

2015 Florida Statutes

Chapter 721 VACATION AND TIMESHARE PLANS

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721.01 Short title.—This chapter shall be known and may be cited as the “Florida Vacation Plan and Timesharing Act.”

History.—s. 1, ch. 81-172; s. 2, ch. 91-236.

721.02 Purposes.—The purposes of this chapter are to:

(1) Give statutory recognition to real property timeshare plans and personal property timeshare plans in this state.

(2) Establish procedures for the creation, sale, exchange, promotion, and operation of timeshare plans.

(3) Provide full and fair disclosure to the purchasers and prospective purchasers of timeshare plans.

(4) Require every timeshare plan offered for sale or created and existing in this state to be subjected to the provisions of this chapter.

(5) Require full and fair disclosure of terms, conditions, and services by resale service providers acting on behalf of consumer timeshare resellers or on behalf of prospective consumer resale purchasers, regardless of the business model employed by the resale service provider.

(6) Recognize that the tourism industry in this state is a vital part of the state's economy; that the sale, promotion, and use of timeshare plans is an emerging, dynamic segment of the tourism industry; that this segment of the tourism industry continues to grow, both in volume of sales and in complexity and variety of product structure; and that a uniform and consistent method of regulation is necessary in order to safeguard Florida's tourism industry and the state's economic well-being. In order to protect the quality of Florida timeshare plans and the

consumers who purchase them, it is the intent of the Legislature that this chapter be interpreted broadly in order to encompass all forms of timeshare plans with a duration of at least 3 years that are created with respect to accommodations and facilities that are located in the state or that are offered for sale in the state as provided herein, including, but not limited to, condominiums, cooperatives, undivided interest campgrounds, cruise ships, vessels, houseboats, and recreational vehicles and other motor vehicles, and including vacation clubs, multisite vacation plans, and multiyear vacation and lodging certificates.

History.—s. 1, ch. 81-172; s. 1, ch. 83-264; s. 47, ch. 85-62; s. 3, ch. 91-236; s. 1, ch. 2004-279; s. 1, ch. 2012-76.

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:

(a) With respect to a timeshare plan containing accommodations or facilities located in this state which has previously been filed with and approved by the division and which is offered for sale in other jurisdictions within the jurisdictional limits of the United States, the offering or sale of the timeshare plan in such jurisdictions shall not be subject to the provisions of this chapter.

(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) 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.

(c) All timeshare accommodations or facilities which are located outside the state but offered for sale in this state shall be governed by the following:

1. The offering for sale in this state of timeshare accommodations and facilities located outside the state is subject only to the provisions of ss. 721.01-721.12, 721.18, 721.20, 721.21, 721.26, 721.28, and part II.

2. The division shall not require a developer of timeshare accommodations or facilities located outside of this state to make changes in any timeshare instrument to conform to the provisions of s. 721.07 or s. 721.55. The division shall have the power to require disclosure of those provisions of the timeshare instrument that do not conform to s. 721.07 or s. 721.55 as the director determines is necessary to fairly, meaningfully, and effectively disclose all aspects of the timeshare plan.

3. Except as provided in this subparagraph, the division shall have no authority to determine whether any person has complied with another state's laws or to disapprove any filing out-of-state, timeshare instrument, or component site document, based solely upon the lack or degree of timeshare regulation in another state. The division may require a developer to obtain and provide to the division existing documentation relating to an out-of-state filing, timeshare instrument, or component site document and prove compliance of same with the laws of that state. In this regard, the division may accept any evidence of the approval or acceptance of any out-of-state filing, timeshare instrument, or component site document by another state in lieu of requiring a developer to file the out-of-state filing, timeshare instrument, or component site document with the division pursuant to this section, or the division may accept an opinion letter from an attorney or law firm opining as to the compliance of such out-of-state filing, timeshare instrument, or component site document with the laws of another state. The division may refuse to approve the inclusion of any out-of-state filing, timeshare instrument, or component site document as part of a public offering statement based upon the inability of the developer to establish the compliance of same with the laws of another state.

4. The division is authorized to enter into an agreement with another state for the purpose of facilitating the processing of out-of-state timeshare instruments or other component site

documents pursuant to this chapter and for the purpose of facilitating the referral of consumer complaints to the appropriate state.

5. Notwithstanding any other provision of this paragraph, the offer, in this state, of an additional interest to existing purchasers in the same timeshare plan, the same nonspecific multisite timeshare plan, or the same component site of a multisite timeshare plan with accommodations and facilities located outside of this state shall not be subject to the provisions of this chapter if the offer complies with the provisions of s. 721.11(4).

(2) When a timeshare plan is subject to both the provisions of this chapter and the provisions of chapter 718 or chapter 719, the plan shall meet the requirements of both chapters unless exempted as provided in this section. The division shall have the authority to adopt rules differentiating between timeshare condominiums and nontimeshare condominiums, and between timeshare cooperatives and nontimeshare cooperatives, in the interpretation and implementation of chapters 718 and 719, respectively. In the event of a conflict between the provisions of this chapter and the provisions of chapter 718 or chapter 719, the provisions of this chapter shall prevail.

(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:

- (a) Sections 718.202 and 719.202, relating to sales or reservation deposits prior to closing.
- (b) Sections 718.502 and 719.502, relating to filing prior to sale or lease.
- (c) Sections 718.503 and 719.503, relating to disclosure prior to sale.
- (d) Sections 718.504 and 719.504, relating to prospectus or offering circular.

(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 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. 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).

(4) The treatment of timeshare estates for ad valorem tax purposes and special assessments shall be as prescribed in chapters 192-200.

(5) Membership camping plans shall be subject to the provisions of ss. 509.501-509.512 and not to the provisions of this chapter.

(6) Unless otherwise provided herein, this chapter shall not apply to the offering of any timeshare plan under which the prospective purchaser's total financial obligation will be \$3,000 or less during the entire term of the plan.

(7) Every escrow agent or trustee required under this chapter, or under chapter 192 as it relates to timeshare plans, must be independent.

(8) With respect to any personal property timeshare plan:

(a) This chapter applies only to personal property timeshare plans that are offered in this state.

(b) The division shall have the authority to adopt rules interpreting and implementing the provisions of this chapter as they apply to any personal property timeshare plan or any

accommodation or facility that is part of a personal property timeshare plan offered in this state, or as the provisions of this chapter apply to any other laws of this state, of the several states, of the United States, or of any other jurisdiction, with respect to any personal property timeshare plan or any accommodation or facility that is part of a personal property timeshare plan offered in this state.

(c) Any developer and any managing entity of a personal property timeshare plan must submit to personal jurisdiction in this state in a form satisfactory to the division at the time of filing a public offering statement.

(9) Notwithstanding the provisions of any other law, s. 687.03 shall govern with respect to the rate of interest permitted for any loan, advance of money, line of credit, forbearance to enforce the collection of any sum of money, or other obligation in connection with a timeshare license.

(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 to use night requirement 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-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.

History.—s. 1, ch. 81-172; s. 60, ch. 82-226; s. 2, ch. 83-264; s. 4, ch. 91-236; s. 1, ch. 93-58; s. 1, ch. 95-274; s. 1, ch. 98-36; s. 8, ch. 2000-302; s. 2, ch. 2004-279; s. 1, ch. 2007-75; s. 64, ch. 2008-240.

721.04 Saving clause.—All timeshare plans filed pursuant to chapter 2-23, Florida Administrative Code, prior to July 1, 1981, shall be deemed to be in compliance with the filing requirements of chapter 81-172, Laws of Florida.

History.—s. 1, ch. 81-172; s. 4, ch. 83-264.

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

(1) “Accommodation” means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, campground, cruise ship cabin, houseboat or other vessel, recreational or other motor vehicle, or any private or commercial structure which is real or personal property and designed for overnight occupancy by one or more individuals. The term does not include an incidental benefit as defined in this section.

(2) “Agreement for deed” means any written contract utilized in the sale of timeshare estates which provides that legal title will not be conveyed to the purchaser until the contract price has been paid in full and the terms of payment of which extend for a period in excess of 180 days after either the date of execution of the contract or completion of construction, whichever occurs later.

(3) “Agreement for transfer” means any written contract utilized in the sale of personal property timeshare interests which provides that legal title will not be transferred to the purchaser until the contract price has been paid in full and the terms of payment of which extend for a period in excess of 180 days after either the date of execution of the contract or completion of construction, whichever occurs later.

(4) “Assessment” means the share of funds required for the payment of common expenses which is assessed from time to time against each purchaser by the managing entity.

(5) “Closing” means:

(a) For any plan selling timeshare estates, conveyance of the legal or beneficial title to a timeshare estate as evidenced by the delivery of a deed for conveyance of legal title, or other instrument for conveyance of beneficial title, to the purchaser or to the clerk of the court for recording or conveyance of the equitable title to a timeshare estate as evidenced by the irrevocable delivery of an agreement for deed to the clerk of the court for recording.

(b) For any plan selling timeshare licenses or personal property timeshare interests, the final execution and delivery by all parties of the last document necessary for vesting in the purchaser the full rights available under the plan.

(6) “Common expenses” means:

(a) Those expenses, fees, or taxes properly incurred for the maintenance, operation, and repair of the accommodations or facilities, or both, constituting the timeshare plan.

(b) Any other expenses, fees, or taxes designated as common expenses in a timeshare instrument.

(c) Any past due and uncollected ad valorem taxes assessed against a timeshare development pursuant to s. 192.037.

(7) “Completion of construction” means:

(a)1. That a certificate of occupancy has been issued for the entire building in which the timeshare unit being sold is located, or for the improvement, or that the equivalent authorization has been issued, by the governmental body having jurisdiction;

2. In a jurisdiction in which no certificate of occupancy or equivalent authorization is issued, that the construction, finishing, and equipping of the building or improvements according to the plans and specifications have been substantially completed; or

3. With respect to personal property timeshare plans, that all accommodations have been manufactured or built and acquired or leased by the developer, owners' association, managing entity, trustee, or other person for the use of purchasers as set forth in the timeshare instrument; and

(b) That all accommodations and facilities of the timeshare plan are available for use in a manner identical in all material respects to the manner portrayed by the promotional material, advertising, and filed public offering statements.

(8) "Conspicuous type" means:

(a) Type in upper and lower case letters two point sizes larger than the largest nonconspicuous type, exclusive of headings, on the page on which it appears but in at least 10-point type; or

(b) Where the use of 10-point type would be impractical or impossible with respect to a particular piece of written advertising material, a different style of type or print may be used, so long as the print remains conspicuous under the circumstances.

Where conspicuous type is required, it must be separated on all sides from other type and print. Conspicuous type may be utilized in contracts for purchase or public offering statements only where required by law or as authorized by the division.

(9) "Contract" means any agreement conferring the rights and obligations of a timeshare plan on the purchaser.

(10) "Developer" includes:

(a)1. A "creating developer," which means any person who creates the timeshare plan;

2. A "successor developer," which means any person who succeeds to the interest of the persons in this subsection by sale, lease, assignment, mortgage, or other transfer, but the term includes only those persons who offer timeshare interests in the ordinary course of business; and

3. A "concurrent developer," which means any person acting concurrently with the persons in this subsection with the purpose of offering timeshare interests in the ordinary course of business.

(b) The term "developer" does not include:

1. An owner of a timeshare interest who has acquired the timeshare interest for his or her own use and occupancy and who later offers it for resale; provided that a rebuttable presumption exists that an owner who has acquired more than seven timeshare interests did not acquire them for his or her own use and occupancy;

2. A managing entity, not otherwise a developer, that offers, or engages a third party to offer on its behalf, timeshare interests in a timeshare plan which it manages, provided that such offer complies with the provisions of s. 721.065;

3. A person who owns or is conveyed, assigned, or transferred more than seven timeshare interests and who subsequently conveys, assigns, or transfers all acquired timeshare interests to a single purchaser in a single transaction, which transaction may occur in stages; or

4. A person who acquires or has the right to acquire more than seven timeshare interests from a developer or other interestholder in connection with a loan, securitization, conduit, or similar financing arrangement transaction and who subsequently arranges for all or a portion of the timeshare interests to be offered by a developer in the ordinary course of business on its own behalf or on behalf of such person.

(c) A successor or concurrent developer is exempt from any liability inuring to a predecessor or concurrent developer of the same timeshare plan, except as provided in s. 721.15(7). This exemption does not apply to any of the successor or concurrent developer's responsibilities, duties, or liabilities with respect to the timeshare plan which accrue after the date the successor or concurrent developer became a successor or concurrent developer, and such transfer does not constitute a fraudulent transfer. A transfer by a predecessor developer to a successor or concurrent developer shall be deemed fraudulent if the predecessor developer made the transfer:

1. With actual intent to hinder, delay, or defraud any purchaser or the division; or
2. To a person that would constitute an insider under s. 726.102.

This paragraph does not relieve any successor or concurrent developer from the obligation to comply with the provisions of any applicable timeshare instrument.

(11) "Division" means the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation.

(12) "Enrolled" means paid membership in an exchange program or membership in an exchange program evidenced by written acceptance or confirmation of membership.

(13) "Escrow account" means an account established solely for the purposes set forth in this chapter with a financial institution located within this state.

(14) "Escrow agent" includes only:

(a) A savings and loan association, bank, trust company, or other financial institution, any of which must be located in this state and any of which must have a net worth in excess of \$5 million;

(b) An attorney who is a member of The Florida Bar or his or her law firm;

(c) A real estate broker who is licensed pursuant to chapter 475 or his or her brokerage firm;
or

(d) A title insurance agent that is licensed pursuant to s. 626.8417, a title insurance agency that is licensed pursuant to s. 626.8418, or a title insurer authorized to transact business in this state pursuant to s. 624.401.

(15) "Exchange company" means any person owning or operating, or owning and operating, an exchange program.

