

CHAPTER 2017-22

Committee Substitute for Senate Bill No. 818

An act relating to timeshares; amending s. 721.05, F.S.; revising the definition of the term “interestholder” to clarify that the term does not include certain parties to a certain multisite timeshare plan; amending s. 721.08, F.S.; clarifying current law; providing that certain instruments are not an encumbrance as they relate to certain vacation and timeshare plans; amending s. 721.125, F.S.; revising requirements for the termination of a timeshare plan; providing that the termination of a timeshare plan does not change the corporate status of an owners’ association under certain circumstances; providing that the owners’ association continues to exist until certain affairs are concluded; requiring the board of administration of the owners’ association to serve as the termination trustee after termination of a timeshare plan; providing powers of the termination trustee; specifying that certain expenses incurred by the termination trustee must be borne by the tenants of a former timeshare property; requiring the termination trustee to adopt certain procedures to implement the partition or sale of a former timeshare property; requiring a voting representative to be designated under certain circumstances; specifying the voting rights of the voting representative; conforming provisions to changes made by the act; creating s. 725.1255, F.S.; providing legislative findings; specifying the percentage of votes required to extend the term of a timeshare plan under certain circumstances; specifying what constitutes a quorum under certain circumstances; specifying that a meeting to extend a timeshare plan may be held at any time; authorizing an owners’ association to determine if a person or entity holding a voting interest is ineligible to vote, subject to certain requirements; specifying the maximum duration of validity of a proxy; providing that a proxy for a vote is revocable unless otherwise stated; specifying requirements for certain extension votes to be effective; providing applicability; providing an effective date.

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

Section 1. Subsection (21) of section 721.05, Florida Statutes, is amended to read:

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

(21)(a) “Interestholder” means a developer, an owner of the underlying fee or owner of the underlying personal property, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the accommodations or facilities of the timeshare plan.

(b) With respect to a multisite timeshare plan governed by part II which contains a component site that is also part of a single-site timeshare plan or condominium or other property regime, the term, except as to any timeshare

interest, timeshare unit, or other unit that is specifically subject to, or otherwise dedicated to, the multisite timeshare plan, does not include a developer; an owner of the underlying fee or owner of the underlying personal property; a mortgagee, judgment creditor, or other lienor; or any other person having an interest in or lien or encumbrance against a timeshare interest in such single-site timeshare plan, or an interest in or lien or encumbrance against a timeshare unit or other unit in such condominium or property regime. This paragraph is intended only as a clarification of existing law.

Section 2. Subsection (11) is added to section 721.08, Florida Statutes, to read:

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

(11) A timeshare instrument, declaration of condominium, or other instrument establishing or governing a component site property regime is not an encumbrance for purposes of this chapter and does not create a requirement for a nondisturbance and notice to creditors instrument for purposes of this section or a subordination and notice to creditors instrument for purposes of s. 721.53 from the managing entity, owners' association, or any other person. This subsection is intended only as a clarification of existing law.

Section 3. Section 721.125, Florida Statutes, is amended 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)(a) If the timeshare property is managed by an owners' association that is separate from any underlying condominium, cooperative, or

homeowners' association, the termination of a timeshare plan does not change the corporate status of the owners' association. The owners' association continues to exist only for the purposes of concluding its affairs, prosecuting and defending actions by or against it, collecting and discharging obligations, disposing of and conveying its property, collecting and dividing its assets, and otherwise complying with this subsection.

1. After termination of a timeshare plan, the board of administration of the owners' association shall serve as the termination trustee, and in such fiduciary capacity may bring an action in partition on behalf of the tenants in common in each former timeshare property or sell the former timeshare property in any manner and to any person who is approved by a majority of all such tenants in common. The termination trustee also has all other powers reasonably necessary to effect the partition or sale of the former timeshare property, including the power to maintain the property during the pendency of any partition action or sale.

2. All reasonable expenses incurred by the termination trustee relating to the performance of its duties pursuant to this subsection, including the reasonable fees of attorneys and other professionals, must be paid by the tenants in common of the former timeshare property subject to partition or sale, proportionate to their respective ownership interests.

3. The termination trustee shall adopt reasonable procedures to implement the partition or sale of the former timeshare property and comply with the requirements of this subsection.

(b) If a timeshare plan is terminated in a timeshare condominium or timeshare cooperative and the underlying condominium or cooperative is not simultaneously terminated, a majority of the tenants in common in each former timeshare unit present and voting in person or by proxy at a meeting of such tenants in common conducted by the termination trustee, or conducted by the board of administration of the condominium or cooperative association, if such association managed the former timeshare property, shall designate a voting representative for the unit and file a voting certificate with the condominium or cooperative association. The voting representative may vote on all matters at meetings of the condominium or cooperative association, including termination of the condominium or cooperative.

~~(4)(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 4. Section 721.1255, Florida Statutes, is created to read:

721.1255 Extension of timeshare plans.—

(1)(a) The Legislature finds that timeshare plans are created as authorized by statute. Most of the older timeshare properties located in

this state are based on a condominium structure, and many of these older timeshare properties are approaching the termination dates set forth in their timeshare instruments.

(b) The Legislature further finds that there are many older timeshare properties located in this state which have been well-maintained over the years and continue to be financially supported, used, and enjoyed by their owners, exchangers, guests, renters, and others. In order to preserve the continued use, enjoyment, tax values, and overall viability of these timeshare properties, the Legislature further finds that the public policy of this state requires the creation of a statutory method to enable the owners of these timeshare properties to extend the terms of their timeshare plans, notwithstanding contrary provisions in their timeshare instruments which may create uncertainty for purchasers, prospective purchasers, and lenders, and which may discourage the ongoing maintenance, refurbishment, and improvement of these timeshare properties.

(2)(a) Unless the timeshare instrument specifically provides a lower percentage, the vote or written consent, or both, of at least 66 percent of all eligible voting interests present in person or by proxy at a duly noticed, called, and constituted meeting of the owners' association may, at any time, extend the term of the timeshare plan. 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.

(b) Unless the timeshare instrument specifically provides for a lower quorum, the quorum for the owners' association meeting described in paragraph (a) is 50 percent of all eligible voting interests in the timeshare plan.

(c) The owners' association meeting held pursuant to paragraph (a) may be held at any time before the termination of the timeshare plan.

(d) The board of administration of the owners' association may determine that any voting interest that is delinquent in the payment of more than 2 years of assessments is ineligible to vote on any extension of the timeshare plan unless such delinquency is paid in full before the vote.

(e) A proxy for a vote to extend a timeshare plan pursuant to this section is valid for up to 3 years and is revocable unless the proxy states it is irrevocable.

(3) If an extension vote or consent pursuant to this section is proposed for a component site of a multisite timeshare plan located in this state, the proposed 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 extension.

Section 5. This act shall take effect upon becoming a law.

Approved by the Governor May 23, 2017.

Filed in Office Secretary of State May 23, 2017.