

CHAPTER 98-36

Committee Substitute for Committee Substitute for Senate Bill No. 626

An act relating to timeshare plans; amending s. 721.03, F.S.; revising provisions with respect to the scope of the chapter; providing for certain rules; amending s. 721.05, F.S.; defining the term “regulated short-term product”; amending s. 721.06, F.S.; revising provisions with respect to contracts for the purchase of timeshare periods; amending s. 721.07, F.S.; revising provisions with respect to public offering statements; providing a time period for amendments that add a new component site to an approved multisite timeshare plan; amending s. 721.075, F.S.; deleting provisions with respect to certain incidental benefits offered by a developer; amending s. 721.09, F.S.; revising provisions with respect to reservation agreements; providing for cancellation of such agreements under certain circumstances; amending s. 721.11, F.S.; requiring that advertisements of regulated short-term products be filed with the division; requiring disclosure statements for purchase agreements; amending s. 721.13, F.S.; revising provisions with respect to management; amending s. 721.15, F.S.; revising provisions with respect to assessments for common expenses; amending s. 721.18, F.S.; revising a time period with respect to the filing of certain information concerning exchange programs; amending s. 721.26, F.S.; authorizing the imposition of penalties with respect to certain rules; amending s. 721.265, F.S.; providing service of process in receivership proceedings; creating part III of chapter 721, F.S.; creating the “Timeshare Lien Foreclosure Act”; providing legislative purpose; providing definitions; providing for a registered agent; providing for the consolidation of foreclosure actions; creating part IV of ch. 721, F.S.; creating timeshare commissioners of deeds; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (b) and (c) of subsection (1) of section 721.03, Florida Statutes, are amended to read:

721.03 Scope of chapter.—

(1) This chapter applies to all timeshare plans consisting of more than seven timeshare periods over a period of at least 3 years in which the accommodations or facilities are located within this state; provided that:

(b) With respect to timeshare plans containing accommodations or facilities located in this state which are offered for sale outside the jurisdictional limits of the United States, such offers shall be exempt from the requirements of this chapter so long as the seller files the information required by s. 721.07 or s. 721.55 with, and obtains the approval of, the division complies with the provisions of this paragraph. This exemption becomes effective upon the filing of such information with the division, if approval is obtained

within 6 months after the initial filing at which time the exemption will expire unless the division stipulates otherwise or approves the filing. The fees set forth in s. 721.07(4) apply to all filings made hereunder. Each purchase contract utilized in any offer of a timeshare plan that occurs outside the jurisdictional limits of the United States shall contain the following disclosure in conspicuous type immediately above the space provided for the purchaser's signature:

The offering of this timeshare plan outside the jurisdictional limits of the United States of America is exempt from regulation under Florida law, and any such purchase is not protected by the State of Florida. However, the management and operation of any accommodations or facilities located in Florida is subject to Florida law and may give rise to enforcement action regardless of the location of any offer.

Purchaser should note that (name of developer or other person or entity) at (address) has a (describe developer's or other person's or entity's actual interest) in the accommodations and facilities of the timeshare plan.

(c) ~~The exemption provided in paragraph (a) shall not apply unless and until a claim of exemption from regulation containing the information required by paragraph (a) and s. 721.51(3)(b) and accompanied by the fee required by s. 721.51(3)(b) is filed with and approved by the division. The division may adopt rules designating those provisions of ss. 721.07 and 721.55 which need not be addressed in the filings required in paragraph (b). The exemption provided in paragraph (b) shall only apply to accommodations or facilities which have first been filed with and approved by the division pursuant to s. 721.07 or s. 721.55.~~

Section 2. Present subsections (27), (28), (29), (30), (31), (32), (33), (34), (35), and (36) of section 721.05, Florida Statutes, are redesignated as subsections (28), (29), (30), (31), (32), (33), (34), (35), (36), and (37), respectively, and a new subsection (27) is added to that section to read:

721.05 Definitions.—As used in this chapter, the term:

(27) "Regulated short-term product" means a contractual right, offered by the seller, to use accommodations of a timeshare plan, provided that:

(a) The agreement to purchase the short-term right to use is executed in this state on the same day that the prospective purchaser receives an offer to acquire an interest in a timeshare plan and does not execute a purchase contract, after attending a sales presentation; and

(b) The acquisition of the right to use includes an agreement that all or a portion of the consideration paid by the prospective purchaser for the right to use will be applied to or credited against the price of a future purchase of a timeshare interest, or that the cost of a future purchase of a timeshare interest will be fixed or locked in at a specified price.

Section 3. Paragraph (f) of subsection (1) of section 721.06, Florida Statutes, is amended to read:

721.06 Contracts for purchase of timeshare periods.—

(1) Each seller shall utilize, and furnish each purchaser a fully completed and executed copy of, a contract pertaining to the sale, which contract shall include the following information:

(f) Immediately prior to the space reserved in the contract for the signature of the purchaser, in conspicuous type, substantially the following statements:

You may cancel this contract without any penalty or obligation within 10 calendar days after ~~from~~ the date you sign this contract, and within until 10 calendar days after the date you receive the approved public offering statement, whichever is later.