(16) "Exchange program" means any method, arrangement, or procedure for the voluntary exchange of the right to use and occupy accommodations and facilities among purchasers. The term does not include the assignment of the right to use and occupy accommodations and facilities to purchasers pursuant to a particular multisite timeshare plan's reservation system. Any method, arrangement, or procedure that otherwise meets this definition, wherein the purchaser's total contractual financial obligation exceeds \$3,000 per any individual, recurring timeshare period, shall be regulated as a multisite timeshare plan in accordance with part II.

(17) "Facility" means any permanent amenity, including any structure, furnishing, fixture, equipment, service, improvement, or real or personal property, improved or unimproved, other than an accommodation of the timeshare plan, which is made available to the purchasers of a timeshare plan. The term does not include an incidental benefit as defined in this section.

(18) "Filed public offering statement" means a public offering statement that has been filed with the division pursuant to s. 721.07(5) or s. 721.55.

(19) "Incidental benefit" means an accommodation, product, service, discount, or other benefit which is offered to a prospective purchaser of a timeshare plan or to a purchaser of a timeshare plan prior to the expiration of his or her initial 10-day voidability period pursuant to s. 721.10; which is not an exchange program as defined in subsection (16); and which complies with the provisions of s. 721.075. The term shall not include an offer of the use of the accommodations and facilities of the timeshare plan on a free or discounted one-time basis.

(20) "Independent," for purposes of determining eligibility of escrow agents and trustees pursuant to s. 721.03(7), means that:

(a) The escrow agent or trustee is not a relative, as described in s. 112.3135(1)(d), or an employee of the developer, seller, or managing entity, or of any officer, director, affiliate, or subsidiary thereof.

(b) There is no financial relationship, other than the payment of fiduciary fees or as otherwise provided in this subsection, between the escrow agent or trustee and the developer, seller, or managing entity, or any officer, director, affiliate, or subsidiary thereof.

(c) Compensation paid by the developer to an escrow agent or trustee for services rendered shall not be paid from funds in the escrow or trust account unless and until the developer is otherwise entitled to receive the disbursement of such funds from the escrow or trust account pursuant to this chapter.

(d) A person shall not be disqualified to serve as an escrow agent or a trustee solely because of the following:

1. A nonemployee, attorney-client relationship exists between the developer and the escrow agent or trustee;

2. The escrow agent or trustee provides brokerage services as defined by chapter 475 for the developer;

3. The escrow agent or trustee provides the developer with routine banking services which do not include construction or receivables financing or any other lending activities; or

4. The escrow agent or trustee performs closings for the developer or seller or issues owner's or lender's title insurance commitments or policies in connection with such closings.

(21) "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.

(22) "Managing entity" means the person who operates or maintains the timeshare plan pursuant to s. 721.13(1).

(23) "Memorandum of agreement" means a written document, in a form sufficient to permit the document to be recorded or otherwise filed in the appropriate public records and to provide constructive notice of its contents under applicable law, which includes the names of the seller and the purchasers, a legal description of the timeshare property or other sufficient description for a personal property timeshare plan, and all timeshare interests to be included in such document, and a description of the type of timeshare interest sold by the seller.

(24) "Offer to sell," "offer for sale," "offered for sale," or "offer" means the solicitation, advertisement, or inducement, or any other method or attempt, to encourage any person to acquire the opportunity to participate in a timeshare plan.

(25) "One-to-one use right to use night requirement 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 regard to whether the owner's use rights have been suspended for failure to pay assessments or otherwise.

(26) "Owner of the underlying fee" or "owner of the underlying personal property" means any person having an interest in the real property or personal property comprising or underlying the accommodations or facilities of a timeshare plan at or subsequent to the time of creation of the timeshare plan.

(27) "Owners' association" means an association made up of all owners of timeshare interests in a timeshare plan, including developers and purchasers of such timeshare plan.

(28) "Personal property timeshare interest" means a right to occupy an accommodation located on or in or comprised of personal property that is not permanently affixed to real property, whether or not coupled with a beneficial or ownership interest in the accommodations or personal property.

(29) "Public offering statement" means the written materials describing a single-site timeshare plan or a multisite timeshare plan, including a text and any exhibits attached thereto as required by ss. 721.07, 721.55, and 721.551. The term "public offering statement" shall refer to both a filed public offering statement and a purchaser public offering statement.

(30) "Purchaser" means any person, other than a developer, who by means of a voluntary transfer acquires a legal or equitable interest in a timeshare plan other than as security for an obligation.

(31) "Purchaser public offering statement" means that portion of the filed public offering statement which must be delivered to purchasers pursuant to s. 721.07(6) or s. 721.551.

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

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

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

(33) "Seller" means any developer or any other person, or any agent or employee thereof, who offers timeshare interests in the ordinary course of business. The term "seller" does not include:

(a) An owner of a timeshare interest who has acquired the timeshare interest for his or her own use and occupancy and who later offers it for resale; provided that a rebuttable presumption

shall exist that an owner who has acquired more than seven timeshare interests did not acquire them for his or her own use and occupancy;

(b) A managing entity, not otherwise a seller, that offers, or engages a third party to offer on its behalf, timeshare interests in a timeshare plan which it manages, provided that such offer complies with the provisions of s. 721.065;

(c) A person who owns or is conveyed, assigned, or transferred more than seven timeshare interests and who subsequently conveys, assigns, or transfers all acquired timeshare interests to a single purchaser in a single transaction, which transaction may occur in stages; or

(d) A person who has acquired or has the right to acquire more than seven timeshare interests from a developer or other interestholder in connection with a loan, securitization, conduit, or similar financing arrangement and who subsequently arranges for all or a portion of the timeshare interests to be offered by one or more developers in the ordinary course of business on their own behalves or on behalf of such person.

(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 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 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.

(35) "Timeshare instrument" means one or more documents, by whatever name denominated, creating or governing the operation of a timeshare plan.

(36) "Timeshare interest" means a timeshare estate, a personal property timeshare interest, or a timeshare license.

(37) "Timeshare license" means a right to occupy a timeshare unit, which right is not a personal property timeshare interest or a timeshare estate.

(38) "Timeshare period" means the period or periods of time when a purchaser of a timeshare interest is afforded the opportunity to use the accommodations of a timeshare plan.

(39) "Timeshare plan" means any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, or right-to-use agreement or by any other means, whereby a purchaser, for consideration, receives ownership rights in or a right to use accommodations, and facilities, if any, for a period of time less than a full year during any given year, but not necessarily for consecutive years. The term "timeshare plan" includes:

(a) A “personal property timeshare plan,” which means a timeshare plan in which the accommodations are comprised of personal property that is not permanently affixed to real property; and

(b) A “real property timeshare plan,” which means a timeshare plan in which the accommodations of the timeshare plan are comprised of or permanently affixed to real property.

(40) “Timeshare property” means one or more timeshare units subject to the same timeshare instrument, together with any other property or rights to property appurtenant to those timeshare units. Notwithstanding anything to the contrary contained in chapter 718 or chapter 719, the timeshare instrument for a timeshare condominium or cooperative may designate personal property, contractual rights, affiliation agreements of component sites of vacation clubs, exchange companies, or reservation systems, or any other agreements or personal property, as common elements or limited common elements of the timeshare condominium or cooperative.

(41) “Timeshare unit” means an accommodation of a timeshare plan which is divided into timeshare periods. Any timeshare unit in which a door or doors connecting two or more separate rooms are capable of being locked to create two or more private dwellings shall only constitute one timeshare unit for purposes of this chapter, unless the timeshare instrument provides that timeshare interests may be separately conveyed in such locked-off portions.

(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 resale advertiser, or other person or entity, including any agent or employee of such person or entity, who offers or uses telemarketing, direct mail, e-mail, or any other means of communication in connection with the offering of resale brokerage or resale advertising services to consumer timeshare resellers. The term does not include developers or managing entities to the extent they offer resale brokerage or resale

advertising services to owners of timeshare interests in their own timeshare plans; resale brokers to the extent that resale advertising services are offered in connection with resale brokerage services and no fee for the advertising service is collected in advance; or a consumer timeshare reseller who acquires a timeshare interest or timeshare interests for his or her own use and occupancy and who later offers the timeshare interest or timeshare interests for rent or offers for resale in a given calendar year seven or fewer of the timeshare interests that he or she acquired for his or her own use and occupancy.

(45) “Consumer resale timeshare interest” means:

(a) A timeshare interest owned by a purchaser;

(b) One or more reserved occupancy rights relating to a timeshare interest owned by a purchaser; or

(c) One or more reserved occupancy rights relating to, or arranged through, an exchange program in which a purchaser is a member.

(46) “Consumer timeshare reseller” means a purchaser who acquires a timeshare interest for his or her own use and occupancy and later offers the timeshare interest for resale or rental.

(47) “Resale broker” means any person, or any agent or employee of such person, who is licensed pursuant to chapter 475 and who offers or provides resale brokerage services to consumer timeshare resellers for compensation or valuable consideration, regardless of whether the offer is made in person, by mail, by telephone, through the Internet, or by any other medium of communication.

(48) “Resale brokerage services” means, with respect to a consumer resale timeshare interest in a timeshare property located or offered within this state, any activity that directly or indirectly consists of any of the activities described in s. 475.01(1)(a).

(49) “Resale advertiser” means any person who offers, personally or through an agent, resale advertising services to consumer timeshare resellers for compensation or valuable consideration, regardless of whether the offer is made in person, by mail, by telephone, through the Internet, or by any other medium of communication. The term does not include:

(a) A resale broker to the extent that resale advertising services are offered in connection with timeshare resale brokerage services and no fee for the resale advertising service is collected in advance;

(b) A developer or managing entity to the extent that either of them offers resale advertising services to owners of timeshare interests in their own timeshare plans; or

(c) A newspaper, periodical, or website owner, operator, or publisher, unless the newspaper, periodical, or website owner, operator, or publisher derives more than 10 percent of its gross revenue from providing resale advertising services. For purposes of this paragraph, the calculation of gross revenue derived from providing resale advertising services includes revenue

of any affiliate, parent, agent, and subsidiary of the newspaper, periodical, or website owner, operator, or publisher, so long as the resulting percentage of gross revenue is not decreased by the inclusion of such affiliate, parent, subsidiary, or agent in the calculation.

(50) “Resale advertising service” means any good or service relating to, or a promise of assistance in connection with, advertising or promoting the resale or rental of a consumer resale timeshare interest located or offered within this state, including any offer to advertise or promote the sale or purchase of any such interest.

(51) “Resale transfer agreement” means a contract or other agreement between a person offering timeshare interest transfer services and a consumer timeshare reseller, in which the person offering timeshare interest transfer services agrees to provide such services as described in s. 721.17(3).

(52) “Timeshare interest transfer services” means any good or service relating to an offer or agreement to transfer ownership of a consumer resale timeshare interest, or assistance with or a promise of assistance in connection with the transfer of ownership of a consumer resale timeshare interest, as described in s. 721.17(3). The term does not include resale advertising services as provided in this chapter.

History.—s. 1, ch. 81-172; s. 3, ch. 83-264; ss. 1, 2, ch. 84-256; s. 17, ch. 85-60; s. 25, ch. 91-103; s. 5, ch. 91-236; s. 5, ch. 91-426; s. 2, ch. 93-58; s. 240, ch. 94-218; s. 2, ch. 95-274; s. 891, ch. 97-102; s. 2, ch. 98-36; s. 17, ch. 98-322; s. 9, ch. 2000-302; s. 3, ch. 2004-279; s. 2, ch. 2007-75; s. 65, ch. 2008-240; s. 7, ch. 2009-133; s. 2, ch. 2012-76; s. 2, ch. 2013-159; s. 5, ch. 2013-189; s. 1, ch. 2015-144.

721.056 Supervisory duties of developer.—Notwithstanding obligations placed upon any other persons by this chapter, it is the duty of the developer to supervise, manage, and control all aspects of the offering of a timeshare plan, including, but not limited to, promotion, advertising, contracting, and closing. Any violation of this section which occurs during such offering activities shall be deemed to be a violation by the developer as well as by the person actually committing such violation.

History.—s. 17, ch. 83-264.

721.06 Contracts for purchase of timeshare interests.—

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

(a) The actual date the contract is executed by each party.

(b) The names and addresses of the developer and the timeshare plan.

(c) The initial purchase price and any additional charges to which the purchaser may be subject in connection with the purchase of the timeshare interest, such as financing, or which will be collected from the purchaser on or before closing, such as the current year’s annual assessment for common expenses.

(d)1. For real property timeshare plans, an estimate of any anticipated annual assessment stated on an annually recurring basis for any use charges, fees, common expenses, or ad valorem taxes or, if an estimate is unavailable, the current year's actual annual assessment for any use charges, fees, common expenses, or ad valorem taxes.

2. For personal property timeshare plans, an estimate of any anticipated annual assessment stated on an annually recurring basis for any use charges, fees, common expenses, or taxes or, if an estimate is unavailable, the current year's actual annual assessment for any use charges, fees, common expenses, or taxes.

(e) The estimated date of completion of construction of each accommodation or facility promised to be completed which is not completed at the time the contract is executed and the estimated date of closing.

(f) A brief description of the nature and duration of the timeshare interest being sold, including whether any interest in real property or personal property is being conveyed and the specific number of years constituting the term of the timeshare plan.

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

1. *If the purchaser will receive a personal property timeshare interest: This personal property timeshare plan is governed only by limited sections of the timeshare management provisions of Florida law.*

2. *If the accommodations or facilities are located on or in a documented vessel or foreign vessel as provided in s. 721.08(2)(c)3.e., the disclosure required by s. 721.08(2)(c)3.e.(IV).*

3. *You may cancel this contract without any penalty or obligation within 10 calendar days after the date you sign this contract or the date on which you receive the last of all documents required to be given to you pursuant to section 721.07(6), Florida Statutes, whichever is later. If you decide to cancel this contract, you must notify the seller in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to (Name of Seller) at (Address of Seller). Any attempt to obtain a waiver of your cancellation right is void and of no effect. While you may execute all closing documents in advance, the closing, as evidenced by delivery of the deed or other document, before expiration of your 10-day cancellation period, is prohibited.*

(h) If a timeshare estate is being conveyed, the following statement in conspicuous type:

For the purpose of ad valorem assessment, taxation and special assessments, the managing entity will be considered the taxpayer as your agent pursuant to section 192.037, Florida Statutes.

