

CHAPTER 2015-144

Committee Substitute for Committee Substitute for House Bill No. 453

An act relating to timeshares; amending s. 721.05, F.S.; revising a definition; amending s. 721.07, F.S.; revising requirements for amendments made to a timeshare instrument; revising requirements for public offering statements; amending s. 721.08, F.S.; revising compliance requirements for the release of certain escrow funds; creating s. 721.125, F.S.; providing for the extension or termination of timeshare plans under certain conditions; providing applicability; amending s. 721.14, F.S.; authorizing an owners' association and a managing entity to agree to certain conditions related to the discharge of the managing entity; providing for the transfer of specified reservation system data upon the termination of the managing entity; providing that reasonable costs incurred by the terminated managing entity in effecting the transfer of certain information shall be reimbursed as a common expense; amending s. 721.52, F.S.; revising definitions; amending s. 721.53, F.S.; revising requirements with respect to subordination instruments; deleting a requirement relating to court approval of trustee dispositions of multisite timeshare trust property; providing that a vote of the voting interests of a multisite timeshare plan is not required for substitution or automatic deletion of multisite timeshare trust property; repealing s. 721.54, F.S., relating to terms of nonspecific multisite timeshare plans; amending s. 721.55, F.S.; revising disclosure requirements for a multisite timeshare plan public offering statement; amending s. 721.551, F.S.; revising disclosure requirements for multisite timeshare plan purchaser public offering statements; amending s. 721.552, F.S.; revising requirements relating to substitutions and deletions of component site accommodations or facilities; amending s. 721.56, F.S.; deleting provisions relating to the transfer of specified reservation system data upon the termination of managing entity and costs incurred by the terminated managing entity; amending s. 721.57, F.S.; revising language with respect to timeshare estates in multisite timeshare plans; providing an effective date.

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

Section 1. Subsection (34) of section 721.05, Florida Statutes, is amended to read:

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

(34) “Timeshare estate” means a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof, ~~or coupled with. The term includes an~~ ownership interest in a condominium unit pursuant to s. 718.103, an ownership interest in a cooperative unit pursuant to s. 719.103, or a direct or indirect beneficial interest in a trust that complies

in all respects with ~~the provisions of~~ s. 721.08(2)(c)4. or s. 721.53(1)(e), provided that the trust does not contain any personal property timeshare interests. A timeshare estate is a parcel of real property under the laws of this state.

Section 2. Paragraph (a) of subsection (3) and paragraph (gg) of subsection (5) of section 721.07, Florida Statutes, are amended 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.

(3)(a)1. Any change to an approved public offering statement 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 to the approved purchaser public offering statement, 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 or any amendment that does not materially alter or modify the offering in a manner that is adverse to a purchaser, 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 purchaser 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 or any amendment that does not materially alter or modify the offering in a manner that is adverse to a purchaser, shall be delivered to a purchaser no later than 10 days prior to closing.

3. For filings subject only to part II of this chapter, amendments made to a timeshare instrument for a component site located in this state are ~~not~~ required only to be delivered to purchasers who ~~do not~~ receive a timeshare estate ~~or an interest in a specific multisite timeshare plan 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.

(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.

(gg)1. Such other information as is necessary to fairly, meaningfully, and effectively disclose all aspects of the timeshare plan, including, but not limited to, any disclosures made necessary by the operation of s. 721.03(8). ~~However,~~

2. If a developer has, in good faith, attempted to comply with ~~the requirements of this chapter section,~~ and if, in fact, ~~the developer he or she~~ has substantially complied with ~~the disclosure requirements of this chapter,~~ nonmaterial errors or omissions ~~are shall not be actionable, are not violations of this chapter, and do not give rise to any purchaser cancellation right. The developer has the burden of proof for purposes of this paragraph.~~

Section 3. Paragraph (c) of subsection (2) of section 721.08, Florida Statutes, is amended to read:

721.08 Escrow accounts; nondisturbance instruments; alternate security arrangements; transfer of legal title.—

(2) One hundred percent of all funds or other property which is received from or on behalf of purchasers of the timeshare plan or timeshare interest prior to the occurrence of events required in this subsection shall be deposited pursuant to an escrow agreement approved by the division. The funds or other property may be released from escrow only as follows:

(c) Compliance with conditions.—

1. Timeshare licenses.—If the timeshare plan is one in which timeshare licenses are to be sold and no cancellation or default has occurred, the escrow agent may release the escrowed funds or other property to or on the order of the developer upon presentation of:

a. An affidavit by the developer that all of the following conditions have been met:

- (I) Expiration of the cancellation period.
- (II) Completion of construction.
- (III) Closing.
- (IV) Either:

(A) Execution, delivery, and recordation by each interestholder of the nondisturbance and notice to creditors instrument, as described in this section; or

(B) Transfer by the developer of legal title to the subject accommodations and facilities, or all use rights therein, into a trust satisfying the requirements of subparagraph 4. and the execution, delivery, and recordation by each other interestholder of the nondisturbance and notice to creditors instrument, as described in this section.

b. A certified copy of each recorded nondisturbance and notice to creditors instrument.

c. One of the following:

(I) A copy of a memorandum of agreement, as defined in s. 721.05, together with satisfactory evidence that the original memorandum of agreement has been irretrievably delivered for recording to the appropriate official responsible for maintaining the public records in the county in which the subject accommodations and facilities are located. The original memorandum of agreement must be recorded within 180 days after the date on which the purchaser executed her or his purchase agreement.

