# CHAPTER 2007-75

## Council Substitute for House Bill No. 405

An act relating to vacation and timeshare plans; amending s. 721.03, F.S.; revising the formula for funding reserve accounts for conversions; authorizing a seller to offer timeshare interests in a timeshare plan located outside of this state without filing a public offering statement for such out-of-state timeshare plan; providing criteria for such offers; requiring certain notice; providing for a fee; conforming cross-references and terminology; amending s. 721.05, F.S.; revising the definition of the term "one-to-one purchaser to accommodation ratio"; providing definitions for the terms "lead dealer," "personal contact information," and "resale service provider"; amending s. 721.07, F.S.; revising information required to be contained in filed public offering statements for certain timeshare plans; authorizing the Division of Florida Land Sales, Condominiums, and Mobile Homes to accept alternate forms of timeshare disclosure statements; conforming cross-references; amending s. 721.075, F.S.; conforming terminology; amending s. 721.11, F.S.; revising provisions relating to advertising and oral statements to include those made by resale service providers; providing that a seller or resale service provider may not misrepresent or falsely imply that the resale service provider is affiliated with, or obtained personal contact information from, a developer, managing entity, or exchange company; creating s. 721.121, F.S.; providing recordkeeping requirements for resale service providers and lead dealers; providing that the failure to produce such records in any civil or criminal action relating to the wrongful possession or wrongful use of personal contact information shall lead to a presumption that the personal contact information was wrongfully obtained; providing what constitutes wrongful use of such personal contact information; providing for recovery of certain damages and attorney's fees and costs; amending s. 721.13, F.S.; providing that failure to obtain and maintain required insurance coverage constitutes a breach of the managing entity's fiduciary duty; authorizing funding of reserve accounts to be waived or reduced; providing the managing entity with certain rights and powers; providing language to be included in public offering statements; providing recordkeeping requirements; requiring the managing entity to make certain records available to the division under certain circumstances; conforming cross-references; amending s. 721.15, F.S.; providing that amounts expended for any insurance coverage required by law or by the timeshare instrument to be maintained by the owners' association shall be exempt from assessment of common expenses; providing that any determination by a timeshare association of whether assessments exceed 115 percent of assessments for the prior fiscal year shall exclude anticipated expenses for required insurance coverage; amending s. 721.165, F.S.; revising provisions relating to insurance; requiring managing entities to use due diligence to obtain certain types of insurance; providing factors that a managing entity must take into account in determining whether the insurance obtained is adequate; providing that insurance coverage



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

may be subject to certain requirements; authorizing the managing entity to apply any existing reserves for certain purposes; amending s. 721.52, F.S.; providing application with respect to use of the term "vacation club"; amending ss. 721.55 and 721.552, F.S.; conforming cross-references and terminology; amending s. 721.97, F.S.; authorizing the Governor to appoint commissioners of deeds to take acknowledgments, proofs of execution, or oaths in international waters; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1), paragraph (e) of subsection (3), and subsection (10) of section 721.03, Florida Statutes, are amended, and subsection (11) is added to that section, 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 and facilities, if any, are located within this state or offered within this state; provided that:

(b) With respect to a timeshare plan containing accommodations or facilities located in this state which is offered for sale outside the jurisdictional limits of the United States, such offer or sale shall be exempt from the requirements of this chapter, provided that the developer shall either file the timeshare plan with the division for approval pursuant to this chapter, or pay an exemption registration fee of $100 and file the following minimum information pertaining to the timeshare plan with the division for approval:

1. The name and address of the timeshare plan.

2. The name and address of the developer and seller, if any.

3. The location and a brief description of the accommodations and facilities, if any, that are located in this state.

4. The number of timeshare interests and timeshare periods to be offered.

5. The term of the timeshare plan.

6. A copy of the timeshare instrument relating to the management and operation of accommodations and facilities, if any, that are located in this state.

7. A copy of the budget required by s. 721.07(5)(t)~~(u)~~ or s. 721.55(4)(h)5., as applicable.

8. A copy of the management agreement and any other contracts regarding management or operation of the accommodations and facilities, if any, that are located in this state, and which have terms in excess of 1 year.

9. A copy of the provision of the purchase contract to be utilized in offering the timeshare plan containing 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.

(3) A timeshare plan which is subject to the provisions of chapter 718 or chapter 719, if fully in compliance with the provisions of this chapter, is exempt from the following:

(e) Part VI of chapter 718 and part VI of chapter 719, relating to conversion of existing improvements to the condominium or cooperative form of ownership, respectively, provided that a developer converting existing improvements to a timeshare condominium or timeshare cooperative must comply with ss. 718.606, 718.608, 718.61, and 718.62, or ss. 719.606, 719.608, 719.61, and 719.62, if applicable, and, if the existing improvements received a certificate of occupancy more than 18 months before such conversion, one of the following:

1. The accommodations and facilities shall be renovated and improved to a condition such that the remaining useful life in years of the roof, plumbing, air-conditioning, and any component of the structure which has a useful life less than the useful life of the overall structure is equal to the useful life of accommodations or facilities that would exist if such accommodations and facilities were newly constructed and not previously occupied.