(i) A statement that, in the event the purchaser cancels the contract during a 10-day cancellation period, the developer will refund to the purchaser the total amount of all payments

made by the purchaser under the contract, reduced by the proportion of any contract benefits the purchaser has actually received under the contract prior to the effective date of the cancellation. The statement shall further provide that the refund will be made within 20 days after receipt of notice of cancellation or within 5 days after receipt of funds from the purchaser's cleared check, whichever is later. A seller and a purchaser shall agree in writing on a specific value for each contract benefit received by the purchaser for purposes of this paragraph. The term "contract benefit" shall not include purchaser public offering statements or other documentation or materials that must be furnished to a purchaser pursuant to statute or rule.

(j) If the timeshare interest is being sold pursuant to an agreement for deed or an agreement for transfer, a statement that the signing of the agreement for deed or agreement for transfer does not entitle the purchaser to receive the conveyance or transfer of his or her timeshare estate or personal property timeshare interest until all payments under the agreement have been made.

(k) Unless the developer is, at the time of offering the plan, the owner of the accommodations and facilities of the timeshare plan, free and clear of all liens, encumbrances, and claims of other interestholders, a statement that the developer is not the sole owner of the underlying fee or owner of the underlying personal property or that the accommodations or facilities are subject to liens or encumbrances, which statement shall include:

1. The names and addresses of all other interestholders; and
2. The actual interest of the developer in the accommodations or facilities. As an alternative to including the statement in the purchase contract, a seller may include a reference in the purchase contract to the location in the purchaser public offering statement text of such information.

(l) If the purchaser will receive an interest in a multisite timeshare plan pursuant to part II, a statement shall be provided in conspicuous type in substantially the following form:

The developer is required to provide the managing entity of the multisite timeshare plan with a copy of the approved public offering statement text and exhibits filed with the division and any approved amendments thereto, and any other component site documents as described in section 721.07 or section 721.55, Florida Statutes, that are not required to be filed with the division, to be maintained by the managing entity for inspection as part of the books and records of the plan.

(m) The following statement in conspicuous type:

Any resale of this timeshare interest must be accompanied by certain disclosures in accordance with section 721.065, Florida Statutes.

(n) A description of any rights reserved by the developer to alter or modify the offering prior to closing.

(2)(a) An agreement for deed shall be recorded by the developer within 30 days after the day it is executed by the purchaser. The developer shall pay all recording costs associated therewith. A form copy of such instrument must be filed with the division for review pursuant to s. 721.07.

(b) An agreement for transfer shall be filed with the appropriate official responsible for maintaining such records in the appropriate jurisdiction within 30 days after the day it is executed by the purchaser. The developer shall pay all filing costs associated therewith. A form copy of such instrument must be filed with the division for review pursuant to s. 721.07.

(3) The escrow agent shall provide the developer with a receipt for all purchaser funds or other property received by the escrow agent from a seller.

History.—s. 1, ch. 81-172; s. 61, ch. 82-226; s. 5, ch. 83-264; s. 3, ch. 93-58; s. 3, ch. 95-274; s. 3, ch. 98-36; s. 10, ch. 2000-302; s. 4, ch. 2004-279.

721.065 Resale purchase agreements.—

(1) An owner who acquires a timeshare interest for her or his own use and occupancy and later offers it for resale, or any agent of such person, must utilize a resale purchase agreement which complies with the provisions of subsection (2) to effectuate any resale of the timeshare interest. A managing entity, not otherwise a developer, that sells, or engages a third party to sell on its behalf, 50 or fewer timeshare interests in the timeshare plan which it manages in a given calendar year to persons who are not existing purchasers of that timeshare plan may also use a resale purchase agreement which complies with subsection (2) in lieu of complying with the provisions of ss. 721.06-721.12 and 721.20. A managing entity, not otherwise a developer, that sells, or engages a third party to sell on its behalf, timeshare interests in the timeshare plan which it manages to persons who are existing purchasers of that timeshare plan may also use a resale purchase agreement in compliance with subsection (2) in lieu of complying with the provisions of ss. 721.06-721.12 and 721.20. For purposes of this subsection, a rebuttable presumption shall exist that an owner who has acquired more than seven timeshare interests did not acquire them for her or his own use and occupancy.

(2) Any resale purchase agreement utilized by a person described in subsection (1) must contain all of the following:

(a) The name and address of the timeshare plan and of the managing entity of the timeshare plan.

(b) One of the following statements in conspicuous type located immediately prior to the disclosure required by paragraph (c):

1. If the resale purchase agreement pertains to a real property timeshare plan:

The current year's assessment for common expenses allocable to the timeshare interest you are purchasing is \$. This assessment, which may be increased from time to time by the managing entity of the timeshare plan, is payable in full each year on or before . This assessment

(includes/does not include) yearly ad valorem real estate taxes, which (are/are not) billed and collected separately. (If ad valorem real property taxes are not included in the current year's assessment for common expenses, the following statement must be included: The most recent annual assessment for ad valorem real estate taxes for the timeshare interest you are purchasing is \$.) (If there are any delinquent assessments for common expenses or ad valorem taxes outstanding with respect to the timeshare interest in question, the following statement must be included: A delinquency in the amount of \$ for unpaid common expenses or ad valorem taxes currently exists with respect to the timeshare interest you are purchasing, together with a per diem charge of \$ for interest and late charges.) For the purpose of ad valorem assessment, taxation, and special assessments, the managing entity will be considered the taxpayer as your agent pursuant to section 192.037, Florida Statutes. Each owner is personally liable for the payment of her or his assessments for common expenses, and failure to timely pay these assessments may result in restriction or loss of your use and/or ownership rights.

There are many important documents relating to the timeshare plan which you should review prior to purchasing a timeshare interest, including the declaration of condominium or covenants and restrictions; the owners' association articles and bylaws; the current year's operating and reserve budgets; and any rules and regulations affecting the use of timeshare plan accommodations and facilities.

2. If the resale purchase agreement pertains to a personal property timeshare plan:

The current year's assessment for any common expenses, use charges, fees, or taxes allocable to the timeshare interest you are purchasing is \$. This assessment, which may be increased from time to time by the managing entity of the timeshare plan, is payable in full each year on or before . (If there are any delinquent assessments for common expenses, use charges, fees, or taxes outstanding with respect to the timeshare interest in question, the following statement must be included: A delinquency in the amount of \$ for unpaid common expenses, use charges, fees, or taxes currently exists with respect to the timeshare interest you are purchasing, together with a per diem charge of \$ for interest and late charges.) Each owner is personally liable for the payment of her or his assessments for common expenses, and failure to timely pay these assessments may result in restriction or loss of your use and/or ownership rights.

There are many important documents relating to the timeshare plan which you should review prior to purchasing a timeshare interest, including any owners' association articles and bylaws; the current year's operating and reserve budgets; and any rules and regulations affecting the use of timeshare plan accommodations and facilities.

(c) The following statement in conspicuous type located immediately prior to the space in the contract reserved for the signature of the purchaser:

You may cancel this contract without any penalty or obligation within 10 days after the date you sign this contract. If you decide to cancel this contract, you must notify the seller in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to the seller at (address). Any attempt to obtain a waiver of your cancellation right is void and of no effect. While you may execute all closing documents in advance, the closing, as evidenced by delivery of the deed or other document, before expiration of your 10-day cancellation period, is prohibited.

(d) The year in which the purchaser will first be entitled to occupancy of a timeshare period associated with the timeshare interest that is the subject of the resale purchase agreement.

(3) If a resale purchase agreement utilized by a person described in subsection (1) does not comply with the provisions of subsection (2), the contract shall be voidable at the option of the purchaser for a period of 1 year after the date of closing.

History.—s. 4, ch. 95-274; s. 892, ch. 97-102; s. 11, ch. 2000-302; s. 5, ch. 2004-279.

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.

(1) The division shall, upon receiving a filed public offering statement from a developer, mail to the developer an acknowledgment of receipt. The failure of the division to send such acknowledgment will not, however, relieve the developer from the duty of complying with this section.

(2)(a) Within 45 days after receipt of a filed public offering statement which is subject only to this part and is submitted in proper form as prescribed by rule, or within 120 days after receipt of a filed public offering statement which is subject to part II and is submitted in proper form as prescribed by rule, the division shall determine whether the proposed filed public offering statement is adequate to meet the requirements of this section and shall notify the developer by mail that the division has either approved the statement or found specified deficiencies in the statement. If the division fails to approve the statement or specify deficiencies in the statement within the period specified in this paragraph, the filing will be deemed approved.

(b) If the developer fails to respond to any cited deficiencies within 20 days after receipt of the division's deficiency notice, the division may reject the filing. Subsequent to such rejection, a new filing fee pursuant to subsection (4) and a new division initial review period pursuant to paragraph (a) shall apply to any refiling or further review of the rejected filing.

(c) Within 20 days after receipt of the developer's timely and complete response to any deficiency notice, the division shall notify the developer by mail that the division has either approved the filing, found additional specified deficiencies in it, or determined that any

previously specified deficiency has not been corrected. If the division fails to approve or specify additional deficiencies within 20 days after receipt of the developer's timely and complete response, the filing will be deemed approved.

(d) A developer shall have the authority to deliver to purchasers any purchaser public offering statement that is not yet approved by the division, provided that the following shall apply:

1. At the time the developer delivers an unapproved purchaser public offering statement to a purchaser pursuant to this paragraph, the developer shall deliver a fully completed and executed copy of the purchase contract required by s. 721.06 that contains the following statement in conspicuous type in substantially the following form which shall replace the statements required by s. 721.06(1)(g):

The developer is delivering to you a public offering statement that has been filed with but not yet approved by the Division of Florida Condominiums, Timeshares, and Mobile Homes. Any revisions to the unapproved public offering statement you have received must be delivered to you, but only if the revisions materially alter or modify the offering in a manner adverse to you. After the division approves the public offering statement, you will receive notice of the approval from the developer and the required revisions, if any.

Your statutory right to cancel this transaction without any penalty or obligation expires 10 calendar days after the date you signed your purchase contract or the date on which you receive the last of all documents required to be given to you pursuant to section 721.07(6), Florida Statutes, or 10 calendar days after you receive revisions required to be delivered to you, if any, whichever is later. If you decide to cancel this contract, you must notify the seller in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to (Name of Seller) at (Address of Seller). Any attempt to obtain a waiver of your cancellation right is void and of no effect. While you may execute all closing documents in advance, the closing, as evidenced by delivery of the deed or other document, before expiration of your 10-day cancellation period, is prohibited.

2. After receipt of approval from the division and prior to closing, if any revisions made to the documents contained in the purchaser public offering statement materially alter or modify the offering in a manner adverse to a purchaser, the developer shall send the purchaser such revisions, together with a notice containing a statement in conspicuous type in substantially the following form:

The unapproved public offering statement previously delivered to you, together with the enclosed revisions, has been approved by the Division of Florida Condominiums, Timeshares, and Mobile Homes. Accordingly, your cancellation right expires 10 calendar days after you sign your purchase contract or 10 calendar days after you receive these revisions, whichever is later. If

you have any questions regarding your cancellation rights, you may contact the division at [insert division's current address].

3. After receipt of approval from the division and prior to closing, if no revisions have been made to the documents contained in the unapproved purchaser public offering statement, or if such revisions do not materially alter or modify the offering in a manner adverse to a purchaser, the developer shall send the purchaser a notice containing a statement in conspicuous type in substantially the following form:

The unapproved public offering statement previously delivered to you has been approved by the Division of Florida Condominiums, Timeshares, and Mobile Homes. Revisions made to the unapproved public offering statement, if any, are not required to be delivered to you or are not deemed by the developer, in its opinion, to materially alter or modify the offering in a manner that is adverse to you. Accordingly, your cancellation right expired 10 days after you signed your purchase contract. A complete copy of the approved public offering statement is available through the managing entity for inspection as part of the books and records of the plan. If you have any questions regarding your cancellation rights, you may contact the division at [insert division's current address].

(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 required only to be delivered to purchasers who receive 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.

(b) At the time that any amendments required to be delivered to purchasers, as provided in paragraph (a), are delivered to purchasers, the developer shall provide to those purchasers who have not closed a written statement that the purchaser or lessee will have a 10-day voidability period.

(4)(a) Upon the filing of a filed public offering statement, the developer shall pay a filing fee of \$2 for each 7 days of annual use availability in each timeshare unit that may be offered as a part of the proposed timeshare plan pursuant to the filing.

(b) Upon the filing of an amendment to an approved filed public offering statement, the developer shall pay a filing fee of \$100.

(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.

(a) A cover page stating only:

1. The name of the timeshare plan; and

2. The following statement, in conspicuous type: *This public offering statement contains important matters to be considered in acquiring a timeshare interest. The statements contained in this public offering statement are only summary in nature. A prospective purchaser should refer to all references, accompanying exhibits, contract documents, and sales materials. You should not rely upon oral representations as being correct. Refer to this document and accompanying exhibits for correct representations. The seller is prohibited from making any representations other than those contained in the contract and this public offering statement.*

(b) A listing of all statements required to be in conspicuous type in the public offering statement and in all exhibits thereto.

(c) A separate index of the contents and exhibits of the public offering statement.

(d) A text which shall include, where applicable, the disclosures set forth in paragraphs (e)-(hh).

(e) A description of the timeshare plan, including, but not limited to:

1. Its name and location.

2. An explanation of the form of timeshare ownership that is being offered, including a statement as to whether any interest in the underlying real property will be conveyed to the purchaser. If the plan is being created or being sold on a leasehold, a description of the material terms of the lease shall be included. If the plan is a plan in which timeshare estates or personal property timeshare interests are sold as interests in a trust pursuant to the requirements of this chapter, a full and accurate description of the trust arrangement and the trustee's duties shall be included. If the plan is a personal property timeshare plan, a description of the material terms of the arrangement for the ownership or use of the personal property shall be included.