(II) A notice delivered for recording to the appropriate official responsible for maintaining the public records in each county in which the subject accommodations and facilities are located notifying all persons of the identity of an independent escrow agent or trustee satisfying the requirements of subparagraph 4. that shall maintain separate books and records, in accordance with good accounting practices, for the timeshare plan in which timeshare licenses are to be sold. The books and records shall indicate each accommodation and facility that is subject to such a timeshare plan and each purchaser of a timeshare license in the timeshare plan.

2. Timeshare estates.—If the timeshare plan is one in which timeshare estates are to be sold and no cancellation or default has occurred, the escrow agent may release the escrowed funds or other property to or on the order of the developer upon presentation of:

a. An affidavit by the developer that all of the following conditions have been met:

(I) Expiration of the cancellation period.

(II) Completion of construction.

(III) Closing.

b. If the timeshare estate is sold by agreement for deed, a certified copy of the recorded nondisturbance and notice to creditors instrument, as described in this section.

c. Evidence that each accommodation and facility:

(I) Is free and clear of the claims of any interestholders, other than the claims of interestholders that, through a recorded instrument, are irrevocably made subject to the timeshare instrument and the use rights of purchasers made available through the timeshare instrument;

(II) Is the subject of a recorded nondisturbance and notice to creditors instrument that complies with subsection (3) and s. 721.17; or

(III) Has been transferred into a trust satisfying the requirements of subparagraph 4.

d. Evidence that the timeshare estate:

(I) Is free and clear of the claims of any interestholders, other than the claims of interestholders that, through a recorded instrument, are irrevocably made subject to the timeshare instrument and the use rights of purchasers made available through the timeshare instrument; or

(II) Is the subject of a recorded nondisturbance and notice to creditors instrument that complies with subsection (3) and s. 721.17.

3. Personal property timeshare interests.—If the timeshare plan is one in which personal property timeshare interests are to be sold and no cancellation or default has occurred, the escrow agent may release the escrowed funds or other property to or on the order of the developer upon presentation of:

a. An affidavit by the developer that all of the following conditions have been met:

(I) Expiration of the cancellation period.

(II) Completion of construction.

(III) Closing.

b. If the personal property timeshare interest is sold by agreement for transfer, evidence that the agreement for transfer complies fully with s. 721.06 and this section.

c. Evidence that one of the following has occurred:

(I) Transfer by the owner of the underlying personal property of legal title to the subject accommodations and facilities or all use rights therein into a trust satisfying the requirements of subparagraph 4.; or

(II) Transfer by the owner of the underlying personal property of legal title to the subject accommodations and facilities or all use rights therein into an owners' association satisfying the requirements of subparagraph 5.

d. Evidence of compliance with the provisions of subparagraph 6., if required.

e. If a personal property timeshare plan is created with respect to accommodations and facilities that are located on or in an oceangoing vessel, including a “documented vessel” or a “foreign vessel,” as defined and governed by 46 U.S.C., chapter 301:

(I) In making the transfer required in sub-subparagraph c., the developer shall use as its transfer instrument a document that establishes and protects the continuance of the use rights in the subject accommodations and facilities in a manner that is enforceable by the trust or owners’ association.

(II) The transfer instrument shall comply fully with the provisions of this chapter, shall be part of the timeshare instrument, and shall contain specific provisions that:

(A) Prohibit the vessel owner, the developer, any manager or operator of the vessel, the owners’ association or the trustee, the managing entity, or any other person from incurring any liens against the vessel except for liens that are required for the operation and upkeep of the vessel, including liens for fuel expenditures, repairs, crews’ wages, and salvage, and except as provided in sub-sub-subparagraphs 4.b.(III) and 5.b.(III). All expenses, fees, and taxes properly incurred in connection with the creation, satisfaction, and discharge of any such permitted lien, or a prorated portion thereof if less than all of the accommodations on the vessel are subject to the timeshare plan, shall be common expenses of the timeshare plan.

(B) Grant a lien against the vessel in favor of the owners’ association or trustee to secure the full and faithful performance of the vessel owner and developer of all of their obligations to the purchasers.

(C) Establish governing law in a jurisdiction that recognizes and will enforce the timeshare instrument and the laws of the jurisdiction of registry of the vessel.