If you decide to cancel this contract, you must notify the developer in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to ...(Name of Developer)... at ...(Address of Developer).... Any attempt to obtain a waiver of your cancellation right is unlawful. While you may execute all closing documents in advance, the closing, as evidenced by delivery of the deed or other document, before expiration of your 10-day cancellation period, is prohibited.

Section 4. Paragraph (a) of subsection (3) of section 721.07, Florida Statutes, is amended to read:

721.07 Public offering statement.—Prior to offering any timeshare plan, the developer must file a public offering statement with the division for approval as prescribed by s. 721.03, s. 721.55, or this section. Until the division approves such filing, any contract regarding the sale of the timeshare plan which is the subject of the public offering statement is voidable by the purchaser.

(3)(a)1. Any change to an approved filing shall be filed with the division for approval as an amendment prior to becoming effective. The division shall have 20 days after receipt of a proposed amendment to approve or cite deficiencies in the proposed amendment. If the division fails to act within 20 days, the amendment will be deemed approved. If the proposed amendment adds a new component site to an approved multisite timeshare plan, the division's initial period in which to approve or cite deficiencies is 45 days. If the developer fails to adequately respond to any deficiency notice within 30 days, the division may reject the amendment. Subsequent to such rejection, a new filing fee pursuant to subsection (4) and a new division initial review period pursuant to this paragraph shall apply to any refiling or further review of the rejected amendment.

2. For filings only subject to this part, each approved amendment, other than an amendment made only for the purpose of the addition of a phase or phases to the timeshare plan in the manner described in the timeshare instrument, shall be delivered to a purchaser no later than 10 days prior to closing. For filings made under part II, each approved amendment to the multisite timeshare plan public offering statement, other than an amendment made only for the purpose of the addition, substitution, or deletion of

a component site pursuant to part II or the addition of a phase or phases to a component site of a multisite timeshare plan in the manner described in the timeshare instrument, shall be delivered to a purchaser no later than 10 days prior to closing.

3. Amendments made to a timeshare instrument for a component site located in this state shall only be delivered to those purchasers who will receive a timeshare estate or a specific timeshare license in that component site. Amendments made to a timeshare instrument for a component site not located in this state are not required to be delivered to purchasers.

Section 5. 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 shall be subject to the provisions of this section and exempt from the other provisions of this part which would otherwise apply to accommodations and facilities if and only if:

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

(b) No costs of acquisition, operation, maintenance, or repair of the incidental benefit are passed on to purchasers of the timeshare plan as common expenses of the timeshare plan or as common expenses of a component site of a multisite timeshare plan.

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

(d) The continued availability to purchasers of timeshare plan accommodations on no greater than a one-to-one purchaser to accommodation ratio is not dependent upon continued availability of the incidental benefit.

(e) The incidental benefit will continue to be available in the manner represented to prospective purchasers for no less than 6 months but less than 3 years after the first date that the timeshare plan is available for use by the purchaser. The developer shall not be required to make the incidental benefit available for longer than 18 months after the date of purchase. Nothing herein shall prevent the renewal or extension of the availability of an incidental benefit ~~after the expiration of its term, provided that any ability to renew is not represented or otherwise portrayed to a prospective purchaser or to a purchaser prior to the expiration of his or her initial 10-day voidability period.~~

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

(g) The incidental benefit is filed with the division in conjunction with the filing of a timeshare plan or in connection with a previously filed timeshare plan.

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

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

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

(c) A statement that the incidental benefit is not assignable or otherwise transferable by the prospective purchaser or purchaser.

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

[Describe incidental benefit] is an incidental benefit offered to prospective purchasers of the timeshare plan [or other permitted reference pursuant to s. 721.11(5)(a)]. This benefit is available for your use for a ~~term of~~ [minimum of 6 months but less than 3 years] after the first date that the timeshare plan is available for your use. The availability of the incidental benefit may or may not be renewed or extended. You should not purchase an interest in the timeshare plan in reliance upon the continued availability or renewal or extension of this benefit.

The acknowledgment and disclosure statement for each incidental benefit shall be filed with the division prior to use. Each purchaser shall receive a copy of his or her executed acknowledgment and disclosure statement as a document required to be provided to him or her pursuant to s. 721.10(1)(b).

(3)(a) In the event that an incidental benefit becomes unavailable to purchasers in the manner represented by the developer in the acknowledgment and disclosure statement, the developer shall pay the purchaser the greater of twice the verifiable retail value or twice the represented value of the unavailable incidental benefit in cash within 30 days of the date that the unavailability of the incidental benefit was made known to the developer unless the developer has reserved a substitution right pursuant to paragraph (b) by making the required disclosure in the acknowledgment and disclosure statement and timely makes the substitution as required by paragraph (b). The developer shall promptly notify the division upon learning of the unavailability of any incidental benefit.

(b) If an incidental benefit becomes unavailable as a result of events beyond the control of the developer, the developer may reserve the right to substitute a replacement incidental benefit of a type, quality, value, and term reasonably similar to the unavailable incidental benefit by including the following language in the disclosure required by paragraph (2)(d):

In the event [describe incidental benefit] becomes unavailable as a result of events beyond the control of the developer, the developer reserves the right to substitute a replacement incidental benefit of a type, quality, value, and term reasonably similar to the unavailable incidental benefit.