3. An explanation of the manner in which the apportionment of common expenses and ownership of the common elements has been determined.

4. If ownership or use of the timeshare plan is based on a point system, a statement indicating the circumstances by which the point values may change, the extent of such changes, and the person or entity responsible for the changes.

5. If any of the accommodations or facilities are part of a personal property timeshare plan in which the accommodations or facilities are located on or in a documented vessel or foreign vessel as provided in s. 721.08(2)(c)3.e., the disclosure required by s. 721.08(2)(c)3.e.(IV).

(f) A description of the accommodations, including, but not limited to:

1. The number of timeshare units in each building, the total number of timeshare periods declared as part of the timeshare plan and filed with the division, and the number of bathrooms and bedrooms in each type of timeshare unit.

2. The latest date estimated for completion of constructing, finishing, and equipping the timeshare units declared as part of the timeshare plan and filed with the division.

3. The estimated maximum number of units and timeshare periods that will use the accommodations and facilities. If the maximum number of timeshare units or timeshare periods will vary, a description of the basis for variation.

4. The duration, in years, of the timeshare plan.

5. If any of the accommodations are part of a personal property timeshare plan, the name, vehicle registration number, title certificate number, or any other identifying registration number assigned to the accommodation of a personal property timeshare plan by a state, federal, or international governmental agency.

6. If any of the accommodations are part of a personal property timeshare plan, the fire detection system and firesafety equipment and description of method of compliance with any applicable firesafety or fire detection regulations.

(g) A description of any facilities that will be used by purchasers of the plan, including, but not limited to:

1. The intended purpose, if not apparent from the description.

2. The estimated date when each facility will be available for use by the purchaser.

3. A statement as to whether the facilities will be used exclusively by purchasers of the timeshare plan, and, if not, a statement as to whether the purchasers of the timeshare plan are required to pay any portion of the maintenance and expenses of such facilities.

(h)1. If any facilities offered by the developer for use by purchasers are to be leased or have club memberships associated with them, other than participation in a vacation club, one of the following statements in conspicuous type: *There is a lease associated with one or more facilities of the timeshare plan;* or, *There is a club membership associated with one or more facilities of the timeshare plan.*

2. If it is mandatory that purchasers pay fees, rent, dues, or other charges under a facilities lease or club membership for the use of the facilities, other than participation in a vacation club, the applicable statement in conspicuous type in substantially the following form:

a. *Membership in a facilities club is mandatory for purchasers;*

b. *Purchasers or the owners' association(s) are required, as a condition of ownership, to be lessees under the facilities lease;*

c. *Purchasers or the owners' association(s) are required to pay their share of the rent or costs and expenses of maintenance, management, upkeep, and replacement under the facilities lease (or the other instruments providing the facilities);* or

d. A similar statement of the nature of the organization or the manner in which the use rights are created, and that purchasers are required to pay.

Immediately following the applicable statement, a description of the lease or other instrument shall be stated, including a description of terms of the payment of rent or costs and expenses of maintenance, management, upkeep, and replacement of the facilities.

3. If the purchasers are required to pay a use fee, or other payment for the use of the facilities, not including the rent or maintenance, management, upkeep, or replacement costs and expenses, the following statement in conspicuous type: *The purchasers or the owners' association(s) must pay use fees for one or more facilities.* Immediately following this statement, a description of the use fees shall be included.

4. If any person other than the owners' association has the right to a lien on the timeshare interests to secure the payment of assessments, rent, or other exactions, a statement in conspicuous type in substantially the following form:

a. *There is a lien or lien right against each timeshare interest to secure the payment of rent and other exactions under the facilities lease. A purchaser's failure to make these payments may result in foreclosure of the lien;* or

b. *There is a lien or lien right against each timeshare interest to secure the payment of assessments or other exactions coming due for the use, maintenance, upkeep, or repair of one or more facilities. A purchaser's failure to make these payments may result in foreclosure of the lien.*

Immediately following the applicable statement, a description of the lien right shall be included.

(i) If the developer or any other person has the right to increase or add to the facilities at any time after the establishment of the timeshare plan, without the consent of the purchasers or owners' association being required, a statement in conspicuous type in substantially the following form: *Facilities may be expanded or added without consent of the purchasers or the owners' association(s).* Immediately following this statement, a description of such reserved rights shall be included.

(j)1. For a real property timeshare plan, an explanation of the status of the title to the real property underlying the timeshare plan, including a statement of the existence of any lien, defect, judgment, mortgage, or other encumbrance affecting the title to the property, and how such lien, defect, judgment, mortgage, or other encumbrance will be removed or satisfied prior to closing.

2. For a personal property timeshare plan, an explanation of the status of title to the personal property underlying the timeshare plan, including a statement of the existence of any lien, defect, judgment, or other encumbrance affecting the title to the personal property, and how such lien, defect, judgment, or other encumbrance will be removed or satisfied prior to closing.

(k) A description of any judgment against the developer, the managing entity, the owner of the underlying fee, or the owner of the underlying personal property, which judgment is material to the timeshare plan; the status of any pending suit to which the developer, the managing entity, the owner of the underlying fee, or the owner of the underlying personal property is a party, which suit is material to the timeshare plan; and any other suit which is material to the timeshare plan of which the developer, managing entity, the owner of the underlying fee, or the owner of the underlying personal property has actual knowledge. If no judgments or pending suits exist, there shall be a statement of such fact.

(l) A description of all unusual and material circumstances, features, and characteristics of the real property or personal property underlying or comprising the timeshare plan.

(m) A detailed explanation of any financial arrangements which have been provided for completion of all promised improvements.

(n) The name and address of the managing entity; a statement whether the seller may change the managing entity or its control and, if so, the manner by which the seller may change the managing entity; a statement of the arrangements for management, maintenance, and operation

of the accommodations and facilities and of other property that will serve the purchasers; and a description of the management arrangement and any contracts for these purposes having a term in excess of 1 year, including the names of the contracting parties, the term of the contract, the nature of the services included, and the compensation, stated for a month and for a year, and provisions for increases in the compensation. In the case of a personal property timeshare plan in which the accommodations or facilities are located on or in a documented vessel or foreign vessel as provided in s. 721.08(2)(c)3.e., a statement shall be included that describes the trustee's or owners' association's access to the certificates of classification and that the certificate of classification will be made available to purchasers on request.

(o) If any person other than the purchasers has the right to retain control of the board of administration of the owners' association, if any, for a period of time which may exceed 1 year after the closing of the sale of a majority of the timeshare interests in that timeshare plan to persons other than successors or concurrent developers and the plan is one in which all purchasers automatically become members of the owners' association, a statement in conspicuous type in substantially the following form: *The developer (or other person) has the right to retain control of the owners' association after a majority of the timeshare interests have been sold.* Immediately following this statement, a description of the applicable transfer of control provisions of the timeshare plan shall be included.

(p)1. If there are any restrictions upon the sale, transfer, conveyance, or leasing of a timeshare interest, a statement in conspicuous type in substantially the following form: *The sale, lease, or transfer of timeshare interests is restricted or controlled.* Immediately following this statement, a description of the nature of the restriction, limitation, or control on the sale, lease, or transfer of timeshare interests shall be included.

2. The following statement in conspicuous type in substantially the following form: *The purchase of a timeshare interest should be based upon its value as a vacation experience or for spending leisure time, and not considered for purposes of acquiring an appreciating investment or with an expectation that the timeshare interest may be resold.*

(q) If the timeshare plan is part of a phase project, a statement to that effect and a complete description of the phasing. Notwithstanding any provisions of s. 718.110 or s. 719.1055, a developer may develop a timeshare condominium or a timeshare cooperative in phases if the original declaration of condominium or cooperative documents submitting the initial phase to condominium ownership or cooperative ownership or an amendment to the declaration of condominium or cooperative documents which has been approved by all of the unit owners and unit mortgagees provides for phasing. Notwithstanding any provisions of s. 718.403 or s. 719.403 to the contrary, the original declaration of condominium or cooperative documents, or an amendment to the declaration of condominium or cooperative documents adopted pursuant to

this subsection, need only generally describe the developer's phasing plan and the land which may become part of the condominium or cooperative, and, in conjunction therewith, the developer may also reserve all rights to vary his or her phasing plan as to phase boundaries, plot plans and floor plans, timeshare unit types, timeshare unit sizes and timeshare unit type mixes, numbers of timeshare units, and facilities with respect to each subsequent phase. There shall be no time limit during which a developer of a timeshare condominium or timeshare cooperative must complete his or her phasing plan, and the developer shall not be required to notify owners of existing timeshare estates of his or her decision not to add one or more proposed phases.

(r) A description of the material restrictions, if any, to be imposed on timeshare interests concerning the use of any of the accommodations or facilities, including statements as to whether there are restrictions upon children and pets or a reference to a copy of the documents containing the restrictions which shall be attached as an exhibit. If there are no restrictions, there shall be a statement of such fact.

(s) If there is any land or personal property that is offered by the developer for use by the purchasers and which is neither owned by them nor leased to them, the owners' association, or any entity controlled by the purchasers, a statement describing the land or personal property, how it will serve the timeshare plan, and the nature and term of service.

(t) An estimated operating budget for the timeshare plan and a schedule of the purchaser's expenses shall be attached as an exhibit and shall contain the following information:

1. The estimated annual expenses of the timeshare plan collectible from purchasers by assessments. The estimated payments by the purchaser for assessments shall also be stated in the estimated amounts for the times when they will be due. Expenses shall also be shown for the shortest timeshare period offered for sale by the developer. If the timeshare plan provides for the offer and sale of units to be used on a nontimeshare basis, the estimated monthly and annual expenses of such units shall be set forth in a separate schedule.

2. The estimated weekly, monthly, and annual expenses of the purchaser of each timeshare interest, other than assessments payable to the managing entity. Expenses which are personal to purchasers that are not uniformly incurred by all purchasers or that are not provided for or contemplated by the timeshare plan documents may be excluded from this estimate.

3. The estimated items of expenses of the timeshare plan and the managing entity, except as excluded under subparagraph 2., including, but not limited to, if applicable, the following items, which shall be stated either as management expenses collectible by assessments or as expenses of the purchaser payable to persons other than the managing entity:

a. Expenses for the managing entity:

(I) Administration of the managing entity.

(II) Management fees.

- (III) Maintenance.
- (IV) Rent for facilities.
- (V) Taxes upon timeshare property.
- (VI) Taxes upon leased areas.
- (VII) Insurance.
- (VIII) Security provisions.
- (IX) Other expenses.
- (X) Operating capital.
- (XI) Reserves for deferred maintenance and reserves for capital expenditures, including:

(A) Reserves for deferred maintenance or capital expenditures of accommodations and facilities of a real property timeshare plan, if any. All reserves for any accommodations and facilities of real property timeshare plans located in this state shall be calculated using a formula based upon estimated life and replacement cost of each reserve item that will provide funds equal to the total estimated deferred maintenance expense or total estimated life and replacement cost for an asset or group of assets over the remaining useful life of the asset or group of assets. Funding formulas for reserves shall be based on either a separate analysis of each of the required assets using the straight-line accounting method or a pooled analysis of two or more of the required assets using the pooling accounting method. Reserves for deferred maintenance for such accommodations and facilities shall include accounts for roof replacement, building painting, pavement resurfacing, replacement of timeshare unit furnishings and equipment, and any other component, the useful life of which is less than the useful life of the overall structure. For any accommodations and facilities of real property timeshare plans located outside of this state, the developer shall disclose the amount of reserves for deferred maintenance or capital expenditures required by the law of the situs state, if applicable, and maintained for such accommodations and facilities.

(B) Reserves for deferred maintenance or capital expenditures of accommodations and facilities of a personal property timeshare plan, if any. If such reserves are maintained, the estimated operating budget shall disclose the methodology of how the reserves are calculated. If a personal property timeshare plan does not require reserves, the following statement, in conspicuous type, shall appear in both the budget and the public offering statement:

The estimated operating budget for this personal property timeshare plan does not include reserves for deferred maintenance or capital expenditures; each timeshare interest may be subject to substantial special assessments from time to time because no such reserves exist.

- (XII) Fees payable to the division.
 - b. Expenses for a purchaser:
 - (I) Rent for the timeshare unit, if subject to a lease.

(II) Rent payable by the purchaser directly to the lessor or agent under any lease for the use of facilities, which use and payment is a mandatory condition of ownership and is not included in the common expenses or assessments for common maintenance paid by the purchasers to the managing entity.

4. The estimated amounts shall be stated for a period of at least 12 months and may distinguish between the period before the time that purchasers elect a majority of the board of administration and the period after that date.

5. If the developer intends to guarantee the level of assessments, such guarantee must be based upon a good faith estimate of the revenues and expenses of the 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 timeshare plan pursuant to s. 721.15(2) if the developer has excused himself or herself from the payment of assessments during the guarantee period.

c. The level, expressed in total dollars, at which the developer guarantees the budget. If the developer has reserved the right to extend or increase the guarantee level pursuant to s. 721.15(2), a disclosure must be included to that effect.

6. If the developer intends to provide a trust fund to defer or reduce the payment of annual assessments, a copy of the trust instrument shall be attached as an exhibit and shall include a description of such arrangement, including, but not limited to:

a. The specific amount of such trust funds and the source of the funds.

b. The name and address of the trustee.

c. The investment methods permitted by the trust agreement.

d. A statement in conspicuous type that the funds from the trust account may not cover all assessments and that there is no guarantee that purchasers will not have to pay assessments in the future.

7. The budget of a phase timeshare plan may contain a note identifying the number of timeshare interests covered by the budget, indicating the number of timeshare interests, if any, estimated to be declared as part of the timeshare plan during that calendar year, and projecting the common expenses for the timeshare plan based upon the number of timeshare interests estimated to be declared as part of the timeshare plan during that calendar year.

(u) 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. ss. 2601 et seq., a schedule of estimated closing expenses to be paid by a purchaser or lessee of a timeshare interest.

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

(w) The identity of the developer and the chief operating officer or principal directing the creation and sale of the timeshare plan and a statement of the experience of each in this field or, if no experience, a statement of that fact.