2. The developer shall fund reserve accounts for capital expenditures and deferred maintenance for the roof, plumbing, air-conditioning, and any component of the structure the useful life of which is less than the useful life of the overall structure. The reserve accounts shall be funded for each component in an amount equal to the product of the estimated current replacement cost of such component as of the date of such conversion (as disclosed and substantiated by a certificate under the seal of an architect or engineer authorized to practice in this state) multiplied by a fraction, the numerator of which shall be the age ~~remaining life~~ of the component in years (as disclosed and substantiated by a certificate under the seal of an architect or engineer authorized to practice in this state) and the denominator of which shall be the total useful life of the component in years (as disclosed and substantiated by a certificate under the seal of an architect or engineer authorized to practice in this state). Alternatively, the reserve accounts may be funded for each component in an amount equal to the amount that, except for the application of this subsection, would be required to be maintained pursuant to s. 718.618(1) or s. 719.618(1). The developer shall fund the reserve accounts contemplated in this subparagraph out of the proceeds of each sale of a timeshare interest, on a pro rata basis, in an amount not less than a percentage of the total amount to be deposited in the reserve account equal to the percentage of ownership allocable to the timeshare interest sold.



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

When an owners' association makes an expenditure of reserve account funds before the developer has initially sold all timeshare interests, the developer shall make a deposit in the reserve account if the reserve account is insufficient to pay the expenditure. Such deposit shall be at least equal to that portion of the expenditure which would be charged against the reserve account deposit that would have been made for any such timeshare interest had the timeshare interest been initially sold. When a developer deposits amounts in excess of the minimum reserve account funding, later deposits may be reduced to the extent of the excess funding.

3. The developer shall provide each purchaser with a warranty of fitness and merchantability pursuant to s. 718.618(6) or s. 719.618(6).

(10) A developer or seller may not offer any number of timeshare interests that would cause the total number of timeshare interests offered to exceed a one-to-one use right ~~purchaser~~ to use night requirement ~~accommodation~~ ratio.

(11)(a) A seller may offer timeshare interests in a real property timeshare plan located outside of this state without filing a public offering statement for such out-of-state real property timeshare plan pursuant to s. 721.07 or s. 721.55, provided all of the following criteria have been satisfied:

1. The seller shall provide a disclosure statement to each prospective purchaser of such out-of-state timeshare plan. The disclosure statement for a single-site timeshare plan shall contain information otherwise required under s. 721.07(5)(e)-(cc) and the exhibits required by s. 721.07(5)(ff)1., 2., 3., 4., 5., 7., 8., and 20. The disclosure statement for a multisite timeshare plan shall contain information otherwise required under s. 721.55(4) and (5) and the exhibits required under s. 721.55(7). If a developer has, in good faith, attempted to comply with the requirements of this subsection and if the developer has substantially complied with the disclosure requirements of this subsection, nonmaterial errors or omissions shall not be actionable. With respect to any offer for an out-of-state timeshare plan made pursuant to this subsection, the delivery by the seller to a prospective purchaser of the disclosure statement required by this subparagraph shall be deemed to satisfy any requirement of this chapter regarding a public offering statement.

2. The seller shall utilize and furnish to each purchaser of an out-of-state timeshare plan offered under this subsection a fully completed and executed copy of a purchase contract that contains the statement set forth in s. 721.065(2)(c) in conspicuous type located immediately prior to the space in the contract reserved for the purchaser's signature. The purchase contract shall also contain the initial purchase price and any additional charges to which the purchaser may be subject in connection with the purchase of the timeshare plan, such as financing, or that will be collected from the purchaser on or before closing, such as the current year's annual assessment for common expenses.

3. All purchase contracts for out-of-state timeshare plans offered under this subsection must also contain the following statements in conspicuous type:

This timeshare plan has not been reviewed or approved by the State of Florida.

The timeshare interest you are purchasing requires certain procedures to be followed in order for you to use your interest. These procedures may be different from those followed in other timeshare plans. You should read and understand these procedures prior to purchasing.

4.a. An out-of-state timeshare plan may only be offered pursuant to this subsection by the seller on behalf of:

(I) The developer of a timeshare plan that has been approved by the division within the preceding 7 years pursuant to s. 721.07 or s. 721.55, or concerning which an amendment by the developer has been approved by the division within the preceding 7 years, which timeshare plan has been neither terminated nor withdrawn; or

(II) A developer under common ownership or control with a developer described in sub-sub-subparagraph (I), provided that any common ownership shall constitute at least a 50-percent ownership interest.

b. An out-of-state timeshare plan may only be offered pursuant to this subsection to a person who already owns a timeshare interest in a timeshare plan filed by a developer described in sub-subparagraph a.

5. Any seller of an out-of-state timeshare plan offered pursuant to this subsection shall be required to provide notice of such plan to the division on a form prescribed by the division, along with payment of a one-time fee not to exceed $1,000 per filing.