(D) Require that a description of the use rights of purchasers be posted and displayed on the vessel in a manner that will give notice of such rights to any party examining the vessel. This notice must identify the owners’ association or trustee and include a statement disclosing the limitation on incurring liens against the vessel described in sub-sub-sub-subparagraph (A).

(E) Include the nondisturbance and notice to creditors instrument for the vessel owner and any other interestholders.

(F) The owners’ association created under subparagraph 5. or trustee created under subparagraph 4. shall have access to any certificates of classification in accordance with the timeshare instrument.

(III) If the vessel is a foreign vessel, the vessel must be registered in a jurisdiction that permits a filing evidencing the use rights of purchasers in the subject accommodations and facilities, offers protection for such use rights against unfiled and inferior claims, and recognizes the document or instrument creating such use rights as a lien against the vessel.

(IV) In addition to the disclosures required by s. 721.07(5), the public offering statement and purchase contract must contain a disclosure in conspicuous type in substantially the following form:

The laws of the State of Florida govern the offering of this timeshare plan in this state. There are inherent risks in purchasing a timeshare interest in this timeshare plan because the accommodations and facilities of the timeshare plan are located on a vessel that will sail into international waters and into waters governed by many different jurisdictions. Therefore, the laws of the State of Florida cannot fully protect your purchase of an interest in this timeshare plan. Specifically, management and operational issues may need to be addressed in the jurisdiction in which the vessel is registered, which is (insert jurisdiction in which vessel is registered). Concerns of purchasers may be sent to (insert name of applicable regulatory agency and address).

4. Trust.—

a. If the subject accommodations or facilities, or all use rights therein, are to be transferred into a trust in order to comply with this paragraph, such transfer shall take place pursuant to this subparagraph. If the accommodations or facilities included in such transfer are subject to a lease, the unexpired term of the lease must be disclosed as the term of the timeshare plan pursuant to s. 721.07(5)(f)4.

b. Prior to the transfer ~~by each interestholder~~ of the subject accommodations and facilities, or all use rights therein, to a trust, any lien or other encumbrance against such accommodations and facilities, or use rights therein, shall be made subject to a nondisturbance and notice to creditors instrument pursuant to subsection (3). No transfer pursuant to this subparagraph shall become effective until the trustee accepts such transfer and the responsibilities set forth herein. A trust established pursuant to this subparagraph shall comply with the following provisions:

(I) The trustee shall be an individual or a business entity authorized and qualified to conduct trust business in this state. Any corporation authorized to do business in this state may act as trustee in connection with a timeshare plan pursuant to this chapter. The trustee must be independent from any developer or managing entity of the timeshare plan or any interestholder of any accommodation or facility of such plan.

(II) The trust shall be irrevocable so long as any purchaser has a right to occupy any portion of the timeshare property pursuant to the timeshare plan.

(III) The trustee shall not convey, hypothecate, mortgage, assign, lease, or otherwise transfer or encumber in any fashion any interest in or portion of the timeshare property with respect to which any purchaser has a right of use or occupancy unless the timeshare plan is terminated pursuant to the timeshare instrument, or such conveyance, hypothecation, mortgage, assignment, lease, transfer, or encumbrance is approved by a vote of two-thirds of all voting interests of the timeshare plan. Subject to s. 721.552, a vote of the voting interests of the timeshare plan is not required for substitution or automatic deletion of accommodations or facilities, and such decision is declared by a court of competent jurisdiction to be in the best interests of the purchasers of the timeshare plan. The trustee shall notify the division in writing within 10 days after receiving notice of the filing of any petition relating to obtaining such a court order. The division shall have standing to advise the court of the division's interpretation of the statute as it relates to the petition.

(IV) All purchasers of the timeshare plan or the owners' association of the timeshare plan shall be the express beneficiaries of the trust. The trustee shall act as a fiduciary to the beneficiaries of the trust. The personal liability of the trustee shall be governed by ss. 736.08125, 736.08163, 736.1013, and 736.1015. The agreement establishing the trust shall set forth the duties of the trustee. The trustee shall be required to furnish promptly to the division upon request a copy of the complete list of the names and addresses of the owners in the timeshare plan and a copy of any other books and records of the timeshare plan required to be maintained pursuant to s. 721.13 that are in the possession, custody, or control of the trustee. All expenses reasonably incurred by the trustee in the performance of its duties, together with any reasonable compensation of the trustee, shall be common expenses of the timeshare plan.

(V) The trustee shall not resign upon less than 90 days' prior written notice to the managing entity and the division. No resignation shall become effective until a substitute trustee, approved by the division, is appointed by the managing entity and accepts the appointment.

(VI) The documents establishing the trust arrangement shall constitute a part of the timeshare instrument.

(VII) For trusts holding property in a timeshare plan located outside this state, the trust and trustee holding such property shall be deemed in compliance with the requirements of this subparagraph if such trust and trustee are authorized and qualified to conduct trust business under the laws of such jurisdiction and the agreement or law governing such trust arrangement provides substantially similar protections for the purchaser as are required in this subparagraph for trusts holding property in a timeshare plan in this state.