(x) A statement of the total financial obligation of the purchaser, including the purchase price and any additional charges to which the purchaser may be subject.

(y) The name of any person who will or may have the right to alter, amend, or add to the charges to which the purchaser may be subject and the terms and conditions under which such alterations, amendments, or additions may be imposed.

(z) A statement of the purchaser's right of cancellation of the purchase contract.

(aa) A description of the insurance coverage provided for the timeshare plan.

(bb) A statement as to whether the timeshare plan is participating in an exchange program and, if so, the name and address of the exchange company offering the exchange program.

(cc) The existence of rules and regulations regarding any reservation features governing a purchaser's ability to make reservations for a timeshare period, including, if applicable, a conspicuous type disclaimer in substantially the following form:

The right to reserve a timeshare period is subject to rules and regulations of the timeshare plan reservation system.

(dd) If a developer is filing a timeshare plan that includes a timeshare instrument or component site document that was in conformance with the laws and rules in existence at the time the timeshare plan was created but does not conform to existing laws and rules that govern the timeshare plan and the developer does not have the authority or power to amend or change the timeshare instrument or component site document to conform to such existing laws or rules as directed by the division, a brief explanation of current law and the conflict with the timeshare instrument or component site document, preceded by disclaimer in conspicuous type in substantially the following form:

Florida law has been amended and certain provisions in [insert appropriate reference to timeshare instrument or component site document] that were in conformance with Florida law as it existed at the time the timeshare plan was created are not in conformance with current Florida law. These documents may only be amended by [insert appropriate reference to person or entity that has the right to amend or change the timeshare instrument or component site document]. The developer does not warrant that such documents are in technical compliance with all applicable Florida laws and regulations. All questions regarding amendment of these documents should be directed to [insert appropriate reference to person or entity that has the right to amend or change the timeshare instrument or component site document].

(ee) Any other information that a seller, with the approval of the division, desires to include in the public offering statement.

(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).
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.

(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).

2. If a developer has, in good faith, attempted to comply with this chapter, and if, in fact, the developer has substantially complied with 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. The developer has the burden of proof for purposes of this paragraph.

(hh) Notwithstanding the provisions of this subsection, the filed public offering statement for a component site of a multisite timeshare plan filed pursuant to this subsection may contain cross-references to information contained in the related multisite timeshare plan filed public offering statement filed pursuant to s. 721.55 in lieu of repeating such information.

(ii) A statement that the owner's obligation to pay assessments continues for as long as he or she owns the timeshare interest and that when a person inherits a timeshare interest, that person is responsible for paying those assessments.

(jj) The following statement in conspicuous type:

The managing entity has a lien against each timeshare interest to secure the payment of assessments, ad valorem assessments, tax assessments, and special assessments. Your failure to make any required payments may result in the judicial or trustee foreclosure of an assessment lien and the loss of your timeshare interest. If the managing entity initiates a trustee foreclosure procedure, you shall have the option to object to the use of the trustee foreclosure procedure and the managing entity may only proceed by filing a judicial foreclosure action.

(6) The division is authorized to prescribe by rule the form of the approved purchaser public offering statement that must be furnished by the developer to each purchaser. The form of the purchaser public offering statement must provide fair, meaningful, and effective disclosure of all aspects of the timeshare plan. For timeshare plans filed pursuant to this part, the developer shall furnish each purchaser with the following:

(a) A copy of the purchaser public offering statement text in the form approved by the division for delivery to purchasers.

(b) Copies of the exhibits required to be filed with the division pursuant to subparagraphs (5)(ff)1., 2., 4., 5., 8., and 20.

(c) A receipt for timeshare plan documents and a list describing any exhibit to the filed public offering statement filed with the division which is not delivered to the purchaser. The division is authorized to prescribe by rule the form of the receipt for timeshare plan documents and the description of exhibits list that must be furnished to the purchaser. The description of documents list utilized by a developer shall be filed with the division for review as part of the filed public offering statement pursuant to this section. The developer shall be required to provide the managing entity with a copy of the approved filed public offering statement and any approved amendments thereto to be maintained by the managing entity as part of the books and records of the timeshare plan pursuant to s. 721.13(3)(d).

(d) Any other exhibit which the developer includes as part of the purchaser public offering statement, provided that the developer first files the exhibit with the division.

(e) An executed copy of any document which the purchaser signs.

(f) Each purchaser shall receive a fully executed paper copy of the purchase contract.

(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.

History.—s. 1, ch. 81-172; s. 156, ch. 83-216; s. 6, ch. 83-264; s. 3, ch. 84-256; s. 48, ch. 85-62; s. 53, ch. 90-339; s. 6, ch. 91-236; s. 4, ch. 93-58; s. 5, ch. 95-274; s. 893, ch. 97-102; s. 4, ch. 98-36; s. 12, ch. 2000-302; s. 6, ch. 2004-279; s. 3, ch. 2007-75; s. 66, ch. 2008-240; s. 8, ch. 2009-133; s. 1, ch. 2010-134; s. 3, ch. 2013-159; s. 2, ch. 2015-144.

721.071 Trade secrets.—

(1) If a developer or any other person filing material with the division pursuant to this chapter expects the division to keep the material confidential on grounds that the material constitutes a trade secret, as that term is defined in s. 812.081, the developer or other person shall file the material together with an affidavit of confidentiality. “Filed material” for purposes of this section shall mean material that is filed with the division with the expectation that the material will be kept confidential and that is accompanied by an affidavit of confidentiality. Filed material that is trade secret information includes, but is not limited to, service contracts relating to the operation of reservation systems and those items and matters described in s. 815.04(3).

(2) The affidavit that must accompany filed material pursuant to subsection (1) shall contain a general claim of confidentiality; describe the filed materials; identify the basis upon which the

claim of confidentiality is made; and contain supporting argument, precedent, legal citation, or other supporting documentation to enable the division to satisfy itself that the claim of confidentiality is not merely specious. The division shall have no duty to inquire into the legal or technical sufficiency of a claim of confidentiality that meets the minimum requirements of this subsection.

(3) In the event that the division is satisfied as to the facial validity of the claim of confidentiality, the division shall keep confidential the affidavit and supporting documentation as well as the filed material and shall not disclose such affidavit, documentation, or filed material to any third party except upon administrative order pursuant to chapter 120 or upon circuit court order.

(4) In the event of any administrative or circuit court proceeding relating to any third party attempt to compel disclosure of filed material or to challenge the confidentiality thereof, the developer or other person who filed the material shall be granted leave to appear as amicus curiae before the administrative law judge or the court. The prevailing party in any such attempt to compel disclosure shall be entitled to recover his or her reasonable attorney's fees and costs from the losing party.

(5) In the event that an administrative law judge or court determines that the filed material is not trade secret information, this subsequent disclosure by the division of the filed material pursuant to s. 119.07(1) shall not be construed as a commission of an offense against intellectual property within the meaning of s. 815.04, nor shall the prior refusal of the division to disclose the filed material subject the division to penalty or attorney's fees under chapter 119.

History.—s. 6, ch. 95-274; s. 301, ch. 96-410; s. 1777, ch. 97-102; s. 1, ch. 2014-208.

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:

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

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

(c) The continued availability of the incidental benefit is not necessary in order for any accommodation or facility of the timeshare plan to be available for use by purchasers of the

timeshare plan in a manner consistent in all material respects with the manner portrayed by any promotional material, advertising, or purchaser public offering statement.

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

(e) The incidental benefit will continue to be available in the manner represented to prospective purchasers for 3 years or less after the first date that the timeshare plan is available for use by the purchaser. Nothing herein shall prevent the renewal or extension of the availability of an incidental benefit.

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

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

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

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

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

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

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

The incidental benefit[s] described in this statement is [are] offered to prospective purchasers of the timeshare plan [or other permitted reference pursuant to s. 721.11(5)(a)]. This [These] benefit[s] is [are] available for your use for [some period 3 years or less] after the first date that the timeshare plan is available for your use. The availability of the incidental benefit[s] may or may not be renewed or extended. You should not purchase an interest in the timeshare plan in reliance upon the continued availability or renewal or extension of this [these] benefit[s].

(e) A statement indicating the source of the services, points, or other products that constitute the incidental benefit.

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

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

(b) If an incidental benefit becomes unavailable as a result of events beyond the control of the developer, the developer may reserve the right to substitute a replacement incidental benefit of a type, quality, value, and term reasonably similar to the unavailable incidental benefit. If the developer reserves the right to substitute, the acknowledgment and disclosure statement required pursuant to paragraph (2)(a) shall contain the following conspicuous disclosure:

In the event any incidental benefit described in this statement becomes unavailable as a result of events beyond the control of the developer, the developer reserves the right to substitute a replacement incidental benefit of a type, quality, value, and term reasonably similar to the unavailable incidental benefit.

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

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

History.—s. 5, ch. 93-58; s. 7, ch. 95-274; s. 894, ch. 97-102; s. 5, ch. 98-36; s. 13, ch. 2000-302; s. 7, ch. 2004-279; s. 138, ch. 2005-2; s. 4, ch. 2007-75.

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

(1) Prior to the filing of a public offering statement with the division, all developers shall establish an escrow account with an escrow agent for the purpose of protecting the funds or other property of purchasers required to be escrowed by this section. An escrow agent shall maintain the accounts called for in this section only in such a manner as to be under the direct supervision and control of the escrow agent. The escrow agent shall have a fiduciary duty to each

purchaser to maintain the escrow accounts in accordance with good accounting practices and to release the purchaser's funds or other property from escrow only in accordance with this chapter. The escrow agent shall retain all affidavits received pursuant to this section for a period of 5 years. Should the escrow agent receive conflicting demands for funds or other property held in escrow, the escrow agent shall immediately notify the division of the dispute and either promptly submit the matter to arbitration or, by interpleader or otherwise, seek an adjudication of the matter by court.

(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:

(a) *Cancellation.*—In the event a purchaser gives a valid notice of cancellation pursuant to s. 721.10 or is otherwise entitled to cancel the sale, the funds or other property received from or on behalf of the purchaser, or the proceeds thereof, shall be returned to the purchaser. Such refund shall be made within 20 days after demand therefor by the purchaser or within 5 days after receipt of funds from the purchaser's cleared check, whichever is later. If the purchaser has received benefits under the contract prior to the effective date of the cancellation, the funds or other property to be returned to the purchaser may be reduced by the proportion of contract benefits actually received.

(b) *Purchaser's default.*—Following expiration of the 10-day cancellation period, if the purchaser defaults in the performance of her or his obligations under the terms of the contract to purchase or such other agreement by which a seller sells the timeshare interest, the developer shall provide an affidavit to the escrow agent requesting release of the escrowed funds or other property and shall provide a copy of such affidavit to the purchaser who has defaulted. The developer's affidavit, as required herein, shall include:

1. A statement that the purchaser has defaulted and that the developer has not defaulted;
2. A brief explanation of the nature of the default and the date of its occurrence;
3. A statement that pursuant to the terms of the contract the developer is entitled to the funds held by the escrow agent; and
4. A statement that the developer has not received from the purchaser any written notice of a dispute between the purchaser and developer or a claim by the purchaser to the escrow.

(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 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.

(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 the transfer 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).

(d) *Substitution of other assurances for escrowed funds or other property.*—Funds or other property escrowed as provided in this section may be released from escrow to or on the order of the developer upon acceptance by the director of the division of other assurances pursuant to subsection (5) as a substitute for such escrowed funds or other property. The amount of escrowed funds or other property that may be released pursuant to this paragraph shall be equal to or less than the face amount of the assurances accepted by the director from time to time.

(3) **NONDISTURBANCE AND NOTICE TO CREDITORS INSTRUMENT.**—The nondisturbance and notice to creditors instrument, when required, shall be executed by each interestholder.

(a) *Contents.*—The instrument shall state that:

1. If the party seeking enforcement is not in default of its obligations, the instrument may be enforced by both the seller and any purchaser of the timeshare plan;

2. The instrument shall be effective as between the timeshare purchaser and interestholder despite any rejection or cancellation of the contract between the timeshare purchaser and developer as a result of bankruptcy proceedings of the developer; and

3. So long as a purchaser remains in good standing with respect to her or his obligations under the timeshare instrument, including making all payments to the managing entity required by the timeshare instrument with respect to the annual common expenses of the timeshare plan, then

the interestholder will honor all rights of such purchaser relating to the subject accommodation or facility as reflected in the timeshare instrument.

The instrument shall contain language sufficient to provide subsequent creditors of the developer and interestholders with notice of the existence of the timeshare plan and of the rights of purchasers and shall serve to protect the interest of the timeshare purchasers from any claims of subsequent creditors.

(b) *Real property timeshare plans.*—For real property timeshare plans, the instrument shall be recorded in the public records of the county in which the subject accommodations or facilities are located.

(c) *Personal property timeshare plans.*—For personal property timeshare plans, the instrument shall be included within or attached as an exhibit to a security agreement or other agreement executed by the interestholder. Constructive notice of such security agreement or other agreement shall be filed in the manner prescribed by chapter 679 or other applicable law.

(d) *Purchaser copies.*—A copy of the recorded or filed nondisturbance and notice to creditors instrument, when required, shall be provided to each timeshare purchaser at the time the purchase contract is executed.

(4) In lieu of any escrow provisions required by this act, the director of the division shall have the discretion to permit deposit of the funds or other property in an escrow account as required by the jurisdiction in which the sale took place.

(5)(a) In lieu of any escrows required by this section, the director of the division shall have the discretion to accept other assurances, including, but not limited to, a surety bond issued by a company authorized and licensed to do business in this state as surety or an irrevocable letter of credit in an amount equal to the escrow requirements of this section.

(b) Notwithstanding anything in chapter 718 or chapter 719 to the contrary, the director of the division shall have the discretion to accept other assurances pursuant to paragraph (a) in lieu of any requirement that completion of construction of one or more accommodations or facilities of a timeshare plan be accomplished prior to closing.