The substituted incidental benefit shall be delivered to the purchaser within 30 days after the date that the unavailability of the incidental benefit was made known to the developer.

~~(4) If the aggregate represented value of all incidental benefits offered by a developer to a purchaser exceeds 5 percent of the purchase price paid by that purchaser, then, prior to offering the incidental benefits, the developer must file an irrevocable letter of credit, surety bond, or other assurance acceptable to the director of the division that will reasonably assure the delivery of the promised incidental benefits to the purchaser; provided, however, that the maximum amount of such assurance shall equal the portion of the aggregate represented value of the offered incidental benefits which exceeds 5 percent of the purchase price contracted for by that purchaser. Proceeds from any assurance accepted by the division shall be used to provide refunds to purchasers pursuant to this section. If the aggregate represented value of all incidental benefits offered by a developer to a purchaser is equal to or less than 5 percent of the purchase price paid by that purchaser, no assurance shall be required from the developer prior to offering any incidental benefit.~~

~~(4)(5)~~ All purchaser remedies pursuant to s. 721.21 shall be available for any violation of the provisions of this section.

Section 6. Subsection (1) of section 721.09, Florida Statutes, is amended to read:

721.09 Reservation agreements; escrows.—

(1)(a) Prior to filing the public offering statement with the division, a seller shall not offer a timeshare plan for sale but may accept reservation deposits and advertise the reservation deposit program upon approval by the division of a fully executed escrow agreement and reservation agreement properly filed with the division.

(b) Reservations shall not be taken on a timeshare plan unless the seller has an ownership interest or leasehold interest, of a duration at least equal to the duration of the proposed timeshare plan, in the land upon which the timeshare plan is to be developed.

(c) If the timeshare plan subject to the reservation agreement has not been filed with the division under s. 721.07(5) or s. 721.55 within 90 days after the date the division approves the reservation agreement filing, the

seller must immediately cancel all outstanding reservation agreements, refund all escrowed funds to prospective purchasers, and discontinue accepting reservation deposits or advertising the availability of reservation agreements.

(d) A seller who has filed a reservation agreement and an escrow agreement under this section may advertise the reservation agreement program if the advertising material meets the following requirements:

1. The seller complies with the provisions of s. 721.11 with respect to such advertising material.

2. The advertising material is limited to a general description of the proposed timeshare plan, including, but not limited to, a general description of the type, number, and size of accommodations and facilities and the name of the proposed timeshare plan.

3. The advertising material contains a statement that the advertising material is being distributed in connection with an approved reservation agreement filing only and that the seller cannot offer an interest in the timeshare plan for sale until a public offering statement has been filed with the division under this chapter.

Section 7. Subsection (6) is added to section 721.11, Florida Statutes, to read:

721.11 Advertising materials; oral statements.—

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

(a) A standard form of any agreement relating to the sale of a regulated short-term product must be filed 10 days prior to use with the division as advertising material under this section. Each seller shall furnish each purchaser of a regulated short-term product with a fully completed and executed copy of the agreement at the time of execution.

(b) A purchaser of a regulated short-term product has the right to cancel the agreement until midnight of the 10th calendar day following the execution date of the agreement. The right of cancellation may not be waived by the prospective purchaser or by any other person on behalf of the prospective purchaser. Notice of cancellation must be given in the same manner prescribed for giving notice of cancellation under s. 721.10(2). If the prospective purchaser gives a valid notice of cancellation or is otherwise entitled to cancel the sale, the funds or property received from or on behalf of the prospective purchaser, or the proceeds thereof, must be returned to the prospective purchaser. Such refund must be made in the same manner prescribed for refunds under s. 721.10.

(c) An agreement for purchase of a regulated short-term product must contain substantially the following statements, given at the time the agreement is made:

1. A statement that if the purchaser of a regulated short-term product cancels the agreement during the 10-day cancellation period, the seller will refund to the prospective purchaser the total amount of all payments made by the prospective purchaser under the agreement, reduced by the proportion of any benefits the prospective purchaser has actually received under the agreement prior to the effective date of the cancellation; and

2. A statement that the specific value for each benefit received by the prospective purchaser under the agreement will be as agreed to between the prospective purchaser and the seller.

(d) An agreement for purchase of a regulated short-term product must contain substantially the following statements in conspicuous type immediately above the space reserved in the agreement for the signature of the prospective purchaser:

You may cancel this agreement without any penalty or obligation within 10 calendar days [or specify a longer time period represented to the purchaser] after the date you sign this agreement. If you decide to cancel this agreement, you must notify the seller in writing of your intent to cancel. Your notice of cancellation is effective upon the date sent and must be sent to ...(Name of Seller)... at ...(Address of Seller).... Any attempt to obtain a waiver of your cancellation right is unlawful.

If you execute a purchase contract for a timeshare period, section 721.08, Florida Statutes, (escrow accounts) will apply to any funds or other property received from you or on your behalf. Section 721.10, Florida Statutes, (cancellation) will apply to the purchase and you will not be entitled to a cancellation refund of the short-term product [or specify an alternate refund policy under these circumstances].

