to meet only once a year, but does not prohibit additional board meetings from being called.
- Requires that, if a timeshare management firm that is an agent of an owners' association or an owners' association provides goods or services through arrangements with a parent, affiliate, or subsidiary of the timeshare management firm, the existence of the arrangement must be disclosed annually to the members of the owners' association as part of the common expense budgeting process, as an explanatory note to the annual budget, or otherwise.

Fiscal or Economic Impact:

None.

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ANALYSIS

EFFECT OF THE BILL:

The bill exempts [community association managers \(CAMs\) and CAM firms](#) that manage a [timeshare plan](#) governed by the Vacation Plan and Timesharing Act¹ from certain requirements and prohibitions relating to [conflicts of interest](#)² for CAMs and CAM firms. (Section [2](#).)

The bill specifies that timeshare management firms and licensed CAMs that are employed by a timeshare management firm are governed by [s. 468.438, F.S.](#),³ and [s. 721.13, F.S.](#)⁴ (Section [3](#).)

¹ Ch. 721, F.S.

² See [s. 468.4335, F.S.](#)

³ S. [468.438, F.S.](#), governs the licensure and regulation of timeshare management firms by Florida's Department of Business and Professional Regulation.

⁴ S. [721.13, F.S.](#), governs the management of timeshare plans under the Florida Vacation Plan and Timesharing Act.

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The bill requires timeshare management firms and licensed CAMs who are employed by a timeshare management firm to discharge their [duties](#) in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner they reasonably believe to be in the interests of the owners' association. (Section [4.](#))

The bill also exempts timeshare management firms and licensed CAMs that are employed by a timeshare management firm from certain liability for monetary damages,⁵ unless the firm or licensed CAM breached or failed to perform their duties and the breach of, or failure to perform, such duties constitutes:

- A violation of criminal law as provided in [s. 617.0834, F.S.](#);⁶
- A transaction from which the firm or licensed CAM derived an improper personal benefit, either directly or indirectly; or
- Constitutes recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. (Section [4.](#))

The bill requires⁷ a board of administration of a timeshare condominium to meet only once a year, unless additional board meetings are called. Additionally, if a timeshare management firm that is an agent of an owners' association or an owners' association provides goods or services through arrangements with a parent, affiliate, or subsidiary of the timeshare management firm, the bill requires the existence of such arrangements to be disclosed annually to the members of that owners' association as part of the common expense budgeting process, as an explanatory note to the annual budget, or otherwise. (Section [4.](#))

RELEVANT INFORMATION

SUBJECT OVERVIEW:

[Community Association Managers and Firms](#)

Under Florida law, a community association is a residential homeowners' association in which membership is a condition of ownership of a unit in a planned unit development, or of a lot for a home or a mobile home, or of a townhouse, villa, condominium, cooperative, or other residential unit which is part of a residential development scheme and which is authorized to impose a fee which may become a lien on the parcel.⁸

Community association managers⁹ (CAMs) and community association management firms¹⁰ (CAM firms) provide community association management services, which means any of the following practices that require substantial specialized knowledge, judgement, and managerial skill when done for compensation and when the community association served contains more than 10 units or has an annual budget in excess of \$100,000:

- Controlling or disbursing funds of an association;
- Preparing budgets or other financial documents for an association;
- Assisting in the noticing or conduct of association meetings;
- Determining the number of days required for statutory notices;
- Determining amounts due to the association;
- Collecting amounts due to the association before the filing of a civil action;
- Calculating the votes required for a quorum or to approve a proposition or amendment;
- Completing forms related to the management of an association;
- Drafting meeting notices and agendas;
- Calculating and preparing certificates of assessment and estoppel certificates;
- Responding to requests for certificates of assessment and estoppel certificates;

⁵ See [s. 617.0834, F.S.](#)

⁶ [s. 617.0834, F.S.](#), governs activities relating to officers and directors of certain non-profit corporations and associations and their immunity from civil liability.