(c) In lieu of a nondisturbance and notice to creditors instrument, when such an instrument is otherwise required by this section, the director of the division shall have the discretion to accept alternate means of protecting the continuing rights of purchasers in and to the subject accommodations or facilities of the timeshare plan as and for the term described in the timeshare instrument, and of providing effective constructive notice of such continuing purchaser rights to subsequent owners of the accommodations or facilities and to subsequent creditors of the affected interestholder.

(d) In lieu of the requirements in sub-sub-subparagraph (2)(c)3.e.(III), the director of the division shall have the discretion to accept alternate means of protecting the use rights of purchasers in the subject accommodations and facilities of the timeshare plan against unfiled and inferior claims.

(6) An escrow agent holding funds escrowed pursuant to this section may invest such escrowed funds in securities of the United States Government, or any agency thereof, or in savings or time deposits in institutions insured by an agency of the United States Government. The right to receive the interest generated by any such investments shall be paid to the party to whom the escrowed funds or other property are paid unless otherwise specified by contract.

(7) Each escrow agent shall maintain separate books and records for each timeshare plan and shall maintain such books and records in accordance with good accounting practices.

(8) An escrow agent holding escrowed funds pursuant to this chapter that have not been claimed for a period of 5 years after the date of deposit shall make at least one reasonable attempt to deliver such unclaimed funds to the purchaser who submitted such funds to escrow. In making such attempt, an escrow agent is entitled to rely on a purchaser's last known address as set forth in the books and records of the escrow agent and is not required to conduct any further search for the purchaser. If an escrow agent's attempt to deliver unclaimed funds to any purchaser is unsuccessful, the escrow agent may deliver such unclaimed funds to the division and the division shall deposit such unclaimed funds in the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund, 30 days after giving notice in a publication of general circulation in the county in which the timeshare property containing the purchaser's timeshare interest is located. The purchaser may claim the same at any time prior to the delivery of such funds to the division. After delivery of such funds to the division, the purchaser shall have no more rights to the unclaimed funds. The escrow agent shall not be liable for any claims from any party arising out of the escrow agent's delivery of the unclaimed funds to the division pursuant to this section.

(9) For each transfer of the legal title to a timeshare estate by a developer, the developer shall deliver an instrument evidencing such transfer to the purchaser or to a title insurance agent or the clerk of the court for recording. For each transfer of the legal title to a personal property timeshare interest by a developer, the developer shall deliver an instrument evidencing such transfer to the purchaser subject to the provisions of this section.

(10)(a) Any developer, seller, or escrow agent who intentionally fails to comply with the provisions of this section concerning the establishment of an escrow account, deposits of funds into escrow, and withdrawal therefrom is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, or the successor thereof. The failure to

establish an escrow account or to place funds therein as required in this section is prima facie evidence of an intentional and purposeful violation of this section.

(b) Any developer, interestholder, trustee, or officer or director of an owners' association who intentionally fails to comply with the provisions of this section concerning the establishment of a trust or owners' association, conveyances of property into the trust or owners' association, and conveyances or encumbrances of trust or owners' association property is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, or the successor thereof. The failure to establish a trust or owners' association, or to transfer property into the trust or owners' association, or the failure of a trustee or officer or director of an owners' association to comply with the trust agreement, articles of incorporation, or bylaws with respect to conveyances or encumbrances of trust or owners' association property, as required by this section, is prima facie evidence of an intentional and purposeful violation of this section.

History.—s. 1, ch. 81-172; s. 49, ch. 83-215; s. 7, ch. 83-264; s. 4, ch. 84-256; s. 49, ch. 85-62; s. 1, ch. 87-343; s. 6, ch. 93-58; s. 8, ch. 95-274; s. 895, ch. 97-102; s. 14, ch. 2000-302; s. 8, ch. 2004-279; s. 25, ch. 2006-217; s. 67, ch. 2008-240; s. 3, ch. 2015-144.

721.09 Reservation agreements; escrows.—

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

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

(c) If the timeshare plan subject to the reservation agreement has not been filed with the division under s. 721.07(5) or s. 721.55 within 180 days after the date the division approves the reservation agreement filing, the seller must immediately cancel all outstanding reservation agreements, refund all escrowed funds to prospective purchasers, and discontinue accepting reservation deposits or advertising the availability of reservation agreements.

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

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

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

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

(2) Each executed reservation agreement shall be signed by the developer and shall contain the following:

(a) A statement that the escrow agent will grant a prospective purchaser an immediate, unqualified refund of the reservation deposit upon the written request of either the purchaser or the seller directed to the escrow agent.

(b) A statement that the escrow agent may not otherwise release moneys unless a contract is signed by the purchaser, authorizing the transfer of the escrowed reservation deposit as a deposit on the purchase price. Such deposit shall then be subject to the requirements of s. 721.08.

(c) A statement of the obligation of the developer to file a filed public offering statement with the division prior to entering into binding contracts.

(d) A statement of the right of the purchaser to receive the purchaser public offering statement required by this chapter.

(e) The name and address of the escrow agent and a statement that the escrow agent will provide a receipt.

(f) A statement that the seller assures that the purchase price represented in or pursuant to the reservation agreement will be the price in the contract for the purchase or that the price represented may be exceeded within a stated amount or percentage or a statement that no assurance is given as to the price in the contract for purchase.

(3)(a) The total amount paid for a reservation shall be deposited into a reservation escrow account.

(b) An escrow agent shall maintain the accounts called for in this section only in such a manner as to be under the direct supervision and control of the escrow agent.

(c) The escrow agent may invest the escrowed funds in securities of the United States Government, or any agency thereof, or in savings or time deposits in institutions insured by an agency of the United States Government. The interest generated by any such investments shall be payable to the party entitled to receive the escrowed funds or other property.

(d) The escrowed funds shall at all reasonable times be available for withdrawal in full by the escrow agent.

(e) Each escrow agent shall maintain separate books and records for each timeshare plan and shall maintain such books and records in accordance with good accounting practices.

(f) Any seller or escrow agent who intentionally fails to comply with the provisions of this section regarding deposit of funds in escrow and withdrawal therefrom is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, or the successor of any of such sections. The failure to establish an escrow account or to place funds therein as required in this section is prima facie evidence of an intentional and purposeful violation of this section.

History.—s. 1, ch. 81-172; s. 8, ch. 83-264; s. 50, ch. 85-62; s. 6, ch. 98-36; s. 15, ch. 2000-302; s. 9, ch. 2004-279.

721.10 Cancellation.—

(1) A purchaser has the right to cancel the contract until midnight of the 10th calendar day following whichever of the following days occurs later:

(a) The execution date; or

(b) The day on which the purchaser received the last of all documents required to be provided to him or her, including the notice required by s. 721.07(2)(d)2., if applicable.

This right of cancellation may not be waived by any purchaser or by any other person on behalf of the purchaser. Furthermore, no closing may occur until the cancellation period of the timeshare purchaser has expired. Any attempt to obtain a waiver of the cancellation right of the timeshare purchaser, or to hold a closing prior to the expiration of the cancellation period, is unlawful and such closing is voidable at the option of the purchaser for a period of 1 year after the expiration of the cancellation period. However, nothing in this section precludes the execution of documents in advance of closing for delivery after expiration of the cancellation period.

(2) Any notice of cancellation shall be considered given on the date postmarked if mailed, or when transmitted from the place of origin if telegraphed, so long as the notice is actually received by the developer or escrow agent. If given by means of a writing transmitted other than by mail or telegraph, the notice of cancellation shall be considered given at the time of delivery at the place of business of the developer.

(3) In the event of a timely preclosing cancellation, the developer shall honor the right of any purchaser to cancel the contract which granted the timeshare purchaser rights in and to the plan. Upon such cancellation, the developer shall refund to the purchaser the total amount of all payments made by the purchaser under the contract, reduced by the proportion of any contract benefits the purchaser has actually received under the contract prior to the effective date of the cancellation, as required by s. 721.06. Such refund shall be made within 20 days of demand

therefor by the purchaser or within 5 days after receipt of funds from the purchaser's cleared check, whichever is later.

History.—s. 1, ch. 81-172; s. 9, ch. 83-264; s. 65, ch. 87-226; s. 9, ch. 95-274; s. 896, ch. 97-102; s. 16, ch. 2000-302.

721.11 Advertising materials; oral statements.—

(1)(a) A developer may file advertising material with the division for review. The division shall review any advertising material filed for review by the developer and notify the developer of any deficiencies within 10 days after the filing. If the developer corrects the deficiencies or if there are no deficiencies, the division shall notify the developer of its approval of the advertising materials. Notwithstanding anything to the contrary contained in this subsection, so long as the developer uses advertising materials approved by the division, following the developer's request for a review, the developer shall not be liable for any violation of this section or s. 721.111 with respect to such advertising materials.

(b) All advertising materials must be substantially in compliance with this chapter and in full compliance with the mandatory provisions of this chapter. In the event that any such material is not in substantial compliance with this chapter, the division may file administrative charges and an injunction against the developer and exact such penalties or remedies as provided in s. 721.26, or may require the developer to correct any deficiency in the materials by notifying the developer of the deficiency. If the developer fails to correct the deficiency after such notification, the division may file administrative charges against the developer and exact such penalties or remedies as provided in s. 721.26.

(2) The term "advertising material" includes:

(a) Any promotional brochure, pamphlet, advertisement, or other material to be disseminated to the public in connection with the sale of a timeshare plan.

(b) Any radio or television advertisement.

(c) Any lodging or vacation certificate.

(d) Any standard oral sales presentation.

(e) Any billboard or other sign posted on or off the premises, except that such billboard or sign shall not be required to contain the disclosure set forth in paragraph (5)(a) or paragraph (5)(b), unless it relates to a prize and gift promotional offer. For purposes of this section, a "sign" shall mean advertising which is affixed to real or personal property and which is not disseminated by other than visual means to prospective purchasers.

(f) Any photograph, drawing, or artist's representation of accommodations or facilities of a timeshare plan which exists or which will or may exist.

(g) Any paid publication relating to a timeshare plan which exists or which will or may exist.

(h) Any other promotional device used, or statement related to a timeshare plan, including any prize and gift promotional offer as described in s. 721.111.

(3) The term “advertising material” does not include:

(a) Any stockholder communication such as an annual report or interim financial report, proxy material, registration statement, securities prospectus, registration, property report, or other material required to be delivered to a prospective purchaser by an agency of any other state or the Federal Government.

(b) Any communication addressed to and relating to the account of any person who has previously executed a contract for the sale and purchase of a timeshare interest in the timeshare plan to which the communication relates, except when directed to the sale of timeshare interests in a different timeshare plan or in a different component site of a multisite timeshare plan subject to part II.

(c) Any audio, written, or visual publication or material relating to an exchange company or exchange program.

(d) Any audio, written, or visual publication or material relating to the promotion of the availability of any accommodations or facilities, or both, for transient rental, including any arrangement governed by part XI of chapter 559, so long as a mandatory tour of a timeshare plan or attendance at a mandatory sales presentation is not a term or condition of the availability of such accommodations or facilities, or both, and so long as the failure of any transient renter to take a tour of a timeshare plan or attend a sales presentation does not result in the transient renter receiving less than what was promised to the transient renter in such materials.

(e) Any oral or written statement disseminated by a developer to broadcast or print media, other than paid advertising or promotional material, regarding plans for the acquisition or development of timeshare property, including possible accommodations or facilities of a timeshare plan pursuant to subsection (7) or subsection (8), or possible component sites of a multisite timeshare plan pursuant to subsection (9). However, any rebroadcast or any other dissemination of such oral statements to a prospective purchaser by a seller in any manner, or any distribution of copies of newspaper or magazine articles, press releases, or any other dissemination of such written statements to a prospective purchaser by a seller in any manner, shall constitute advertising material.

(f) Any promotional materials relating to a timeshare plan that are not directed specifically at residents of this state, regardless of whether such materials relate to accommodations or facilities located in this state, provided that such materials do not contain any statements that would be in violation of subsection (4). For purposes of this paragraph, a rebuttable presumption shall exist that promotional materials are not directed specifically at residents of this state if the materials include a disclaimer in substantially the following form:

This offer is not directed to residents in any state [or the offer is void in any states] in which a registration of the timeshare plan is required but in which registration requirements have not yet been met.

(g) Any materials delivered to a purchaser after the purchase contract is executed that are not delivered for the purpose of soliciting the sale of a timeshare interest in a different timeshare plan or a different component site in a multisite timeshare plan subject to part II, provided that such materials do not contain any statements that would be in violation of subsection (4).

(h) Any materials exclusively shown, displayed, or presented in a sales center or during a sales presentation provided that such materials do not contain any statements that would be in violation of subsection (4) and that any description of any facility that is not required to be built or that has not been completed shall be 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.

(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.

(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.

(5)(a) No written advertising material, including any lodging certificate, gift award, premium, discount, or display booth, may be utilized without each prospective purchaser being provided a disclosure in conspicuous type in substantially the following form: *This advertising material is being used for the purpose of soliciting sales of timeshare interests;* or *This advertising material is being used for the purpose of soliciting sales of a vacation (or vacation membership or vacation ownership) plan.* The division shall have the discretion to approve the use of an alternate disclosure. The conspicuous disclosure required in this subsection shall only be required to be given to each prospective purchaser on one piece of advertising for each advertising promotion or marketing campaign, provided that if the promotion or campaign contains terms and conditions, the conspicuous disclosure required in this subsection shall be included on any piece containing such terms and conditions. The conspicuous disclosure required in this subsection shall be provided before the purchaser is required to take any affirmative action pursuant to the promotion. If the advertising material containing the conspicuous disclosure is a

display booth, the disclosure required by this subsection must be conspicuously displayed on or within the display booth.