(b) Timeshare plans offered pursuant to this subsection shall be exempt from the requirements of ss. 721.06, 721.065, 721.07, 721.27, 721.55, and 721.58 in addition to the exemptions otherwise applicable to accommodations and facilities located outside of the state pursuant to subparagraph (1)(c)1.

(c) Any escrow account required to be established by s. 721.08 for any out-of-state timeshare plan offered under this subsection may be maintained in the situs jurisdiction provided the escrow agent submits to personal jurisdiction in this state in a form satisfactory to the division.

Section 2. Subsection (25) of section 721.05, Florida Statutes, is amended, and subsections (42), (43), and (44) are added to that section, to read:

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

(25) "One-to-one use right ~~purchaser~~ to use night requirement ~~accommodation~~ ratio" means that the sum of the nights that owners are entitled to use in a given 12-month period shall not exceed the number of nights available for use by those owners during the same 12-month period. No individual timeshare unit may be counted as providing more than 365 use nights per 12-month period or more than 366 use nights per 12-month period that includes February 29. The use rights of each owner shall be counted without



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

regard to whether the owner's use rights have been suspended for failure to pay assessments or otherwise ~~the ratio of the number of purchasers eligible to use the accommodations of a timeshare plan on a given day to the number of accommodations available for use within the plan on that day, such that the total number of purchasers eligible to use the accommodations of the timeshare plan during a given calendar year never exceeds the total number of accommodations available for use in the timeshare plan during that year. For purposes of calculation under this subsection, each purchaser must be counted at least once, and no individual timeshare unit may be counted more than 365 times per calendar year (or more than 366 times per leap year). A purchaser who is delinquent in the payment of timeshare plan assessments shall continue to be considered eligible to use the accommodations of the timeshare plan for purposes of this subsection notwithstanding any application of s. 721.13(6)~~.

(42) "Lead dealer" means any person who sells or otherwise provides a resale service provider or any other person with personal contact information for five or more owners of timeshare interests. In the event a lead dealer is not a natural person, the term shall also include the natural person providing personal contact information to a resale service provider or other person on behalf of the lead dealer entity. The term does not include developers, managing entities, or exchange companies to the extent they provide others with personal contact information about owners of timeshare interests in their own timeshare plans or members of their own exchange programs. The term does not include persons providing personal contact information that is not designed specifically or primarily to identify owners of timeshare interests even though the information provided may include five or more owners of timeshare interests.

(43) "Personal contact information" means any information that can be used to contact the owner of a specific timeshare interest, including, but not limited to, the owner's name, address, telephone number, and e-mail address.

(44) "Resale service provider" means any person who uses unsolicited telemarketing, direct mail, or e-mail in connection with the offering of resale brokerage or resale advertising services to owners of timeshare interests. The term does not include developers, managing entities, or exchange companies to the extent they offer resale brokerage or resale advertising services to owners of timeshare interests in their own timeshare plans or members of their own exchange programs.

Section 3. Paragraphs (n) through (v) of subsection (5) of section 721.07, Florida Statutes, are redesignated as paragraphs (m) through (u), present paragraphs (m), (v), and (ff) of that subsection are amended, and subsection (7) is added to that section, to read:

721.07 Public offering statement.—Prior to offering any timeshare plan, the developer must submit a filed public offering statement to 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 that timeshare plan is subject to cancellation by the purchaser pursuant to s. 721.10.

(5) Every filed public offering statement for a timeshare plan which is not a multisite timeshare plan shall contain the information required by this subsection. The division is authorized to provide by rule the method by which a developer must provide such information to the division.

~~(m) A description of any financing to be offered to purchasers by the developer or any person or entity in which the developer has a financial interest, together with a disclosure that the description of such financing may be changed by the developer and that any change in the financing offered to prospective purchasers will not be deemed to be a material change.~~

(u)~~(v)~~ For any timeshare plan for which the purchase or closing of timeshare interests is not subject to the requirements of the Real Estate Settlement Procedures Act, 12 U.S.C. s. 2601 et seq., a schedule of estimated closing expenses to be paid by a purchaser or lessee of a timeshare interest.

(v) ~~and~~ A statement as to whether a title opinion or title insurance policy is available to the purchaser and, if so, at whose expense.

(ff) Copies of the following documents and plans, to the extent they are applicable, shall be included as exhibits to the filed public offering statement provided, if the timeshare plan has not been declared or created at the time of the filing, the developer shall provide proposed documents:

1. The declaration of condominium.

2. The cooperative documents.

3. The declaration of covenants and restrictions.

4. The articles of incorporation creating the owners' association.

5. The bylaws of the owners' association.

6. Any ground lease or other underlying lease of the real property associated with the timeshare plan. In the case of a personal property timeshare plan, any lease of the personal property associated with the personal property timeshare plan.

7. The management agreement and all maintenance and other contracts regarding the management and operation of the timeshare property which have terms in excess of 1 year.