⁷ This requirement is notwithstanding the other provisions of ch. 718, F.S., the Florida Condominium Act.

⁸ S. [468.431\(1\), F.S.](#)

⁹ See s. [468.431\(4\), F.S.](#)

¹⁰ See s. [468.432\(3\), F.S.](#)

- Negotiating monetary or performance terms of a contract subject to approval by an association;
- Drafting pre-arbitration demands;
- Coordinating or performing maintenance for real or personal property and other related routine services involved in the operation of an association; and
- Complying with an association’s governing documents and the requirements of law as necessary to perform any of the above activities.¹¹

Licensure and Regulation

CAMs and CAM firms are licensed and regulated by the Department of Business and Professional Regulation (DBPR), and the seven-member Regulatory Council of Community Association Managers within DBPR, pursuant to part VIII of chapter 468, F.S.¹² A person may not manage (or hold herself or himself out to the public as being able to manage) a community association in the state unless he or she is licensed by DBPR.¹³ Similarly, a CAM firm or other organization responsible for the management of more than 10 units or an association budget of \$100,000 or greater may not engage (or hold itself out to the public as being able to engage) in the business of community association management in the state unless it is licensed by DBPR.¹⁴

Under Florida law, a CAM or CAM firm is deemed to act as an agent of a community association when performing duties within the scope of authority authorized by a written contract with the association or chapter 468, F.S. Additionally, a CAM or CAM firm must discharge duties authorized to be performed on behalf of an association:

- Loyal, skillfully, and diligently;
- Dealing honestly and fairly;
- In good faith;
- With care and full disclosure to the community association;
- Accounting for all funds; and
- Not charging unreasonable or excessive fees.¹⁵

Florida law requires a CAM or CAM firm to return all official records of a community association within its possession to the association with 20 business days after termination of an agreement to provide community association management services to the association or receipt of a written request for return of the official records, whichever occurs first.¹⁶

Conflicts of Interest

A CAM or CAM firm, including directors, officers, and persons with a financial interest in a CAM firm, or a relative¹⁷ of such persons, must disclose to the board of a community association any activity that may reasonably be construed to be a conflict of interest.¹⁸ There is a rebuttable presumption that a conflict of interest exists if any of the following occurs without prior notice:

- A CAM or CAM firm, including directors, officers, and persons with a financial interest in a CAM firm, or a relative of such persons, enters into a contract for goods or services with the association.¹⁹
- A CAM or CAM firm, including directors, officers, and persons with a financial interest in a CAM firm, or a relative of such persons, holds an interest in or receives compensation or anything of value from a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity

¹¹ S. [468.431\(2\), F.S.](#)

¹² See ss. [468.432\(1\)](#) and [468.4315, F.S.](#)

¹³ S. [468.432\(1\), F.S.](#)

¹⁴ S. [468.432\(2\), F.S.](#)

¹⁵ S. [468.4334\(1\)\(a\), F.S.](#)

¹⁶ S. [468.4334\(4\), F.S.](#)

¹⁷ For purposes of these provisions, “relative” means a relative within the third degree of consanguinity by blood or marriage. S. [468.4335\(6\), F.S.](#)

¹⁸ S. [468.4335\(1\), F.S.](#)

¹⁹ S. [468.4335\(1\)\(a\), F.S.](#)

that conducts business with the association or proposes to enter into a contract or other transaction with the association.²⁰

If a CAM or CAM firm, including directors, officers, and persons with a financial interest in a CAM firm, or a relative of such persons, proposes to engage in an activity that is a conflict of interest described above, the proposed activity must be listed on, and all contracts and transactional documents related to the proposed activity must be attached to, the meeting agenda of the next board of administration meeting.²¹