(b) This subsection does not apply to any advertising material which involves a project or development which includes sales of real estate or other commodities or services in addition to timeshare interests, including, but not limited to, lot sales, condominium or home sales, or the rental of resort accommodations. However, if the sale of timeshare interests, as compared with such other sales or rentals, is the primary purpose of the advertising material, a disclosure shall be made in conspicuous type that: *This advertising material is being used for the purpose of soliciting the sale of (Disclosure shall include timeshare interests and may include other types of sales)*. Factors which the division may consider in determining whether the primary purpose of the advertising material is the sale of timeshare interests include:

1. The retail value of the timeshare interests compared to the retail value of the other real estate, commodities, or services being offered in the advertising material.

2. The amount of space devoted to the timeshare portion of the project in the advertising material compared to the amount of space devoted to other portions of the project, including, but not limited to, printed material, photographs, or drawings.

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

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

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

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

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

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

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

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

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

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

of cancellation must be given in the same manner prescribed for giving notice of cancellation pursuant to s. 721.10(2). If the prospective purchaser gives a valid notice of cancellation, or is otherwise entitled to cancel the sale, the funds or other property received from or on behalf of the prospective purchaser, or the proceeds thereof, shall be returned to the prospective purchaser. Such refund shall be made in the manner prescribed for refunds under s. 721.10.

(7) Notwithstanding the provisions of s. 721.05(7)(b), a seller may portray possible accommodations or facilities to prospective purchasers in advertising material, or a purchaser public offering statement, without such accommodations or facilities being available for use by purchasers so long as the advertising material or purchaser public offering statement complies with the provisions of subsection (4).

(8) Notwithstanding the provisions of s. 721.05(7)(b), a developer may portray possible accommodations or facilities to prospective purchasers by disseminating oral or written statements regarding same to broadcast or print media with no obligation on the developer's part to actually construct such accommodations or facilities or to file such accommodations or facilities with the division, but only so long as such oral or written statements are not considered advertising material pursuant to paragraph (3)(e).

(9) Notwithstanding the provisions of s. 721.05(7)(b), a seller of a multisite timeshare plan may portray a possible component site to prospective purchasers with no accommodations or facilities located at such component site being available for use by purchasers so long as the seller satisfies the following requirements:

(a) A developer of a multisite timeshare plan may disseminate oral or written statements to broadcast or print media describing a possible component site with no obligation on the developer's part to actually add such component site to the multisite timeshare plan or to amend the developer's filing with the division, but only so long as such oral or written statements are not considered advertising material pursuant to paragraph (3)(e).

(b) A seller may make representations to purchasers in advertising material or in a purchaser public offering statement regarding the possible accommodations and facilities of a possible component site without such accommodations or facilities being available for use by purchasers so long as the advertising material or purchaser public offering statement complies with the provisions of subsection (4).

(c) In the event a seller makes any of the representations permitted by paragraph (b), the purchase agreement must contain the following conspicuous disclosure unless and until such time as the developer has committed itself in the timeshare instrument to adding the possible component site to the multisite timeshare plan, at which time the seller may portray the component site pursuant to the timeshare instrument without restriction:

[Description of possible component site] is only a possible component site which may never be added to the multisite timeshare plan (or multisite vacation ownership plan or multisite vacation plan or vacation club). Do not purchase an interest in the multisite timeshare plan (or multisite vacation ownership plan or multisite vacation plan or vacation club) in reliance upon the addition of this component site.

(d) Notwithstanding anything contained in this chapter to the contrary, a developer or managing entity may communicate with existing purchasers regarding possible component sites without restriction, so long as all oral and written statements made to existing purchasers pursuant to this subsection comply with the provisions of subsection (4).

(e) Any violation of this subsection by a developer, seller, or managing entity shall constitute a violation of this chapter. Any violation of this subsection with respect to a purchaser whose purchase has not yet closed shall be deemed to provide that purchaser with a new 10-day voidability period.

History.—s. 1, ch. 81-172; s. 157, ch. 83-216; s. 10, ch. 83-264; s. 2, ch. 87-343; s. 54, ch. 90-339; s. 64, ch. 91-110; s. 7, ch. 91-236; s. 7, ch. 93-58; s. 10, ch. 95-274; s. 7, ch. 98-36; s. 17, ch. 2000-302; s. 10, ch. 2004-279; s. 5, ch. 2007-75.

721.111 Prize and gift promotional offers.—

(1) As used herein, the term “prize and gift promotional offer” means any advertising material wherein a prospective purchaser may receive goods or services other than the timeshare plan itself, either free or at a discount, including, but not limited to, the use of any prize, gift, award, premium, or lodging or vacation certificate.

(2) A game promotion, such as a contest of chance, gift enterprise, or sweepstakes, in which the elements of chance and prize are present may not be used in connection with the offering or sale of timeshare interests, except for drawings, as that term is defined in s. 849.0935(1)(a), in which no more than 26 prizes are promoted and in which all promoted prizes are actually awarded. All such drawings must meet all requirements of this chapter and of ss. 849.092 and 849.094(1), (2), and (7).

(3) Any prize, gift, or other item offered pursuant to a prize and gift promotional offer must be delivered to the prospective purchaser on the day she or he appears to claim it, whether or not she or he purchases a timeshare interest.

(4) A separate filing for each prize and gift promotional offer to be used in the sale of timeshare interests shall be made with the division pursuant to s. 721.11(1). The developer shall pay a \$100 filing fee for each prize and gift promotional offer. One item of each prize or gift, except cash, must be made available for inspection by the division.

(5) Each filing of a prize and gift promotional offer with the division shall include, when applicable:

(a) A copy of all advertising material to be used in connection with the prize and gift promotional offer.

(b) The name, address, and telephone number (including area code) of the supplier or manufacturer from whom each type or variety of prize, gift, or other item is obtained.

(c) The manufacturer's model number or other description of such item.

(d) The information on which the developer relies in determining the verifiable retail value, if the value is in excess of \$50.

(e) The name, address, and telephone number (including area code) of the promotional entity responsible for overseeing and operating the prize and gift promotional offer.

(f) The name and address of the registered agent in this state of the promotional entity for service of process purposes.

(g) Full disclosure of all pertinent information concerning the use of lodging or vacation certificates, including the terms and conditions of the campaign and the fact and extent of participation in such campaign by the developer. The developer shall provide to the division, upon the request of the division, an affidavit, certification, or other reasonable evidence that the obligation incurred by a seller or the seller's agent in a lodging certificate program can be met.

(6) All advertising material to be distributed in connection with a prize and gift promotional offer shall contain, in addition to the information required pursuant to the provisions of s. 721.11, the following disclosures:

(a) A description of the prize, gift, or other item that the prospective purchaser will actually receive, including, if the price is in excess of \$50, the manufacturer's suggested retail price or, if none is available, the verifiable retail value. If the value is \$50 or less, the description shall contain a statement of such.

(b) All rules, terms, requirements, and preconditions which must be fulfilled or met before a prospective purchaser may claim any prize, gift, or other item involved in the prize and gift promotional plan, including whether the prospective purchaser is required to attend a sales presentation in order to receive the prize, gift, or other item.

(c) The date upon which the offer expires.

(d) If the number of prizes, gifts, or other items to be awarded is limited, a statement of the number of items that will be awarded.

(e) The method by which prizes, gifts, or other items are to be awarded.

(7) All prizes, gifts, or other items represented by the developer to be awarded in connection with any prize and gift promotional offer shall be awarded by the date referenced in the advertising material used in connection with such offer.

History.—s. 11, ch. 83-264; s. 3, ch. 87-343; s. 8, ch. 91-236; s. 897, ch. 97-102; s. 18, ch. 2000-302; s. 1, ch. 2002-87.

721.12 Recordkeeping by seller.—Each seller of a timeshare plan shall maintain among its business records the following:

(1) A copy of each contract for the sale of a timeshare interest, which contract has not been canceled. If a timeshare estate is being sold, the seller is required to retain a copy of the contract only until a deed of conveyance, agreement for deed, or lease is recorded in the office of the clerk of the circuit court in the county wherein the plan is located. If a personal property timeshare plan is being sold, the seller is required to retain a copy of the contract only until a certificate of transfer, agreement for transfer, lease, or other instrument of transfer that fully complies with s. 721.08 is delivered to the purchaser.

(2) A list of all salespersons of the seller and their last known addresses. The names and addresses of such salespersons whose employments terminate shall be retained for 3 years after termination of employment. If the seller has a contract with any entity not owned or controlled by the seller for the sale of the timeshare plan, that entity shall be responsible for maintaining a record of current employees involved in the sale of the timeshare plan and a record of any former employees involved in the sale of such plan within the previous 3 years.

History.—s. 1, ch. 81-172; s. 12, ch. 83-264; s. 51, ch. 85-62; s. 19, ch. 2000-302; s. 11, ch. 2004-279.

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 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.

(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.

History.—s. 6, ch. 2007-75.

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).

History.—s. 4, ch. 2015-144.

721.13 Management.—

(1)(a) For each timeshare plan, the developer shall provide for a managing entity, which shall be either the developer, a separate manager or management firm, or an owners' association. Any owners' association shall be created prior to the first closing of the sale of a timeshare interest.

(b)1. With respect to a timeshare plan which is also regulated under chapter 718 or chapter 719, or which contains a mandatory owners' association, the board of administration of the owners' association shall be considered the managing entity of the timeshare plan.

2. During any period of time in which such owners' association has entered into a contract with a manager or management firm to provide some or all of the management services to the timeshare plan, both the board of administration and the manager or management firm shall be considered the managing entity of the timeshare plan and shall be jointly and severally responsible for the faithful discharge of the duties of the managing entity.

3. An owners' association which is the managing entity of a timeshare plan that includes condominium units or cooperative units shall not be considered a condominium association pursuant to the provisions of chapter 718 or a cooperative association pursuant to the provisions of chapter 719, unless such owners' association also operates the entire condominium pursuant to s. 718.111 or the entire cooperative pursuant to s. 719.104.

(c) With respect to any timeshare plan other than one described in paragraph (b), any developer shall be considered the managing entity of the timeshare plan unless and until such developer clearly provides in the timeshare instrument that a different party will serve as managing entity, which party has acknowledged in writing that it has accepted the duties and obligations of serving as managing entity. In the event such other party subsequently resigns or otherwise ceases to perform its duties as managing entity, any developer shall again be considered the managing entity until the developer arranges for a new managing entity pursuant to this paragraph.

(d) In the event no one described in paragraph (b) or paragraph (c) is operating and maintaining the timeshare plan, anyone who operates or maintains the timeshare plan shall be considered the managing entity of the timeshare plan.

(e) Any managing entity performing community association management must comply with part VIII of chapter 468.

(2)(a) The managing entity shall act in the capacity of a fiduciary to the purchasers of the timeshare plan. No penalty imposed by the division pursuant to s. 721.26 against any managing entity for breach of fiduciary duty shall be assessed as a common expense of any timeshare plan.

(b) The managing entity shall invest the operating and reserve funds of the timeshare plan in accordance with s. 518.11(1); however, the managing entity shall give safety of capital greater weight than production of income. In no event shall the managing entity invest timeshare plan funds with a developer or with any entity that is not independent of any developer or any

managing entity within the meaning of s. 721.05(22), and in no event shall the managing entity invest timeshare plan funds in notes and mortgages related in any way to the timeshare plan.

(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:

(a) Management and maintenance of all accommodations and facilities constituting the timeshare plan.

(b) Collection of all assessments for common expenses.

(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). 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.

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)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.

(d)1. Maintenance of all books and records concerning the timeshare plan so that all such books and records are reasonably available for inspection by any purchaser or the authorized agent of such purchaser. For purposes of this subparagraph, the books and records of the timeshare plan shall be considered "reasonably available" if copies of the requested portions are delivered to the purchaser or the purchaser's agent within 7 days after the date the managing entity receives a written request for the records signed by the purchaser. The managing entity may charge the purchaser a reasonable fee for copying the requested information not to exceed 25 cents per page. However, any purchaser or agent of such purchaser shall be permitted to personally inspect and examine the books and records wherever located at any reasonable time, under reasonable conditions, and under the supervision of the custodian of those records. The custodian shall supply copies of the records where requested and upon payment of the copying fee. No fees other than those set forth in this section may be charged for the providing of, inspection, or examination of books and records. All books and financial records of the timeshare plan must be maintained in accordance with generally accepted accounting practices.

2. If the books and records of the timeshare plan are not maintained on the premises of the accommodations and facilities of the timeshare plan, the managing entity shall inform the division in writing of the location of the books and records and the name and address of the person who acts as custodian of the books and records at that location. In the event that the location of the books and records changes, the managing entity shall notify the division of the change in location and the name and address of the new custodian within 30 days after the date the books and records are moved. The purchasers shall be notified of the location of the books and records and the name and address of the custodian in the copy of the annual budget provided to them pursuant to paragraph (c).

3. The division is authorized to adopt rules which specify those items and matters that shall be included in the books and records of the timeshare plan and which specify procedures to be followed in requesting and delivering copies of the books and records.

4. Notwithstanding any provision of chapter 718 or chapter 719 to the contrary, the managing entity may not furnish the name, address, or electronic mail address of any purchaser to any

other purchaser or authorized agent thereof unless the purchaser whose name, address, or electronic mail address is requested first approves the disclosure in writing.

(e) Arranging for an annual audit of the financial statements of the timeshare plan by a certified public accountant licensed by the Board of Accountancy of the Department of Business and Professional Regulation, in accordance with generally accepted auditing standards as defined by the rules of the Board of Accountancy of the Department of Business and Professional Regulation. The financial statements required by this section must be prepared on an accrual basis using fund accounting, and must be presented in accordance with generally accepted accounting principles. A copy of the audited financial statements must be filed with the division for review and forwarded to the board of directors and officers of the owners' association, if one exists, no later than 5 calendar months after the end of the timeshare plan's fiscal year. If no owners' association exists, each purchaser must be notified, no later than 5 months after the end of the timeshare plan's fiscal year, that a copy of the audited financial statements is available upon request to the managing entity. Notwithstanding any requirement of s. 718.111(13) or s. 719.104(4), the audited financial statements required by this section are the only annual financial reporting requirements for timeshare condominiums or timeshare cooperatives.

(f) Making available for inspection by the division any books and records of the timeshare plan upon the request of the division. The division may enforce this paragraph by making direct application to the circuit court.