8. The estimated operating budget for the timeshare plan and the required schedule of purchasers' expenses.

9. The floor plan of each type of accommodation and the plot plan showing the location of all accommodations and facilities declared as part of the timeshare plan and filed with the division.

10. The lease for any facilities.

11. A declaration of servitude of properties serving the accommodations and facilities, but not owned by purchasers or leased to them or the owners' association.

12. Any documents required by s. 721.03(3)(e) as the result of the inclusion of a timeshare plan in the conversion of the building to condominium or cooperative ownership.

13. The form of agreement for sale or lease of timeshare interests.

14. The executed agreement for escrow of payments made to the developer prior to closing and the form of any agreement for escrow of ad valorem tax escrow payments, if any, to be made into an ad valorem tax escrow account pursuant to s. 192.037(6).

15. The documents containing any restrictions on use of the property required by paragraph (r) ~~(s)~~.

16. A letter from the escrow agent or filing attorney confirming that the escrow agent and its officers, directors, or other partners are independent pursuant to the requirements of this chapter.

17. Any nondisturbance and notice to creditors instrument required by s. 721.08.

18. In the case of any personal property timeshare plan in which the accommodations and facilities are located on or in a documented vessel or foreign vessel as provided in s. 721.08(2)(c)3.e., a copy of the certificate of ownership of such vessel and either a copy of the certificate of documentation or certificate of registry of such vessel.

19. An executed affidavit given under oath by an attorney licensed to practice law in any jurisdiction in the United States stating that the attorney has researched the applicable laws of the jurisdiction in which governing law has been established and the laws of the jurisdiction in which the vessel is registered, and has found that the timeshare instrument complies with the provisions of s. 721.08(2)(c)3.e.(II)(C) and (III).

20. Any other documents or instruments creating the timeshare plan.

(7) The division may accept an alternate form of timeshare disclosure statement under an agreement with another state. At a minimum, the alternate form of timeshare disclosure statement must have provisions substantially similar to this section. The division may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this subsection.

Section 4. Paragraph (d) of subsection (1) of 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 chapter which would otherwise apply to such accommodations or facilities if and only if:

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

Section 5. Subsection (4) of section 721.11, Florida Statutes, is amended to read:

721.11 Advertising materials; oral statements.—

(4) No advertising or oral statement made by any seller or resale service provider shall:

(a) Misrepresent a fact or create a false or misleading impression regarding the timeshare plan or promotion thereof.

(b) Make a prediction of specific or immediate increases in the price or value of timeshare interests.

(c) Contain a statement concerning future price increases by a seller which are nonspecific or not bona fide.

(d) Contain any asterisk or other reference symbol as a means of contradicting or substantially changing any previously made statement or as a means of obscuring a material fact.

(e) Describe any facility that is not required to be built or that is uncompleted unless the improvement is conspicuously labeled as "NEED NOT BE BUILT," "PROPOSED," or "UNDER CONSTRUCTION." If the facility is labeled "NEED NOT BE BUILT" or "PROPOSED," the seller may indicate the estimated date that such facility will be made part of the timeshare plan. If the facility is labeled "UNDER CONSTRUCTION," the estimated date of completion must be included.

(f) Misrepresent the size, nature, extent, qualities, or characteristics of the offered accommodations or facilities.

(g) Misrepresent the amount or period of time during which the accommodations or facilities will be available to any purchaser.

(h) Misrepresent the nature or extent of any incidental benefit.

(i) Make any misleading or deceptive representation with respect to the contents of the public offering statement and the contract or the rights, privileges, benefits, or obligations of the purchaser under the contract or this chapter.

(j) Misrepresent the conditions under which a purchaser may exchange the right to use accommodations or facilities in one location for the right to use accommodations or facilities in another location.

(k) Misrepresent the availability of a resale or rental program or resale or rental opportunity ~~offered by or on behalf of the developer~~.



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(l) Contain an offer or inducement to purchase which purports to be limited as to quantity or restricted as to time unless the numerical quantity or time limit applicable to the offer or inducement is clearly stated.

(m) Imply that a facility is available for the exclusive use of purchasers if the facility will actually be shared by others or by the general public.

(n) Purport to have resulted from a referral unless the name of the person making the referral can be produced upon demand of the division.

(o) Misrepresent the source of the advertising or statement by leading a prospective purchaser to believe that the advertising material is mailed by a governmental or official agency, credit bureau, bank, or attorney, if that is not the case.

(p) Misrepresent the value of any prize, gift, or other item to be awarded in connection with any prize and gift promotional offer, as described in s. 721.111, or any incidental benefit.

(q) Misrepresent or falsely imply that the resale service provider is affiliated with, or obtained personal contact information from, a developer, managing entity, or exchange company.

Section 6. Section 721.121, Florida Statutes, is created to read:

721.121 Recordkeeping by resale service providers and lead dealers.—

(1) Resale service providers and lead dealers shall maintain the following records for a period of 5 years from the date each piece of personal contact information is obtained:

(a) The name, home address, work address, home telephone number, work telephone number, and cellular telephone number of the lead dealer from which the personal contact information was obtained.