(e) If the seller provides the purchaser with the right to cancel the purchase of a regulated short-term product at any time up to 7 days prior to the purchaser's reserved use of the accommodations, but in no event less than 10 days, and if the seller refunds the total amount of all payments made by the purchaser reduced by the proportion of any benefits the purchaser has actually received prior to the effective date of the cancellation, the specific value of which has been agreed to between the purchaser and the seller, the short-term product offer shall be exempt from the requirements of paragraphs (b), (c), and (d). An agreement relating to the sale of the regulated short-term product made pursuant to this paragraph must contain a statement setting forth the cancellation and refund rights of the prospective purchaser in a manner that is consistent with this section and s. 721.10, including a description of the length of the cancellation right, a statement that the purchaser's intent to cancel must be in writing and sent to the seller at a specified address, a statement that the notice of cancellation is effective upon the date sent, and a statement that any attempt to waive the cancellation right is unlawful. The right of cancellation provided to the purchaser pursuant to this paragraph may not be waived by the prospective purchaser or by any other person on behalf of the prospective purchaser. Notice of cancellation must be given in the same manner prescribed for giving notice of cancellation pursuant to s. 721.10(2). If the prospective purchaser gives a valid notice of cancellation, or is otherwise entitled to cancel the sale, the

funds or property received from or on behalf of the prospective purchaser, or the proceeds thereof, shall be returned to the prospective purchaser. Such refund shall be made in the manner prescribed for refunds under s. 721.10.

Section 8. Paragraphs (c), (e), and (i) of subsection (3) and subsection (4) of section 721.13, Florida Statutes, are amended to read:

721.13 Management.—

(3) The duties of the managing entity include, but are not limited to:

(c)1. Providing each year to all purchasers an itemized annual budget which shall include all estimated revenues and expenses. The budget shall be in the form required by s. 721.07(5)(x) and shall be the final budget adopted by the managing entity for the current fiscal year. The budget shall contain, as a footnote or otherwise, any related party transaction disclosures or notes which appear in the audited financial statements of the managing entity for the previous budget year as required by paragraph (e). A copy of the final budget shall be filed with the division within 30 days after its adoption by the managing entity together with a statement of the number of periods of 7-day annual use availability that exist within the timeshare plan, including those periods filed for sale by the developer but not yet committed to the timeshare plan, for which annual fees are required to be paid to the division under s. 721.27.

2. Notwithstanding anything contained in chapter 718 or chapter 719 to the contrary, the board of administration of an owners' association which serves as managing entity may from time to time reallocate reserves for deferred maintenance and capital expenditures required by s. 721.07(5)(x)3.a.(XI) from any deferred maintenance or capital expenditure reserve account to any other deferred maintenance or capital expenditure reserve account or accounts in its discretion without the consent of purchasers of the timeshare plan. Funds in any deferred maintenance or capital expenditure reserve account may not be transferred to any operating account without the consent of a majority of the purchasers of the timeshare plan.

(e) Arranging for an annual ~~independent~~ audit of the financial statements all the books and financial records of the timeshare plan by a certified public accountant licensed by the Board of Accountancy of the Department of Business and Professional Regulation, in accordance with generally accepted auditing standards as defined by the rules of the Board of Accountancy of the Department of Business and Professional Regulation. The financial statements required by this section must be prepared on an accrual basis using fund accounting, and must be presented in accordance with generally accepted accounting principles. A copy of the audited financial statements ~~audit must~~ shall be filed with the division and forwarded to the board of directors and officers of the owners' association, or, if one exists, no later than 5 calendar months after the end of the timeshare plan's fiscal year. If no owners' association exists, the owner of each purchaser timeshare period must shall be notified, no later than 5 months after the end of the timeshare plan's fiscal year, that a copy of the audited financial statements

such audit is available upon request to the managing entity. Notwithstanding any requirement of s. 718.111(13) or (14), the audited financial statements required by this section are the only annual financial reporting requirements for timeshare condominiums.

(i) Submitting to the division the statement of receipts and disbursements regarding the ad valorem tax escrow account as required by s. 192.037(6)(e). The statement of receipts and disbursements must also include a statement disclosing that all ad valorem taxes have been paid in full to the tax collector through the current assessment year, or, if all such ad valorem taxes have not been paid in full to the tax collector, a statement disclosing those assessment years for which there are outstanding ad valorem taxes due and the total amount of all delinquent taxes, interest, and penalties for each such assessment year as of the date of the statement of receipts and disbursements.

(4) The managing entity shall maintain among its records and provide to the division upon request a complete list of the names and addresses of all purchasers and owners of timeshare units in the timeshare plan. The managing entity shall update this list no less frequently than quarterly. Pursuant to paragraph (3)(d), the managing entity may not publish this owner's list or provide a copy of it to any purchaser or to any third party other than the division. ~~However, if the managing entity includes a condominium association subject to the provisions of chapter 718 or a cooperative association subject to the provisions of chapter 719, the managing entity shall initiate a mailing to those persons listed on the owner's list upon the written request of any purchaser if the purpose of the mailing is to advance legitimate association business, such as a proxy solicitation for any purpose, including the recall of one or more board members or the discharge of the manager or management firm. The use of any proxies solicited in this manner must comply with the provisions of the timeshare instrument and this chapter. The board of administration of the association shall be responsible for determining the appropriateness of any mailing requested pursuant to this subsection, and it shall be a violation of this chapter and of part VIII of chapter 468 for the board of administration and/or the manager or management firm to refuse to initiate any mailing requested for the purpose of advancing legitimate association business. The purchaser who requests the mailing must reimburse the association in advance for the association's actual costs in performing the mailing.~~