In the event a community association's board discovers that a CAM or CAM firm, including directors, officers, and persons with a financial interest in a CAM firm, or a relative of such persons, has violated Florida's laws relating to conflicts of interests for CAMs and CAM firms, the association may cancel its community association management contract with the CAM or CAM firm.²² If the contract is canceled, the association is liable only for the reasonable value of the management services provided up to the time of cancellation and is not liable for any termination fees, liquidated damages, or other form of penalty for such cancellation.²³

Florida Vacation Plan and Timesharing Act

The Florida Vacation Plan and Timesharing Act²⁴ (Timeshare Act), administered by the Division of Florida Condominiums, Timeshares, and Mobile Homes (Division) within DBPR, governs vacation plans and timeshare plans in the state. 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, whereby 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.²⁵

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.²⁶

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.²⁷ The Timeshare Act governs vacation plans and timesharing,²⁸ and multisite vacation and timeshare plans known as vacation clubs.²⁹

²⁰ S. [468.4335\(1\)\(b\), F.S.](#)

²¹ S. [468.4335\(3\), F.S.](#)

²² S. [468.4335\(4\), F.S.](#)

²³ *Id.*

²⁴ Ch. 721, F.S.

²⁵ S. [721.05\(39\), F.S.](#)

²⁶ S. [721.02, F.S.](#)

²⁷ S. [721.03\(1\), F.S.](#)

²⁸ See p. I of ch. 721, F.S.

²⁹ See pt. II of ch. 721, F.S.

Managing Entity of a Timeshare

The Timeshare Act requires a developer to provide a managing entity for each timeshare plan.³⁰ The managing entity is the person or organization responsible for operating and maintaining the timeshare plan.³¹ The managing entity may be the developer, a separate manager or management firm, or an owners' association,³² and must be created prior to the first closing of the sale of a timeshare interest.³³

The [duties](#) of a managing entity of a timeshare plan include, but are not limited to:

- Management and maintenance of all accommodations and facilities constituting the timeshare plan.
- Collection of all assessments for common expenses.
- Providing annually to all purchasers of the timeshare plan 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.
- Making available for inspection by the Division any books and records of the timeshare plan upon the request of the Division.
- 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 of the timeshare plan, 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, if an independent escrow agent is required by [s. 192.037, F.S.](#), and submitting to the Division the statement of receipts and disbursements regarding the ad valorem tax escrow account.³⁴

Under the Timeshare Act, a managing entity that is an officer, director, or agent of an owners' association must discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the interests of the owners' association.³⁵ An officer, director, or agent of an owners' association is exempt from liability for monetary damages, unless the officer, director, or agent breached or failed to perform his or her duties and the breach of, or failure to perform, his or her duties constitutes:

- A violation of criminal law as provided in s. 617.0834, F.S.;
- A transaction from which the officer or director derived an improper personal benefit, either directly or indirectly; or
- An act or omission that was reckless, in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.³⁶

³⁰ S. [721.13\(1\)\(a\), F.S.](#)

³¹ See s. [721.05\(22\), F.S.](#)

³² An owners' association is an association made up of all owners of timeshare interests in a timeshare plan, including developers and purchasers of the timeshare plan. S. [721.105\(27\), F.S.](#)

³³ S. [721.13\(1\)\(a\), F.S.](#)

³⁴ S. [721.13\(3\), F.S.](#)

³⁵ S. [721.13\(13\), F.S.](#)

³⁶ *Id.*

RECENT LEGISLATION:

YEAR	BILL #	HOUSE SPONSOR(S)	SENATE SPONSOR	OTHER INFORMATION
2024	CS/HB 429	Robinson, W.	Perry	Amended several provisions in the Timeshare Act. Approved by the Governor.
2024	CS/CS/CS/HB 1021	Lopez, V.	Bradley	Amended certain laws relating to CAMs and CAM firms. Approved by the Governor.

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Housing, Agriculture & Tourism Subcommittee			Curtin	Fletcher
Civil Justice & Claims Subcommittee				
Commerce Committee				