(b) A copy of a current government-issued photographic identification for the lead dealer from which the personal contact information was obtained, such as a driver's license, passport, or military identification card.

(c) The date, time, and place of the transaction at which the personal contact information was obtained, along with the amount of consideration paid and a signed receipt from the lead dealer or copy of a canceled check.

(d) A copy of all pieces of personal contact information obtained in the exact form and media in which they were received.

(e) If personal contact information was directly researched and assembled by the resale service provider or lead dealer and not obtained from another lead dealer, a complete written description of the sources from which personal contact information was obtained, the methodologies used for researching and assembling it, the items set forth in paragraphs (a) and (b) for the individuals who performed the work, and the date such work was done.



CODING: Words stricken are deletions; words underlined are additions.

(2) In any civil or criminal action relating to the wrongful possession or wrongful use of personal contact information by a resale service provider or lead dealer, any failure by a resale service provider or lead dealer to produce the records required by subsection (1) shall lead to a presumption that the personal contact information was wrongfully obtained.

(3) Any use by a resale service provider or lead dealer of personal contact information that is wrongfully obtained pursuant to this section shall be considered wrongful use of such personal contact information by the resale service provider or lead dealer, as applicable. Any party who establishes that a resale service provider or lead dealer wrongfully obtained or wrongfully used personal contact information with respect to owners of a timeshare plan or members of an exchange program shall, in addition to any other remedies that may be available in law or equity, be entitled to recover from such resale service provider or lead dealer an amount equal to $1,000 for each owner about whom personal contact information was wrongfully obtained or used. Upon prevailing, the plaintiff in any such action shall also be entitled to recover reasonable attorney's fees and costs.

Section 7. Paragraph (c) is added to subsection (2) of section 721.13, Florida Statutes, paragraph (c) of subsection (3) of that section is amended, and subsection (12) is added to that section, to read:

721.13 Management.—

(2)

(c) Failure by a managing entity to obtain and maintain insurance coverage as required under s. 721.165 during any period of developer control of the managing entity shall constitute a breach of the managing entity's fiduciary duty.

(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)(t)~~(u)~~. The budget shall be the final budget adopted by the managing entity for the current fiscal year. The final adopted budget is not required to be delivered if the managing entity has previously delivered a proposed annual budget for the current fiscal year to purchasers in accordance with chapter 718 or chapter 719 and the managing entity includes a description of any changes in the adopted budget with the assessment notice and a disclosure regarding the purchasers' right to receive a copy of the adopted budget, if desired. 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 for review within 30 days after the beginning of each fiscal year 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.



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

2. Notwithstanding anything contained in chapter 718 or chapter 719 to the contrary, the board of administration of an owners' association which serves as the managing entity may from time to time reallocate reserves for deferred maintenance and capital expenditures required by s. 721.07(5)(t)~~(u)~~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. The managing entity may from time to time transfer excess funds in any operating account to any deferred maintenance or capital expenditure reserve account without the vote or approval of purchasers of the timeshare plan. In the event any amount of reserves for accommodations and facilities of a timeshare plan containing timeshare licenses or personal property timeshare interests exists at the end of the term of the timeshare plan, such reserves shall be refunded to purchasers on a pro rata basis.

3. With respect to any timeshare plan that has a managing entity that is an owners' association, reserves may be waived or reduced by a majority vote of those voting interests that are present, in person or by proxy, at a duly called meeting of the owners' association. If a meeting of the purchasers has been called to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not attained, the reserves as included in the budget shall go into effect.

(12)(a) In addition to any other rights granted by the rules and regulations of the timeshare plan, the managing entity of a timeshare plan is authorized to manage the reservation and use of accommodations using those processes, analyses, procedures, and methods that are in the best interests of the owners as a whole to efficiently manage the timeshare plan and encourage the maximum use and enjoyment of the accommodations and other benefits made available through the timeshare plan. The managing entity shall have the right to forecast anticipated reservation and use of the accommodations, including the right to take into account current and previous reservation and use of the accommodations, information about events that are scheduled to occur, seasonal use patterns, and other pertinent factors that affect the reservation or use of the accommodations. In furtherance of the provisions of this subsection, the managing entity is authorized to reserve accommodations, in the best interests of the owners as a whole, for the purposes of depositing such reserved use with an affiliated exchange program or renting such reserved accommodations in order to facilitate the use or future use of the accommodations or other benefits made available through the timeshare plan.

(b) A statement in conspicuous type, in substantially the following form, shall appear in the public offering statement as provided in s. 721.07:

> The managing entity shall have the right to forecast anticipated reservation and use of the accommodations of the timeshare plan and is authorized to reasonably reserve, deposit, or rent the accommodations for the purpose of facilitating the use or future use of the accommodations or other benefits made available through the timeshare plan.