Section 9. Subsection (1) of section 721.15, Florida Statutes, is amended to read:

721.15 Assessments for common expenses.—

(1)(a) Until a managing entity is created or provided pursuant to s. 721.13, the developer shall pay all common expenses. The timeshare instrument shall provide for the allocation of common expenses among all timeshare units or timeshare periods on a reasonable basis, as appropriate, including timeshare periods owned or not yet sold by the developer. The timeshare instrument may provide that the common expenses allocated may differ between those units that are part of the timeshare plan and those

units that are not part of the timeshare plan; however, the different proportion of expenses must be based upon reasonable differences in the benefit provided to each. The timeshare instrument shall allocate common expenses to timeshare periods owned or not yet sold by the developer on the same basis that common expenses are allocated to similar or equivalent timeshare periods sold to purchasers. ~~Timeshare plans that are also governed by chapter 718 or chapter 719 shall allocate common expenses among the timeshare units in the manner required by those chapters.~~

(b) Notwithstanding any provision of chapter 718 or chapter 719 to the contrary, the allocation of total common expenses for a condominium or a cooperative timeshare plan may vary on any reasonable basis including, but not limited to, unit size, unit type, unit location, specific identification, or a combination of these factors, if the percentage interest in the common elements attributable to each timeshare condominium parcel or timeshare cooperative parcel equals the share of the total common expenses allocable to that parcel. The share of a timeshare interest in the common expenses allocable to the timeshare condominium parcel or the timeshare cooperative parcel containing such interest may vary on any reasonable basis if the timeshare interest's share of its parcel's common expense allocation is equal to that timeshare interest's share of the percentage interest in common elements attributable to such parcel.

Section 10. Subsection (2) of section 721.18, Florida Statutes, is amended to read:

721.18 Exchange programs; filing of information and other materials; filing fees; unlawful acts in connection with an exchange program.—

(2) Each exchange company offering an exchange program to purchasers in this state shall file the information specified in subsection (1) and the audit specified in subsection (1) on or before June 1 at least 20 days prior to July 1 of each year. However, an exchange company shall make its initial filing at least 20 days prior to offering an exchange program to any purchaser in this state. Each filing shall be accompanied by an annual filing fee of \$500. Within 20 days of receipt of such filing, the division shall determine whether the filing is adequate to meet the requirements of this section and shall notify the exchange company in writing that the division has either approved the filing or found specified deficiencies in the filing. If the division fails to respond within 20 days, the filing shall be deemed approved. The exchange company may correct the deficiencies; and, within 10 days after receipt of corrections from the exchange company, the division shall notify the exchange company in writing that the division has either approved the filing or found additional specified deficiencies in the filing. If at any time the division determines that any of such information supplied by an exchange company fails to meet the requirements of this section, the division may undertake enforcement action against the exchange company in accordance with the provision of s. 721.26.

Section 11. Section 721.26, Florida Statutes, is amended to read:

721.26 Regulation by division.—The division has the power to enforce and ensure compliance with the provisions of this chapter, except for part

III and part IV, using the powers provided in this chapter, as well as the powers prescribed in chapters 498, 718, and 719. In performing its duties, the division shall have the following powers and duties:

(1) To aid in the enforcement of this chapter, or any division rule or order promulgated or issued pursuant to this chapter, the division may make necessary public or private investigations within or outside this state to determine whether any person has violated or is about to violate this chapter, or any division rule or order promulgated or issued pursuant to this chapter.

(2) The division may require or permit any person to file a written statement under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter under investigation.

(3) For the purpose of any investigation under this chapter, the director of the division or any officer or employee designated by the director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the identity, existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby shall be a violation of this chapter. In addition to the other enforcement powers authorized in this subsection, the division may, at its discretion, apply to the circuit court for an order compelling compliance.

(4) The division may prepare and disseminate a prospectus and other information to assist prospective purchasers, sellers, and managing entities of timeshare plans in assessing the rights, privileges, and duties pertaining thereto.

(5) Notwithstanding any remedies available to purchasers, if the division has reasonable cause to believe that a violation of this chapter, or of any division rule or order promulgated or issued pursuant to this chapter, has occurred, the division may institute enforcement proceedings in its own name against any regulated party, as such term is defined in this subsection:

(a)1. "Regulated party," for purposes of this section, means any developer, exchange company, seller, managing entity, association, association director, association officer, management firm, escrow agent, trustee, any respective assignees or agents, or any other person having duties or obligations pursuant to this chapter.

2. Any person who materially participates in any offer or disposition of any interest in, or the management or operation of, a timeshare plan in violation of this chapter or relevant rules involving fraud, deception, false pretenses, misrepresentation, or false advertising or the disbursement, concealment, or diversion of any funds or assets, which conduct adversely affects the interests of a purchaser, and which person directly or indirectly

controls a regulated party or is a general partner, officer, director, agent, or employee of such regulated party, shall be jointly and severally liable under this subsection with such regulated party, unless such person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts giving rise to the violation of this chapter. A right of contribution shall exist among jointly and severally liable persons pursuant to this paragraph.