(VIII) The trustee shall have appointed a registered agent in this state for service of process. In the event such a registered agent is not appointed, service of process may be served pursuant to s. 721.265.

5. Owners' association.—

a. If the subject accommodations or facilities, or all use rights therein, are to be transferred into an owners' association in order to comply with this paragraph, such transfer shall take place pursuant to this subparagraph.

b. ~~Before~~ Prior to the transfer by ~~each interestholder~~ of the subject accommodations and facilities, or all use rights therein, to an owners' association, any lien or other encumbrance against such accommodations and facilities, or use rights therein, shall be made subject to a nondisturbance and notice to creditors instrument pursuant to subsection (3). No transfer pursuant to this subparagraph shall become effective until the owners' association accepts such transfer and the responsibilities set forth herein. An owners' association established pursuant to this subparagraph shall comply with the following provisions:

(I) The owners' association shall be a business entity authorized and qualified to conduct business in this state. Control of the board of directors of the owners' association must be independent from any developer or managing entity of the timeshare plan or any interestholder.

(II) The bylaws of the owners' association shall provide that the corporation may not be voluntarily dissolved without the unanimous vote of all owners of personal property timeshare interests so long as any purchaser has a right to occupy any portion of the timeshare property pursuant to the timeshare plan.

(III) The owners' association shall not convey, hypothecate, mortgage, assign, lease, or otherwise transfer or encumber in any fashion any interest in or portion of the timeshare property with respect to which any purchaser has a right of use or occupancy, unless the timeshare plan is terminated pursuant to the timeshare instrument, or unless such conveyance, hypothecation, mortgage, assignment, lease, transfer, or encumbrance is approved by a vote of two-thirds of all voting interests of the association and such decision is declared by a court of competent jurisdiction to be in the best interests of the purchasers of the timeshare plan. The owners' association shall notify the division in writing within 10 days after receiving notice of the filing of any petition relating to obtaining such a court order. The division shall have standing to advise the court of the division's interpretation of the statute as it relates to the petition.

(IV) All purchasers of the timeshare plan shall be members of the owners' association and shall be entitled to vote on matters requiring a vote of the owners' association as provided in this chapter or the timeshare instrument. The owners' association shall act as a fiduciary to the purchasers of the timeshare plan. The articles of incorporation establishing the owners' association shall set forth the duties of the owners' association. All expenses reasonably incurred by the owners' association in the performance of its duties, together with any reasonable compensation of the officers or directors of the owners' association, shall be common expenses of the timeshare plan.

(V) The documents establishing the owners' association shall constitute a part of the timeshare instrument.

(VI) For owners' associations holding property in a timeshare plan located outside this state, the owners' association holding such property shall be deemed in compliance with the requirements of this subparagraph if such owners' association is authorized and qualified to conduct owners' association business under the laws of such jurisdiction and the agreement or law governing such arrangement provides substantially similar protections for the purchaser as are required in this subparagraph for owners' associations holding property in a timeshare plan in this state.

(VII) The owners' association shall have appointed a registered agent in this state for service of process. In the event such a registered agent cannot be located, service of process may be made pursuant to s. 721.265.

6. Personal property subject to certificate of title.—If any personal property that is an accommodation or facility of a timeshare plan is subject to a certificate of title in this state pursuant to chapter 319 or chapter 328, the following notation must be made on such certificate of title pursuant to s. 319.27(1) or s. 328.15(1):

The further transfer or encumbrance of the property subject to this certificate of title, or any lien or encumbrance thereon, is subject to the requirements of section 721.17, Florida Statutes, and the transferee or lienor agrees to be bound by all of the obligations set forth therein.

7. If the developer has previously provided a certified copy of any document required by this paragraph, she or he may for all subsequent disbursements substitute a true and correct copy of the certified copy, provided no changes to the document have been made or are required to be made.

8. In the event that use rights relating to an accommodation or facility are transferred into a trust pursuant to subparagraph 4. or into an owners' association pursuant to subparagraph 5., all other interestholders, including the owner of the underlying fee or underlying personal property, must execute a nondisturbance and notice to creditors instrument pursuant to subsection (3).

Section 4. Section 721.125, Florida Statutes, is created to read:

721.125 Extension or termination of timeshare plans.—

(1) Unless the timeshare instrument provides otherwise, the vote or written consent, or both, of 60 percent of all voting interests in a timeshare plan may extend or terminate the term of the timeshare plan at any time. If the term of a timeshare plan is extended pursuant to this section, all rights, privileges, duties, and obligations created under applicable law or the

timeshare instrument continue in full force to the same extent as if the extended termination date of the timeshare plan were the original termination date of the timeshare plan. If a timeshare plan is terminated pursuant to this section, the termination has immediate effect pursuant to applicable law and the timeshare instrument as if the effective date of the termination were the original date of termination.