(c) The managing entity shall maintain copies of all records, data, and information supporting the processes, analyses, procedures, and methods utilized by the managing entity in its determination to reserve accommodations of the timeshare plan pursuant to this subsection for a period of 5 years from the date of such determination. In the event of an investigation by the division for failure of a managing entity to comply with this subsection, the managing entity shall make all such records, data, and information available to the division for inspection, provided that if the managing entity complies with the provisions of s. 721.071, any such records, data, and information provided to the division shall constitute a trade secret pursuant to that section.

Section 8. Paragraph (c) of subsection (2) of section 721.15, Florida Statutes, is amended, and subsection (11) is added to that section, to read:

721.15 Assessments for common expenses.—

(2)

(c) For the purpose of calculating the obligation of a developer under a guarantee pursuant to paragraph (b), amounts expended for any insurance coverage required by law or by the timeshare instrument to be maintained by the owners' association and depreciation expenses related to real property shall be excluded from common expenses incurred during the guarantee period, except that for real property that is used for the production of fees, revenues, or other income, depreciation expenses shall be excluded only to the extent that they exceed the net income from the production of such fees, revenues, or other income. Any special assessment imposed for amounts excluded from the developer guarantee pursuant to this paragraph shall be paid proportionately by all owners of timeshare interests, including the developer with respect to the timeshare interests owned by the developer, in accordance with the timeshare instrument.

(11) Notwithstanding any provision of chapter 718 or chapter 719 to the contrary, any determination by a timeshare association of whether assessments exceed 115 percent of assessments for the prior fiscal year shall exclude anticipated expenses for insurance coverage required by law or by the timeshare instrument to be maintained by the association.

Section 9. Section 721.165, Florida Statutes, is amended to read:

721.165 Insurance.—

(1) Notwithstanding any provision contained in the timeshare instrument or in this chapter, chapter 718, or chapter 719 to the contrary, the ~~seller, initially, and thereafter the~~ managing entity~~,~~ shall use due diligence to obtain adequate casualty ~~be responsible for obtaining~~ insurance as a common expense of the timeshare plan to protect the timeshare property against all reasonably foreseeable perils, in such covered amounts and subject to such reasonable exclusions and reasonable deductibles as are consistent with the provisions of this section ~~accommodations and facilities of the timeshare plan in an amount equal to the replacement cost of such accommodations and facilities. Failure to obtain and maintain the insurance re-~~



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

~~quired by this subsection during any period of developer control of the managing entity shall constitute a breach of s. 721.13(2)(a) by the managing entity, unless the managing entity can show that, despite such failure, it exercised due diligence to obtain and maintain the insurance required by this subsection~~.

(2) In making the determination as to whether the insurance obtained pursuant to subsection (1) is adequate, the managing entity shall take into account the following factors, among others as may be applicable:

(a) Available insurance coverages and related premiums in the marketplace.

(b) Amounts of any related deductibles, types of exclusions, and coverage limitations; provided that, for purposes of this paragraph, a deductible of 5 percent or less shall be deemed to be reasonable per se.

(c) The probable maximum loss relating to the insured timeshare property during the policy term.

(d) The extent to which a given peril is insurable under commercially reasonable terms.

(e) Amounts of any deferred maintenance or replacement reserves on hand.

(f) Geography and any special risks associated with the location of the timeshare property.

(g) The age and type of construction of the timeshare property.

(3) Notwithstanding any provision contained in this section or in the timeshare instrument to the contrary, insurance shall be procured and maintained by the managing entity for the timeshare property as a common expense of the timeshare plan against such perils, in such coverages, and subject to such reasonable deductions or reasonable exclusions as may be required by:

(a) An institutional lender to a developer, for so long as such lender holds a mortgage encumbering any interest in or lien against a portion of the timeshare property; or

(b) Any holder or pledgee of, or any institutional lender having a security interest in, a pool of promissory notes secured by mortgages or other security interests relating to the timeshare plan, executed by purchasers in connection with such purchasers' acquisition of timeshare interests in such timeshare property, or any agent, underwriter, placement agent, trustee, servicer, custodian, or other portfolio manager acting on behalf of such holder, pledgee, or institutional lender, for so long as any such notes and mortgages or other security interests remain outstanding.

(4) Notwithstanding any provision contained in the timeshare instrument or in this chapter, chapter 718, or chapter 719 to the contrary, the managing entity is authorized to apply any existing reserves for deferred

maintenance and capital expenditures toward payment of insurance deductibles or the repair or replacement of the timeshare property after a casualty without regard to the purposes for which such reserves were originally established.

(5)~~(2)~~ A copy of each policy of insurance in effect shall be made available for reasonable inspection by purchasers and their authorized agents.

Section 10. Subsection (8) of section 721.52, Florida Statutes, is amended to read:

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

(8) "Vacation club" means a multisite timeshare plan. However, notwithstanding any other provision of this chapter, the use of the term "vacation club" by a person or entity as part of a company, brand, or product name shall not, in and of itself, subject the person, entity, or product being offered to the provisions of this part unless the product offered otherwise meets the definition of a "multisite timeshare plan" as defined in subsection (4).