(b) The division may permit any person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby an order, rule, or letter of censure or warning, whether formal or informal, may be entered against that person.

(c) The division may issue an order requiring a regulated party to cease and desist from an unlawful practice under this chapter and take such affirmative action as in the judgment of the division will carry out the purposes of this chapter.

(d)1. The division may bring an action in circuit court for declaratory or injunctive relief or for other appropriate relief, including restitution.

2. The division shall have broad authority and discretion to petition the circuit court to appoint a receiver with respect to any managing entity which fails to perform its duties and obligations under this chapter with respect to the operation of a timeshare plan. The circumstances giving rise to an appropriate petition for receivership under this subparagraph include, but are not limited to:

a. Damage to or destruction of any of the accommodations or facilities of a timeshare plan, where the managing entity has failed to repair or reconstruct same.

b. A breach of fiduciary duty by the managing entity, including, but not limited to, undisclosed self-dealing or failure to timely assess, collect, or disburse the common expenses of the timeshare plan.

c. Failure of the managing entity to operate the timeshare plan in accordance with the timeshare instrument and this chapter.

If, under the circumstances, it appears that the events giving rise to the petition for receivership cannot be reasonably and timely corrected in a cost-effective manner consistent with the timeshare instrument, the receiver may petition the circuit court to implement such amendments or revisions to the timeshare instrument as may be necessary to enable the managing entity to resume effective operation of the timeshare plan, or to enter an order terminating the timeshare plan, or to enter such further orders regarding the disposition of the timeshare property as the court deems appropriate. All reasonable costs and fees of the receiver relating to the receivership shall become common expenses of the timeshare plan upon order of the court.

3. The division may revoke its approval of any filing for any timeshare plan for which a petition for receivership has been filed pursuant to this paragraph.

(e)1. The division may impose a penalty against any regulated party for a violation of this chapter or any rule adopted thereunder. A penalty may be imposed on the basis of each day of continuing violation, but in no event may the penalty for any offense exceed \$10,000. All accounts collected shall be deposited with the Treasurer to the credit of the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund.

2.a. If a regulated party fails to pay a penalty, the division shall thereupon issue an order directing that such regulated party cease and desist from further operation until such time as the penalty is paid; or the division may pursue enforcement of the penalty in a court of competent jurisdiction.

b. If an association or managing entity fails to pay a civil penalty, the division may pursue enforcement in a court of competent jurisdiction.

(f) In order to permit the regulated party an opportunity either to appeal such decision administratively or to seek relief in a court of competent jurisdiction, the order imposing the penalty or the cease and desist order shall not become effective until 20 days after the date of such order.

(g) Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

(h) Notice to any regulated party shall be complete when delivered by United States mail, return receipt requested, to the party's address currently on file with the division or to such other address at which the division is able to locate the party. Every regulated party has an affirmative duty to notify the division of any change of address at least 5 business days prior to such change.

(6) The division is authorized to adopt, amend, or repeal rules pursuant to chapter 120 as necessary to implement, enforce, and interpret this chapter.

(7)(a) The use of any unfair or deceptive act or practice by any person in connection with the sales or other operations of an exchange program or timeshare plan is a violation of this chapter.

(b) Any violation of the Florida Deceptive and Unfair Trade Practices Act, ss. 501.201 et seq., relating to the creation, promotion, sale, operation, or management of any timeshare plan shall also be a violation of this chapter.

(c) The division is authorized to institute proceedings against any such person and take any appropriate action authorized in this section in connection therewith, notwithstanding any remedies available to purchasers.

(8) The failure of any person to comply with any order of the division is a violation of this chapter.

Section 12. Subsection (3) is added to section 721.265, Florida Statutes, to read:

721.265 Service of process.—

(3) In addition to any means recognized by law, substituted service of process on timeshare purchasers in receivership proceedings may be made in accordance with s. 721.85(1).

Section 13. Part III of chapter 721, Florida Statutes, consisting of sections 721.80, 721.81, 721.82, 721.83, 721.84, 721.85, and 721.86, Florida Statutes, is created to read:

Part III
FORECLOSURE OF LIENS ON TIMESHARE ESTATES

721.80 Short title.—This part may be cited as the “Timeshare Lien Foreclosure Act.”

721.81 Legislative purpose.—The purposes of this part are to:

(1) Recognize that timeshare estates are parcels of real property used for vacation experience rather than for homestead purposes and that there are numerous timeshare estates in the state.

(2) Recognize that the economic health and efficient operation of the vacation ownership industry are in part dependent upon the availability of an efficient and economical process for foreclosure.

(3) Recognize the need to assist vacation ownership resort owners’ associations and mortgagees by simplifying and expediting the process of foreclosure of assessment liens and mortgage liens against timeshare estates.

(4) Reduce court congestion and the cost to taxpayers by establishing streamlined procedures for the foreclosure of assessment liens and mortgage liens against timeshare estates.

721.82 Definitions.—As used in this part, the term:

(1) “Assessment lien” means:

(a) A lien for delinquent assessments as provided in ss. 721.16 and 718.116 as to timeshare condominiums; or

(b) A lien for unpaid taxes and special assessments as provided in s. 192.037(8).