(2) If a termination or extension vote or consent pursuant to subsection (1) is proposed for a component site of a multisite timeshare plan located in this state, the proposed termination or extension is effective only if the person authorized to make additions or substitutions of accommodations and facilities pursuant to the timeshare instrument also approves the termination or extension.

(3) This section applies only to a timeshare plan that has been in existence for at least 25 years as of the effective date of the termination or extension vote or consent required by subsection (1).

Section 5. Subsection (4) of section 721.14, Florida Statutes, is amended to read:

721.14 Discharge of managing entity.—

(4)(a) An owners' association and a manager or management firm may, in the management contract or other written document, agree to the transition procedures and related time periods to be followed in the event the manager or management firm is discharged pursuant to this section. If there is no written agreement between the parties that covers the matters set forth in paragraphs (b) and (c), the provisions of paragraphs (b) and (c) shall apply.

(b) Within 90 days after the date that the manager or management firm is notified by the owners' association of a successful termination vote pursuant to subsection (1), the terminated managing entity shall transfer to the owners' association or new manager or management firm all relevant data held by the managing entity and related to any reservation system for the timeshare plan, including, but not limited to:

1. The names, addresses, and reservation status of all accommodations.
2. The names and addresses of all purchasers of timeshare interests.
3. All outstanding confirmed reservations and reservation requests.
4. Such other records and information as is necessary to permit the uninterrupted operation and administration of the timeshare plan. However, the information required to be transferred does not include private information of the terminated managing entity that is not directly related to operation and management of the timeshare plan.

(c) All reasonable costs incurred by the terminated managing entity in effecting the transfer of information required by this subsection shall be

reimbursed to the terminated managing entity as a common expense of the timeshare plan within 10 days after the completed transfer of the data described in paragraph (b). This section shall not apply to personal property timeshare plans:

Section 6. Subsections (5) and (7) of section 721.52, Florida Statutes, are amended to read:

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

(5) “Nonspecific multisite timeshare plan” means a multisite timeshare plan ~~containing timeshare licenses or personal property timeshare interests,~~ with respect to which a purchaser receives a right to use all of the accommodations and facilities, if any, of the multisite timeshare plan through the reservation system, but no specific right to use any particular accommodations and facilities for the remaining term of the multisite timeshare plan in the event that the reservation system is terminated for any reason prior to the expiration of the term of the multisite timeshare plan.

(7) “Specific multisite timeshare plan” means a multisite timeshare plan ~~containing timeshare licenses or personal property timeshare interests,~~ with respect to which a purchaser receives a specific right to use accommodations and facilities, if any, at one component site of a multisite timeshare plan, together with use rights in the other accommodations and facilities of the multisite timeshare plan created by or acquired through the reservation system.

Section 7. Paragraph (e) of subsection (1) of section 721.53, Florida Statutes, is amended to read:

721.53 Subordination instruments; alternate security arrangements.—

(1) With respect to each accommodation or facility of a multisite timeshare plan, the developer shall provide the division with satisfactory evidence that one of the following has occurred with respect to each interestholder prior to offering the accommodation or facility as a part of the multisite timeshare plan:

(e) The interestholder has transferred the subject accommodation or facility or all use rights therein to a trust that complies with this paragraph. If the accommodation or facility included in such transfer is subject to a lease, the unexpired term of the lease must be disclosed as the term of that component site pursuant to s. 721.55(4)(a). Prior to such transfer, any lien or other encumbrance against such accommodation or facility shall be made subject to a nondisturbance and notice to creditors instrument pursuant to paragraph (a) or a subordination and notice to creditors instrument pursuant to paragraph (b). No transfer pursuant to this paragraph shall become effective until the trust accepts such transfer and the responsibilities set forth herein. A trust established pursuant to this paragraph shall comply with the following provisions:

1. The trustee shall be an individual or a business entity authorized and qualified to conduct trust business in this state. Any corporation authorized to do business in this state may act as trustee in connection with a timeshare plan pursuant to this chapter. The trustee must be independent from any developer or managing entity of the timeshare plan or any interestholder of any accommodation or facility of such plan. The same trustee may hold the accommodations and facilities, or use rights therein, for one or more of the component sites of the timeshare plan.

2. The trust shall be irrevocable so long as any purchaser has a right to occupy any portion of the timeshare property pursuant to the timeshare plan.

3. The trustee shall not convey, hypothecate, mortgage, assign, lease, or otherwise transfer or encumber in any fashion any interests in or portion of the timeshare property with respect to which any purchaser has a right of use or occupancy unless the timeshare plan is terminated pursuant to the timeshare instrument, or the timeshare property held in trust is deleted from a multisite timeshare plan pursuant to s. 721.552(3), or such conveyance, hypothecation, mortgage, assignment, lease, transfer, or encumbrance is approved by vote of two-thirds of all voting interests of the timeshare plan. Subject to s. 721.552, a vote of the voting interests of the timeshare plan is not required for substitution or automatic deletion of accommodations or facilities and such decision is declared by a court of competent jurisdiction to be in the best interests of the purchasers of the timeshare plan.