Section 11. Paragraphs (f) and (h) of subsection (4) and paragraph (l) of subsection (7) of section 721.55, Florida Statutes, are amended to read:

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

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

(f) If the provisions of s. 721.552 and the timeshare instrument permit additions, substitutions, or deletions of accommodations or facilities, the public offering statement must include substantially the following information:

1. Additions.—

a. A description of the basis upon which new accommodations and facilities may be added to the multisite timeshare plan; by whom additions may be made; and the anticipated effect of the addition of new accommodations and facilities upon the reservation system, its priorities, its rules and regulations, and the availability of existing accommodations and facilities.

b. The developer must disclose the existence of any cap on annual increases in common expenses of the multisite timeshare plan that would apply in the event that additional accommodations and facilities are made a part of the plan.

c. The developer shall also disclose any extent to which the purchasers of the multisite timeshare plan will have the right to consent to any proposed

additions; if the purchasers do not have the right to consent, the developer must include the following disclosure in conspicuous type:

Accommodations and facilities may be added to this multisite timeshare plan (or multisite vacation ownership plan or multisite vacation plan or vacation club) without the consent of the purchasers. The addition of accommodations and facilities to the plan may result in the addition of new purchasers who will compete with existing purchasers in making reservations for the use of available accommodations and facilities within the plan, and may also result in an increase in the annual assessment against purchasers for common expenses.

2. Substitutions.—

a. A description of the basis upon which new accommodations and facilities may be substituted for existing accommodations and facilities of the multisite timeshare plan; by whom substitutions may be made; the basis upon which the determination may be made to cause such substitutions to occur; and any limitations upon the ability to cause substitutions to occur.

b. The developer shall also disclose any extent to which purchasers will have the right to consent to any proposed substitutions; if the purchasers do not have the right to consent, the developer must include the following disclosure in conspicuous type:

New accommodations and facilities may be substituted for existing accommodations and facilities of this multisite timeshare plan (or multisite vacation ownership plan or multisite vacation plan or vacation club) without the consent of the purchasers. The replacement accommodations and facilities may be located at a different place or may be of a different type or quality than the replaced accommodations and facilities. The substitution of accommodations and facilities may also result in an increase in the annual assessment against purchasers for common expenses.

3. Deletions.—A description of any provision of the timeshare instrument governing deletion of accommodations or facilities from the multisite timeshare plan. If the timeshare instrument does not provide for business interruption insurance in the event of a casualty, or if it is unavailable, or if the instrument permits the developer, the managing entity, or the purchasers to elect not to reconstruct after casualty under certain circumstances or to secure replacement accommodations or facilities in lieu of reconstruction, the public offering statement must contain a disclosure that during the reconstruction, replacement, or acquisition period, or as a result of a decision not to reconstruct, purchasers of the plan may temporarily compete for available accommodations on a greater than one-to-one use right ~~purchaser~~ to use night requirement ~~accommodation~~ ratio.

(h) A description of the purchaser's liability for common expenses of the multisite timeshare plan, including the following:

1. A description of the common expenses of the plan, including the method of allocation and assessment of such common expenses, whether component site common expenses and real estate taxes are included within



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

the total common expense assessment of the multisite timeshare plan, and, if not, the manner in which timely payment of component site common expenses and real estate taxes shall be accomplished.

2. A description of any cap imposed upon the level of common expenses payable by the purchaser. In no event shall the total common expense assessment for the multisite timeshare plan in a given calendar year exceed 125 percent of the total common expense assessment for the plan in the previous calendar year.

3. A description of the entity responsible for the determination of the common expenses of the multisite timeshare plan, as well as any entity which may increase the level of common expenses assessed against the purchaser at the multisite timeshare plan level.

4. A description of the method used to collect common expenses, including the entity responsible for such collections, and the lien rights of any entity for nonpayment of common expenses. If the common expenses of any component site are collected by the managing entity of the multisite timeshare plan, a statement to that effect together with the identity and address of the escrow agent required by s. 721.56(3).

5. If the purchaser will receive an interest in a nonspecific multisite timeshare plan, a statement that a multisite timeshare plan budget is attached to the public offering statement as an exhibit pursuant to paragraph (7)(c). The multisite timeshare plan budget shall comply with the provisions of s. 721.07(5)(t)~~(u)~~.

6. If the developer intends to guarantee the level of assessments for the multisite timeshare plan, such guarantee must be based upon a good faith estimate of the revenues and expenses of the multisite timeshare plan. The guarantee must include a description of the following:

a. The specific time period, measured in one or more calendar or fiscal years, during which the guarantee will be in effect.

b. A statement that the developer will pay all common expenses incurred in excess of the total revenues of the multisite timeshare plan, if the developer is to be excused from the payment of assessments during the guarantee period.

c. The level, expressed in total dollars, at which the developer guarantees the assessments. If the developer has reserved the right to extend or increase the guarantee level, a disclosure must be included to that effect.