(2) “Junior interestholder” means any person who has a lien or interest of record against a timeshare estate in the county in which the timeshare estate is located, which is inferior to the mortgage lien or assessment lien being foreclosed under this part.

(3) “Lienholder” means a holder of an assessment lien or a holder of a mortgage lien, as applicable. A receiver appointed under s. 721.26 is a lienholder for purposes of this part.

(4) “Mortgage” has the same meaning set forth in s. 697.01.

(5) “Mortgage lien” means a security interest in a timeshare estate created by a mortgage encumbering the timeshare estate.

(6) “Mortgagee” means a person holding a mortgage lien.

(7) “Mortgagor” means a person granting a mortgage lien or a person who has assumed the obligation secured by a mortgage lien.

(8) “Notice address” means:

(a) As to an assessment lien, the address of the current owner of a timeshare estate as reflected by the books and records of the timeshare plan under ss. 721.13(4) and 721.15(7).

(b) As to a mortgage lien:

1. The address of the mortgagor as set forth in the mortgage, the promissory note or a separate document executed by the mortgagor at the time the mortgage lien was created, or the most current address of the mortgagor according to the records of the mortgagee; and

2. If the current owner of the timeshare estate is different from the mortgagor, the address of the current owner of the timeshare estate as reflected by the books and records of the mortgagee.

(c) As to a junior interestholder, the address as set forth in the recorded instrument creating the junior interest or lien, or any recorded supplement thereto changing the address, or written notification by the junior interestholder to the foreclosing lienholder of such change in address.

(9) “Obligor” means the mortgagor, the person subject to an assessment lien, or the record owner of the timeshare estate.

(10) “Registered agent” means an agent duly appointed by the obligor under s. 721.84 for the purpose of accepting all notices and service of process under this part. A registered agent may be an individual resident in this state whose business office qualifies as a registered office, or a domestic or foreign corporation or a not-for-profit corporation as defined in chapter 617 authorized to transact business or to conduct its affairs in this state, whose business office qualifies as a registered office. A registered agent for any obligor may not be the lienholder or the attorney for the lienholder.

(11) “Registered office” means the street address of the business office of the registered agent appointed under s. 721.84, located in this state.

721.83 Consolidation of foreclosure actions.—

(1) A complaint in a foreclosure proceeding involving timeshare estates may join in the same action multiple defendant obligors and junior interestholders of separate timeshare estates, provided:

(a) The foreclosure proceeding involves a single timeshare property;

(b) The foreclosure proceeding is filed by a single plaintiff;

(c) The default and remedy provisions in the written instruments on which the foreclosure proceeding is based are substantially the same for each defendant; and

(d) The nature of the defaults alleged are the same for each defendant.

(2) In any foreclosure proceeding involving multiple defendants filed under subsection (1), the court shall sever for separate trial any count of the complaint in which a defense or counterclaim is timely raised by a defendant.

721.84 Appointment of a registered agent; duties.—

(1) Any obligor may appoint a registered agent on whom notices and process may be served under s. 721.85. The statement of appointment must be in writing signed by the obligor and must:

(a) Provide the name of the registered agent and the street address for the registered office;

(b) Identify the obligor for whom the registered agent serves;

(c) Indicate the purpose of the appointment;

(d) Specify the instruments out of which the liens arise;

(e) Designate the address the obligor wishes to use to receive mail from the registered agent; and

(f) Contain the obligor's undertaking to inform the registered agent of any change in such designated address.

The statement of appointment must also provide for the registered agent's acceptance of the appointment, which must confirm that the registered agent is familiar with and accepts the obligations of that position as set forth in this section.

(2) An obligor may change but not revoke its appointment of registered agent and registered office under this chapter by executing a written statement of change that identifies the former registered agent and registered address and also satisfies all of the requirements of subsection (1). A copy of the statement of change must be promptly provided to the former registered agent and the affected lienholder and becomes effective upon receipt by the affected lienholder.

(3) A registered agent appointed under subsection (1) or a successor registered agent appointed under subsection (2) shall provide the lienholder with a copy of the obligor's appointment and the executed acceptance of the appointment by the registered agent promptly following the registered agent's receipt of the statement of appointment or statement of change executed by the obligor. The statement of appointment or statement of change becomes effective upon receipt by the lienholder of the fully executed form. A successor registered agent shall promptly provide a copy of a statement of change to the former registered agent.

(4) A registered agent may change its business name or the street address of the registered office for any obligor for which it serves as registered agent by:

(a) Notifying all obligors of the specific change in writing at the address such obligor designated for receipt of mail from the registered agent; and

(b) Delivering to each respective lienholder a statement that updates the information on the original appointment or change of appointment, identifies the names of all affected obligors, and states that each such affected obligor has been notified of the change.