4. All purchasers of the timeshare plan or the owners' association of the timeshare plan shall be express beneficiaries of the trust. The trustee shall act as a fiduciary to the beneficiaries of the trust. The personal liability of the trustee shall be governed by ss. 736.08125, 736.08163, 736.1013, and 736.1015. The agreement establishing the trust shall set forth the duties of the trustee. The trustee shall be required to furnish promptly to the division upon request a copy of the complete list of the names and addresses of the owners in the timeshare plan and a copy of any other books and records of the timeshare plan required to be maintained pursuant to s. 721.13 that are in the possession of the trustee. All expenses reasonably incurred by the trustee in the performance of its duties, together with any reasonable compensation of the trustee, shall be common expenses of the timeshare plan.

5. The trustee shall not resign upon less than 90 days' prior written notice to the managing entity and the division. No resignation shall become effective until a substitute trustee, approved by the division, is appointed by the managing entity and accepts the appointment.

6. The documents establishing the trust arrangement shall constitute a part of the timeshare instrument.

7. For trusts holding property in component sites located outside this state, the trust holding such property shall be deemed in compliance with the requirements of this paragraph, if such trust is authorized and qualified to

conduct trust business under the laws of such jurisdiction and the agreement or law governing such trust arrangement provides substantially similar protections for the purchaser as are required in this paragraph for trusts holding property in a component site located in this state.

8. The trustee shall have appointed a registered agent in this state for service of process. In the event such a registered agent is not appointed, service of process may be served pursuant to s. 721.265.

Section 8. Section 721.54, Florida Statutes, is repealed.

Section 9. Paragraphs (a) and (h) of subsection (4), subsection (5), 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).

(a) A description of the multisite timeshare plan, including its term, legal structure, and form of ownership, ~~and. For multisite timeshare plans in which the purchaser will receive a timeshare estate pursuant to s. 721.57 and for specific multisite timeshare plans, the description must also include the term of each component site within the multisite timeshare plan. The term of each component site that is shorter than the term of the multisite timeshare plan must be disclosed in conspicuous type.~~

(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 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.

a. 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.

b. Component site common expenses and ad valorem taxes shall not be included in calculating the total common expense assessment under subparagraph a.

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).

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.

(5)(a) Such other information as the division determines is necessary to fairly, meaningfully, and effectively disclose all aspects of the multisite

timeshare plan, including, but not limited to, any disclosures made necessary by the operation of s. 721.03(8). ~~However,~~

(b) If a developer has, in good faith, attempted to comply with the ~~requirements of this chapter section~~, and if, in fact, the developer has substantially complied with the ~~disclosure requirements of this chapter~~, nonmaterial errors or omissions ~~are not actionable, are not violations of this chapter, and do not give rise to any purchaser cancellation right shall not be~~ actionable.

(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) 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 10. Paragraph (c) of subsection (2) of section 721.551, Florida Statutes, is amended to read:

721.551 Delivery of multisite timeshare plan purchaser public offering statement.—

(2) The developer shall furnish each purchaser with the following:

(c) 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 in this state,~~ the developer shall also furnish the purchaser with the information required to be delivered pursuant to s. 721.07(6)(a) and (b) for that ~~that~~ the component site ~~in which the purchaser will receive an estate or interest in a specific multisite timeshare plan.~~

Section 11. Subsection (2) and paragraph (c) of 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:

(2) SUBSTITUTIONS.—

(a) Substitutions are available only for nonspecific multisite timeshare plans. Specific multisite timeshare plans ~~or plans offering timeshare estates pursuant to s. 721.57~~ may not contain an accommodation substitution right.

(b) The timeshare instrument shall provide for the following:

1. 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; and the basis upon which the determination may be made to cause such substitutions to occur.

2. The replacement accommodations and facilities must provide purchasers with an opportunity to enjoy a substantially similar or improved vacation experience as compared to as was the experience available at with the replaced accommodation or facility. In determining whether the replacement accommodations and facilities will provide a substantially similar or improved vacation experience, all relevant factors must be considered, including, but not limited to, some or all of the following: size, capacity, furnishings, maintenance, location (geographic, topographic, and scenic), demand, and availability for purchaser use, and recreational capabilities.

3. The extent, if any, to which purchasers will have the right to consent to any proposed substitutions.

(c) No substitutions may be made during the first year after the developer begins to offer the multisite timeshare plan.