7. If required under applicable law, the developer shall also disclose the following matters for each component site:

a. Any limitation upon annual increases in common expenses;

b. The existence of any bad debt or working capital reserve; and

c. The existence of any replacement or deferred maintenance reserve.



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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

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

2. If the purchaser will receive a timeshare estate pursuant to s. 721.57, or an interest in a specific multisite timeshare plan, in a component site located outside of this state but which is offered in this state, the information required by s. 721.07(5) pertaining to that component site, provided, however, that the provisions of s. 721.07(5)(t)~~(u)~~ shall only require disclosure of information related to the estimated budget for the timeshare plan and purchaser's expenses as required by the jurisdiction in which the component site is located.

Section 12. Paragraph (b) of subsection (1), paragraph (g) of subsection (2), and subsection (3) of section 721.552, Florida Statutes, are amended to read:

721.552 Additions, substitutions, or deletions of component site accommodations or facilities; purchaser remedies for violations.—Additions, substitutions, or deletions of component site accommodations or facilities may be made only in accordance with the following:

(1) ADDITIONS.—

(b) Any person who is authorized by the timeshare instrument to make additions to the multisite timeshare plan pursuant to this subsection shall act as a fiduciary in such capacity in the best interests of the purchasers of the plan as a whole and shall adhere to the demand balancing standard set forth in s. 721.56(6) in connection with such additions. Additions that are otherwise permitted may be made only so long as a one-to-one use right ~~purchaser~~ to use night requirement ~~accommodation~~ ratio is maintained at all times.

(2) SUBSTITUTIONS.—

(g) The person who is authorized by the timeshare instrument to make substitutions to the multisite timeshare plan pursuant to this subsection shall act as a fiduciary in such capacity in the best interests of the purchasers of the plan as a whole and shall adhere to the demand balancing standard set forth in s. 721.56(6) in connection with such substitutions. Substitutions that are otherwise permitted may be made only so long as a one-to-one use right ~~purchaser~~ to use night requirement ~~accommodation~~ ratio is maintained at all times.

(3) DELETIONS.—

(a) Deletion by casualty.—

1. Pursuant to s. 721.165, the timeshare instrument creating the multisite timeshare plan must provide for casualty insurance for the accommodations and facilities of the multisite timeshare plan in an amount equal to the

replacement cost of such accommodations or facilities. The timeshare instrument must also provide that in the event of a casualty that results in accommodations or facilities being unavailable for use by purchasers, the managing entity shall notify all affected purchasers of such unavailability of use within 30 days after the event of casualty.

2. The timeshare instrument must also provide for the application of any insurance proceeds arising from a casualty to either the replacement or acquisition of additional similar accommodations or facilities or to the removal of purchasers from the multisite timeshare plan so that purchasers will not be competing for available accommodations on a greater than one-to-one use right ~~purchaser~~ to use night requirement ~~accommodation~~ ratio.

3. If the timeshare instrument does not provide for business interruption insurance, or if it is unavailable, or if the instrument permits the developer, the managing entity, or the purchasers to elect not to reconstruct after casualty under certain circumstances or to secure replacement accommodations or facilities in lieu of reconstruction, purchasers of the plan may temporarily compete for available accommodations on a greater than one-to-one use right ~~purchaser~~ to use night requirement ~~accommodation~~ ratio. The decision whether or not to reconstruct shall be made as promptly as possible under the circumstances.

4. Any replacement of accommodations or facilities pursuant to this paragraph shall be made upon the same basis as required for substitution as set forth in subparagraph (2)(b)2.

(b) Deletion by eminent domain.—

1. The timeshare instrument creating the multisite timeshare plan must also provide for the application of any proceeds arising from a taking under eminent domain proceedings to either the replacement or acquisition of additional similar accommodations or facilities or to the removal of purchasers from the multisite timeshare plan so that purchasers will not be competing for available accommodations on a greater than one-to-one use right ~~purchaser~~ to use night requirement ~~accommodation~~ ratio.

2. Any replacement of accommodations or facilities pursuant to this paragraph shall be made upon the same basis as required for substitution set forth in subparagraph (2)(b)2.

(c) Automatic deletion.—The timeshare instrument may provide that a component site will be automatically deleted upon the expiration of its term in a timeshare plan other than a nonspecific multisite timeshare plan or as otherwise provided in the timeshare instrument. However, the timeshare instrument must also provide that in the event a component site is deleted from the plan in this manner, a sufficient number of purchasers of the plan will also be deleted so as to maintain no greater than a one-to-one use right ~~purchaser~~ to use night requirement ~~accommodation~~ ratio.

Section 13. Subsection (1) of section 721.97, Florida Statutes, is amended to read:



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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, in international waters, or in any possession, territory, or commonwealth of the United States outside the 50 states. 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, personal property timeshare interest, 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), Florida Statutes 1997, 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.

Section 14. This act shall take effect July 1, 2007.

Approved by the Governor May 24, 2007.

Filed in Office Secretary of State May 24, 2007.



CODING: Words stricken are deletions; words underlined are additions.