(5) A registered agent may resign his agency appointment for any obligor for which he serves as registered agent, provided that:

(a) The resigning registered agent executes a written statement of resignation that identifies himself or herself and the street address of his or her registered office, and identifies the obligors affected by his or her resignation;

(b) A successor registered agent is appointed and such successor registered agent executes an acceptance of appointment as successor registered agent and satisfies all of the requirements of subsection (1). The resigning registered agent may designate the successor registered agent; however, if the resigning registered agent fails to designate a successor registered agent or the designated successor registered agent fails to accept, the successor registered agent for the affected obligors may be designated by the mortgagee as to the mortgagee lien and by the association of the timeshare plan as to the assessment lien; and

(c) Copies of the statement of resignation and acceptance of appointment as successor registered agent are promptly mailed to the affected obligors at the obligors' last designated address shown on the records of the resigning registered agent and to the affected lienholders. The agency and registered office of the resigning registered agent are terminated and the agency and registered office of the successor registered agent are effective as of the 10th day after the date on which the statement of resignation and acceptance of appointment as successor registered agent are received by the lienholder, unless a longer period is provided in the statement of resignation and acceptance of appointment as successor registered agent.

(6) Unless otherwise provided in this section, a registered agent in receipt of any notice or other document addressed from the lienholder to the obligor in care of the registered agent at the registered office must mail, by first class mail if the obligor's address is within the United States, and by international air mail if the obligor's address is outside the United States, with postage fees prepaid, such notice or documents to the obligor at the obligor's last designated address within 5 days of receipt.

(7) In the absence of a written agreement to the contrary, a registered agent is not liable for the failure to give notice to the obligor of the receipt of any document under this part if, such registered agent has complied in a timely manner with the procedures and duties in this section.

721.85 Service to notice address or on registered agent.—

(1) Service of process for a foreclosure proceeding involving a timeshare estate may be made by any means recognized by law. In addition, substituted service on a party who has appointed a registered agent under s. 721.84 may be made on such registered agent at the registered office. Also, when using s. 48.194 where in rem or quasi in rem relief only is sought, such service of process provisions are modified in connection with a foreclosure proceeding against a timeshare estate to provide that:

(a) Such service of process may be made on any person whether the person is located inside or outside this state, by certified or registered mail, addressed to the person to be served at the notice address, or on the party's registered agent duly appointed under s. 721.84, at the registered office; and

(b) Service shall be considered obtained upon the signing of the return receipt by any person at the notice address, or by the registered agent.

(2) The current owner and the mortgagor of a timeshare estate must promptly notify the association of the timeshare plan and the mortgagee of any change of address.

721.86 Miscellaneous provisions.—

(1) The procedures in this part must be given effect in the context of any foreclosure proceedings against timeshare estates governed by this chapter, chapter 702, or chapter 718.

(2) If any provision of this part, or the application thereof to any person or circumstances, is held invalid, such invalidity does not affect other provisions or applications of this part which can be given effect without the invalid provision or application. To this end, the provisions of this part are declared severable.

(3) The division has no authority to regulate, enforce, or ensure compliance with any provision of this part.

(4) In addition to assessment liens and mortgage liens arising after the effective date of this part, the provisions of this part apply to all assessment liens and mortgage liens existing prior to the effective date of this act regarding which a foreclosure proceeding has not yet commenced.

Section 14. Part IV of chapter 721, Florida Statutes, consisting of sections 721.96, 721.97, and 721.98, is created to read:

Part IV
COMMISSIONER OF DEEDS

721.96 Purpose.—The purpose of this part is to provide for the appointment of commissioners of deeds to take acknowledgments, proofs of execution, and oaths outside the United States in connection with the execution of any deed, mortgage, deed of trust, contract, power of attorney, or any other agreement, instrument or writing concerning, relating to, or to be used or recorded in connection with a timeshare estate, timeshare license, any

property subject to a timeshare plan, or the operation of a timeshare plan located within this state.

721.97 Timeshare commissioner of deeds.—

(1) The Governor may appoint commissioners of deeds to take acknowledgments, proofs of execution, or oaths in any foreign country. The term of office is 4 years. Commissioners of deeds shall have authority to take acknowledgments, proofs of execution, and oaths in connection with the execution of any deed, mortgage, deed of trust, contract, power of attorney, or any other writing to be used or recorded in connection with a timeshare estate, timeshare license, any property subject to a timeshare plan, or the operation of a timeshare plan located within this state; provided such instrument or writing is executed outside the United States. Such acknowledgments, proofs of execution, and oaths must be taken or made in the manner directed by the laws of this state, including but not limited to s. 117.05(4), (5)(a) and (6) and certified by a commissioner of deeds. The certification must be endorsed on or annexed to the instrument or writing aforesaid and has the same effect as if made or taken by a notary public licensed in this state.

(2) Any person seeking to be appointed a commissioner of deeds must take and subscribe to an oath, before a notary public in this state or any other state, or a person authorized to take oaths in another country, to well and faithfully execute and perform the duties of such commissioner of deeds. The oath must be filed with the Department of State prior to the person being commissioned.

(3) Official acts performed by any previously appointed commissioners of deeds, between May 30, 1997, and the effective date of this part, are declared valid as though such official acts were performed in accordance with and under the authority of this part.

721.98 Powers of the division.—The division has no duty or authority to regulate, enforce, or ensure compliance with any provision of this part.

Section 15. This act shall take effect upon becoming a law; however, with respect to any timeshare plan filing approved by the division prior to the date this act becomes a law, the amendment to s. 721.06(1)(f), Florida Statutes, shall not apply to such filing until January 1, 1999, unless and only to the extent that the developer otherwise voluntarily agrees to comply with all or a portion of such provisions.

Became a law without the Governor's approval April 30, 1998.

Filed in Office Secretary of State April 29, 1998.