~~(d)1. If the timeshare instrument provides that the developer, acting unilaterally, is the person authorized to make substitutions, the developer may not substitute No more than 25 percent of the available accommodations in the multisite timeshare plan at a given component site may undergo substitution in a given calendar year pursuant to paragraph (e) if the amount of such substituted accommodations provides more than 10 percent of the total annual use availability in the multisite timeshare plan calculated in 7-day increments in which substitution is permitted. This paragraph shall be interpreted to permit the substitution of an entire component site over a 4-year period.~~

2. If the timeshare instrument provides that the managing entity is the person authorized to make substitutions, and the managing entity is under common ownership or control with the developer, the managing entity may not substitute available accommodations in the multisite timeshare plan in a given calendar year pursuant to paragraph (e) if the amount of such substituted accommodations provides more than 10 percent of the total annual use availability in the multisite timeshare plan calculated in 7-day increments.

3. If the timeshare instrument provides that the managing entity is the person authorized to make substitutions, and the managing entity is not

under common ownership or control with the developer, the managing entity may not substitute available accommodations in the multisite timeshare plan in a given calendar year pursuant to paragraph (e) if the amount of such substituted accommodations provides more than 25 percent of the total annual use availability in the multisite timeshare plan calculated in 7-day increments.

4. If the person authorized to make substitutions receives, within 21 days after the date of the notice of substitution required by paragraph (e), a written objection to the proposed substitution from at least 10 percent of all purchasers in the multisite timeshare plan, a meeting of the purchasers must be conducted by the managing entity within 30 days after the end of such 21-day period. The proposed substitution is ratified unless it is rejected by a majority of purchasers voting in person or by proxy at the meeting, provided that at least 25 percent of all purchasers cast votes. This subparagraph does not apply if the timeshare instrument provides that purchasers do not have the right to consent to any proposed substitutions.

5. This paragraph does not apply if the proposed substitution is approved in advance pursuant to paragraph (f).

~~(e) The person authorized to make substitutions shall notify all purchasers of the multisite timeshare plan in writing of her or his intention to delete accommodations or facilities at a given component site and to substitute them with other specified accommodations or facilities pursuant to this subsection. This notice must be given at least 6 months in advance of the date that the proposed substitution will occur; must state the last day after the end of the 6-month period on which reservations will be accepted from purchasers for use of the accommodations to be deleted; and must state that purchasers shall have 21 days after the date of the notice of substitution to file a written objection with the person authorized to make substitutions, and the notice must inform the purchasers that they may reserve the use of the accommodations to be deleted during this 6-month period. At the end of the 6-month period, The person authorized to make substitutions may delete accommodations for substitution only after such accommodations have no pending purchaser use reservations to the extent that they were not reserved during the 6-month period.~~

(f) The person authorized to make substitutions may make unlimited substitutions. If the managing entity of a multisite timeshare plan includes an owners' association composed of all purchasers or a corporation which owns or controls the accommodations and facilities of the plan, the board of administration of either of which is comprised of a majority of board members elected by purchasers other than the developer, and if such managing entity has the right to make substitutions pursuant to the timeshare instrument, all of the available accommodations at a given component site may undergo substitution in a given year without compliance with paragraphs (d) and (e) if a proposed a written plan of substitution is provided to each purchaser has been approved in advance by a majority of purchasers of the multisite timeshare plan voting in person or by proxy at a meeting called for that

purpose, provided that at least 25 percent of the total number of purchasers cast votes of the board of administration and by a majority of all purchasers in the plan. The plan of substitution must:

- 1.— Specifically identify the component site being replaced and the proposed substitute component site.
- 2.— Contain information regarding prior demand for purchaser use of the component site being replaced.
- 3.— Provide the results of a survey of purchaser attitudes regarding the component site being replaced and the proposed substitute component site.
- 4.— Explain the practical and business reasons for effecting a total substitution within the given calendar year.
- 5.— Provide a plan for handling reservation requests during the substitution period for both the component site being replaced and the proposed substitute component site.

Substitutions made pursuant to this paragraph shall not be subject to the provisions of subparagraph (b)2.

(g) If the person authorized to make substitutions has fully complied with the applicable provisions of this subsection and the timeshare instrument, the trustee of a timeshare trust qualified under s. 721.53(1)(e) may convey title to any accommodations and facilities that have been designated or approved for substitution as and when directed by the person authorized to make substitutions without any further vote or other authorization of the purchasers of the multisite timeshare plan.

~~(h)~~(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 to use night requirement ratio is maintained at all times.

(3) DELETIONS.—

(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, or a sufficient number of replacement accommodations and facilities that comply with subparagraph (2)(b)2. will be substituted for the deleted accommodations and facilities, so as to maintain no greater than a one-to-one use right to use night requirement ratio.

Section 12. Subsection (5) of section 721.56, Florida Statutes, is amended to read:

721.56 Management of multisite timeshare plans; reservation systems; demand balancing.—

~~(5)(a)1. The reservation system is a facility of any nonspecific multisite timeshare plan. The reservation system is not a facility of any specific multisite timeshare plan, nor is it a facility of any multisite timeshare plan in which timeshare estates are offered pursuant to s. 721.57.~~

~~2.— The reservation system of any multisite timeshare plan shall include any computer software and hardware employed for the purpose of enabling or facilitating the operation of the reservation system. Nothing contained in this part shall preclude a manager or management firm that is serving as managing entity of a multisite timeshare plan from providing in its contract with the purchasers or owners' association of the multisite timeshare plan or in the timeshare instrument that the manager or management firm owns the reservation system and that the managing entity shall continue to own the reservation system in the event the purchasers discharge the managing entity pursuant to s. 721.14.~~

~~(b) In the event of a termination of a managing entity of a nonspecific multisite timeshare plan, which managing entity owns the reservation system, irrespective of whether the termination is voluntary or involuntary and irrespective of the cause of such termination, in addition to any other remedies available to purchasers in this part, the terminated managing entity shall, prior to such termination, establish a trust meeting the criteria set forth in this paragraph. It is the intent of the Legislature that this trust arrangement provide for an adequate period of continued operation of the reservation system of the multisite timeshare plan, during which period the new managing entity shall make provision for the acquisition of a substitute reservation system.~~

~~1.— The trust shall be established with an independent trustee. Both the terminated managing entity and the new managing entity shall attempt to agree on an acceptable trustee. In the event they cannot agree on an acceptable trustee, they shall each designate a nominee, and the two nominees shall select the trustee.~~

~~2.— The terminated managing entity shall take all steps necessary to enable the trustee or the trustee's designee to operate the reservation system in the same manner as provided in the timeshare instrument and the public offering statement. The trustee may, but shall not be required to, contract with the terminated managing entity for the continued operation of the reservation system. In the event the trustee elects to contract with the terminated managing entity, that managing entity shall be required to operate the reservation system and shall be entitled to payment for that service. The payment shall in no event exceed the amount previously paid to the terminated managing entity for operation of the reservation system.~~

~~3.—The trust shall remain in effect for a period of no longer than 1 year following the date of termination of the managing entity.~~

~~4.—Nothing contained in this subsection shall abrogate or otherwise interfere with any proprietary rights in the reservation system that have been reserved by the discharged managing entity, in its management contract or otherwise, so long as such proprietary rights are not asserted in a manner that would prevent the continued operation of the reservation system as contemplated in this subsection.~~

~~(c) In the event of a termination of a managing entity of a timeshare estate or specific multisite timeshare plan, which managing entity owns the reservation system, irrespective of whether the termination is voluntary or involuntary and irrespective of the cause of such termination, in addition to any other remedies available to purchasers in this part, the terminated managing entity shall, prior to such termination, promptly transfer to each component site managing entity all relevant data contained in the reservation system with respect to that component site, including, but not limited to:~~

~~1.—The names, addresses, and reservation status of component site accommodations.~~

~~2.—The names and addresses of all purchasers of timeshare interests at that component site.~~

~~3.—All outstanding confirmed reservations and reservation requests for that component site.~~

~~4.—Such other component site records and information as are necessary, in the reasonable discretion of the component site managing entity, to permit the uninterrupted operation and administration of the component site, provided that a given component site managing entity shall not be entitled to any information regarding other component sites or regarding the terminated multisite timeshare plan managing entity.~~

~~All reasonable costs incurred by the terminated managing entity in effecting the transfer of information required by this paragraph shall be reimbursed to the terminated managing entity on a pro rata basis by each component site, and the amount of such reimbursement shall constitute a common expense of each component site.~~

Section 13. Section 721.57, Florida Statutes, is amended to read:

721.57 Offering of timeshare estates in specific multisite timeshare plans; required provisions in the timeshare instrument.—

(1) In addition to meeting all the requirements of part I, timeshare estates offered in a specific multisite timeshare plan must meet the requirements of subsection (2). Any offering of timeshare estates in a specific multisite timeshare plan that does not comply with these requirements shall be deemed to be an offering of a timeshare license.

(2) The timeshare instrument of a specific multisite timeshare plan in which timeshare estates are offered, ~~other than a trust meeting the requirements of s. 721.08,~~ must contain or provide for all of the following matters:

(a) The purchaser will receive a timeshare estate as defined in s. 721.05 in one of the component sites of the specific multisite timeshare plan. The use rights in the other component sites of the multisite timeshare plan shall be made available to the purchaser through the reservation system pursuant to the timeshare instrument.

(b) In the event that the reservation system is terminated or otherwise becomes unavailable for any reason prior to the expiration of the term of the specific multisite timeshare plan:

1. The purchaser will be able to continue to use the accommodations and facilities of the component site in which she or he has been conveyed a timeshare estate in the manner described in the timeshare instrument for that component site for the remaining term of the timeshare estate; and

2. Any use rights in that component site which had previously been made available through the reservation system to purchasers of the specific multisite timeshare plan who were not offered a timeshare estate at that component site will terminate when the reservation system is terminated or otherwise becomes unavailable for any reason.

Section 14. This act shall take effect July 1, 2015.

Approved by the Governor June 11, 2015.

Filed in Office Secretary of State June 11, 2015.