(g) Scheduling occupancy of the timeshare units, when purchasers are not entitled to use specific timeshare periods, so that all purchasers will be provided the use and possession of the accommodations and facilities of the timeshare plan which they have purchased.

(h) Performing any other functions and duties which are necessary and proper to maintain the accommodations or facilities, as provided in the contract and as advertised.

(i)1. Entering into an ad valorem tax escrow agreement prior to the receipt of any ad valorem tax escrow payments into the ad valorem tax escrow account, as long as an independent escrow agent is required by s. 192.037.

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

(j) Notwithstanding anything contained in chapter 718 or chapter 719 to the contrary, purchasers shall not have the power to cancel contracts entered into by the managing entity relating to a master or community antenna television system, a franchised cable television service, or any similar paid television programming service or bulk rate services agreement.

(4) The managing entity shall maintain among its records and provide to the division upon request a complete list of the names and addresses of all purchasers and owners of timeshare units in the timeshare plan. The managing entity shall update this list no less frequently than quarterly. Pursuant to paragraph (3)(d), the managing entity may not publish this owner's list or provide a copy of it to any purchaser or to any third party other than the division. However, the managing entity shall mail to those persons listed on the owner's list materials provided by any purchaser, upon the written request of that purchaser, if the purpose of the mailing is to advance legitimate owners' association business, such as a proxy solicitation for any purpose, including the recall of one or more board members elected by the owners or the discharge of the manager or management firm. The use of any proxies solicited in this manner must comply with the provisions of the timeshare instrument and this chapter. A mailing requested for the purpose of advancing legitimate owners' association business shall occur within 30 days after receipt of a request from a purchaser. The board of administration of the owners' association shall be responsible for determining the appropriateness of any mailing requested pursuant to this subsection. The purchaser who requests the mailing must reimburse the owners' association in advance for the owners' association's actual costs in performing the mailing. It shall be a violation of this chapter and, if applicable, of part VIII of chapter 468, for the board of administration or the manager or management firm to refuse to mail any material requested by the purchaser to be mailed, provided the sole purpose of the materials is to advance legitimate owners' association business. If the purpose of the mailing is a proxy solicitation to recall one or more board members elected by the owners or to discharge the manager or management firm and the managing entity does not mail the materials within 30 days after receipt of a request from a purchaser, the circuit court in the county where the timeshare plan is located may, upon application from the requesting purchaser, summarily order the mailing of the materials solely related to the recall of one or more board members elected by the owners or the discharge of the manager or management firm. The court shall dispose of an application on an expedited basis. In the event of such an order, the court may order the managing entity to pay the purchaser's costs, including attorney's fees reasonably incurred to enforce the purchaser's rights, unless the managing entity can prove it refused the mailing in good faith because of a reasonable basis for doubt about the legitimacy of the mailing.

(5) Any managing entity, or individual officer, director, employee, or agent thereof, who willfully misappropriates the property or funds of a timeshare plan commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, or the successor thereof.

(6)(a) The managing entity of any timeshare plan located in this state, including, but not limited to, those plans created with respect to a condominium pursuant to chapter 718 or a cooperative pursuant to chapter 719, may deny the use of the accommodations and facilities of the timeshare plan, including the denial of the right to make a reservation or the cancellation of a confirmed reservation for timeshare periods in a floating reservation timeshare plan, to any purchaser who is delinquent in the payment of any assessments made by the managing entity against such purchaser for common expenses or for ad valorem real estate taxes pursuant to this chapter or pursuant to s. 192.037. Such denial of use shall also extend to those parties claiming under the delinquent purchaser described in paragraphs (b) and (c). For purposes of this subsection, a purchaser shall be considered delinquent in the payment of a given assessment only upon the expiration of 60 days after the date the assessment is billed to the purchaser or upon the expiration of 60 days after the date the assessment is due, whichever is later. For purposes of this subsection, an affiliated exchange program shall be any exchange program which has a contractual relationship with the creating developer or the managing entity of the timeshare plan, or any exchange program that notifies the managing entity in writing that it has members that are purchasers of the timeshare plan, and the exchange companies operating such affiliated exchange programs shall be affiliated exchange companies. Any denial of use for failure to pay assessments shall be implemented only pursuant to this subsection.

(b) A managing entity desiring to deny the use of the accommodations and facilities of the timeshare plan to a delinquent purchaser and to those claiming under the purchaser, including his or her guests, lessees, and third parties receiving use rights in the timeshare period in question through a nonaffiliated exchange program, shall, no less than 30 days after the date the assessment is due in accordance with the timeshare instrument, notify the purchaser in writing of the total amount of any delinquency which then exists, including any accrued interest and late charges permitted to be imposed under the terms of the timeshare plan or by law and including a per diem amount, if any, to account for further accrual of interest and late charges between the stated effective date of the notice and the first date of use. The notice shall also clearly state that the purchaser will not be permitted to use his or her timeshare period, that the purchaser will not be permitted to make a reservation in the timeshare plan's reservation system, or that any confirmed reservation may be canceled, as applicable, until the total amount of such delinquency is satisfied in full or until the purchaser produces satisfactory evidence that the delinquency does not exist. The notice shall be mailed to the purchaser at his or her last known address as recorded in the books and records of the timeshare plan, and the notice shall be

effective to bar the use of the purchaser and those claiming use rights under the purchaser, including his or her guests, lessees, and third parties receiving use rights in the timeshare period in question through a nonaffiliated exchange program, until such time as the purchaser is no longer delinquent. The notice shall not be effective to bar the use of third parties receiving use rights in the timeshare period in question through an affiliated exchange program without the additional notice to the affiliated exchange program required by paragraph (c).

(c) In addition to giving notice to the delinquent purchaser as required by paragraph (b), a managing entity desiring to deny the use of the accommodations and facilities of the timeshare plan to third parties receiving use rights in the delinquent purchaser's timeshare period through any affiliated exchange program shall notify the affiliated exchange company in writing of the denial of use. The receipt of such written notice by the affiliated exchange company shall be effective to bar the use of all third parties claiming through the affiliated exchange program, and such notice shall be binding upon the affiliated exchange company and all third parties claiming through the affiliated exchange program until such time as the affiliated exchange company receives notice from the managing entity that the purchaser is no longer delinquent. However, any third party claiming through the affiliated exchange program who has received a confirmed assignment of the delinquent purchaser's use rights from the affiliated exchange company prior to the expiration of 48 hours after the receipt by the affiliated exchange company of such written notice from the managing entity shall be permitted by the managing entity to use the accommodations and facilities of the timeshare plan to the same extent that he or she would be allowed to use such accommodations and facilities if the delinquent purchaser were not delinquent.

(d) Any costs reasonably incurred by the managing entity in connection with its compliance with the requirements of paragraphs (b) and (c), together with any costs reasonably incurred by an affiliated exchange company in connection with its compliance with the requirements of paragraph (c), may be assessed by the managing entity against the delinquent purchaser and collected in the same manner as if such costs were common expenses of the timeshare plan allocable solely to the delinquent purchaser. The costs incurred by the affiliated exchange company shall be collected by the managing entity as the agent for the affiliated exchange company. In no event shall the total costs to be assessed against the delinquent purchaser pursuant to this paragraph at any one time exceed 5 percent of the total amount of delinquency contained in the notice given to the delinquent purchaser pursuant to paragraph (b) per timeshare period or \$15 per timeshare period, whichever is less.

(e) An exchange company may elect to deny exchange privileges to any member whose use of the accommodations and facilities of the member's timeshare plan is denied pursuant to

paragraph (b), and no exchange program or exchange company shall be liable to any of its members or third parties on account of any such denial of exchange privileges.

(f)1. Provided that the managing entity has properly and timely given notice to a delinquent purchaser pursuant to paragraph (b) and to any affiliated exchange program pursuant to paragraph (c), the managing entity may give further notice to the delinquent purchaser that it may rent the delinquent purchaser's timeshare period, or any use rights appurtenant thereto, and will apply the proceeds of such rental, net of any rental commissions, cleaning charges, travel agent commissions, or any other commercially reasonable charges reasonably and usually incurred by the managing entity in securing rentals, to the delinquent purchaser's account. Such further notice of intent to rent must be given at least 30 days prior to the first day of the purchaser's use period, and must be delivered to the purchaser in the manner required for notices under paragraph (b). A managing entity may make a reasonable determination regarding the priority of rentals of timeshare periods to be rented pursuant to this paragraph and, in the event that the delinquent purchaser of a timeshare period rented pursuant to this paragraph cannot be specifically determined due to the structure of the timeshare plan, may allocate such net rental proceeds by the managing entity in any reasonable manner.

2. The notice of intent to rent, which may be included in the notice required by paragraph (b), must state in conspicuous type that:

a. The managing entity's efforts to secure a rental will not commence on a date earlier than 10 days after the date of the notice of intent to rent.

b. Unless the purchaser satisfies the delinquency in full, or unless the purchaser produces satisfactory evidence that the delinquency does not exist pursuant to paragraph (b), the purchaser will be bound by the terms of any rental contract entered into by the managing entity with respect to the purchaser's timeshare period or appurtenant use rights.

c. The purchaser will remain liable for any difference between the amount of the delinquency and the net amount produced by the rental contract and applied against the delinquency pursuant to this paragraph, and the managing entity shall not be required to provide any further notice to the purchaser regarding any residual delinquency pursuant to this paragraph.

3. In securing a rental pursuant to this paragraph, the managing entity shall not be required to obtain the highest nightly rental rate available, nor any particular rental rate, and the managing entity shall not be required to rent the entire timeshare period; however, the managing entity must use reasonable efforts to secure a rental that is commensurate with other rentals of similar timeshare periods or use rights generally secured at that time. Alternatively, the managing entity may rent such units at a bulk rate that is below the rate described above but not less than \$200 per week, which amount may be prorated for daily rentals.

(g) A managing entity shall have breached its fiduciary duty described in subsection (2) in the event it enforces the denial of use pursuant to paragraph (b) against any one purchaser or group of purchasers without similarly enforcing it against all purchasers, including all developers and owners of the underlying fee or underlying personal property; however, a managing entity shall not be required to solicit rentals pursuant to paragraph (f) for every delinquent purchaser. A managing entity shall also have breached its fiduciary duty in the event an error in the books and records of the timeshare plan results in a denial of use pursuant to this subsection of any purchaser who is not, in fact, delinquent. In addition to any remedies otherwise available to purchasers of the timeshare plan arising from such breaches of fiduciary duty, such breach shall also constitute a violation of this chapter. In addition, any purchaser receiving a notice of delinquency pursuant to paragraph (b), or any third party claiming under such purchaser pursuant to paragraph (b), may immediately bring an action for injunctive or declaratory relief against the managing entity seeking to have the notice invalidated on the grounds that the purchaser is not, in fact, delinquent, that the managing entity failed to follow the procedures prescribed by this section, or on any other available grounds. The prevailing party in any such action shall be entitled to recover his or her reasonable attorney's fees from the losing party.

(7) Unless the articles of incorporation, the bylaws, or the provisions of this chapter provide for a higher quorum requirement, the percentage of voting interests required to make decisions and to constitute a quorum at a meeting of the members of a timeshare condominium or owners' association shall be 15 percent of the voting interests. If a quorum is not present at any meeting of the owners' association at which members of the board of administration are to be elected, the meeting may be adjourned and reconvened within 90 days for the sole purpose of electing members of the board of administration, and the quorum for such adjourned meeting shall be 15 percent of the voting interests. This provision shall apply notwithstanding any provision of chapter 718 or chapter 719 to the contrary.

(8) Notwithstanding anything to the contrary in s. 718.110, s. 718.113, s. 718.114, or s. 719.1055, the board of administration of any owners' association that operates a timeshare condominium pursuant to s. 718.111, or a timeshare cooperative pursuant to s. 719.104, shall have the power to make material alterations or substantial additions to the accommodations or facilities of such timeshare condominium or timeshare cooperative without the approval of the owners' association. However, if the timeshare condominium or timeshare cooperative contains any residential units that are not subject to the timeshare plan, such action by the board of administration must be approved by a majority of the owners of such residential units. Unless otherwise provided in the timeshare instrument as originally recorded, no such amendment may change the configuration or size of any accommodation in any material fashion, or change the proportion or percentage by which a member of the owners' association shares the common

expenses, unless the record owners of the affected units or timeshare interests and all record owners of liens on the affected units or timeshare interests join in the execution of the amendment.

(9) All notices or other information sent by a board of administration of an owners' association may be delivered to a purchaser by electronic mail, provided that the purchaser first consents electronically to the use of electronic mail for notice purposes in a manner that reasonably demonstrates that the purchaser has the ability to access the notice by electronic mail. The consent to receive notice by electronic mail is effective until revoked by the purchaser. Proxies or written consents on votes of any owners' association may be received by electronic mail, shall have legal effect, and may be utilized for votes of an owners' association, provided that the electronic signature is authenticated through use of a password, cryptography software, or other reasonable means and that proof of such authentication is made available to the board of directors.

(10) Any failure of the managing entity to faithfully discharge the fiduciary duty to purchasers imposed by this section or to otherwise comply with the provisions of this section shall be a violation of this chapter and of part VIII of chapter 468.

(11) Notwithstanding the other provisions of this section, personal property timeshare plans are only subject to the provisions of paragraphs (1)(a)-(d), (2)(a), (3)(a)-(h) and subsections (5), (6), (9), and (10).

(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.

(13) Notwithstanding any provisions of chapter 607, chapter 617, or chapter 718, an officer, director, or agent of an owners' association shall discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the interests of the owners' association. An officer, director, or agent of an owners' association shall be exempt from liability for monetary damages in the same manner as provided in s. 617.0834 unless such officer, director, or agent breached or failed to perform his or her duties and the breach of, or failure to perform, his or her duties constitutes a violation of criminal law as provided in s. 617.0834; constitutes a transaction from which the officer or director derived an improper personal benefit, either directly or indirectly; or constitutes recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

History.—s. 1, ch. 81-172; s. 13, ch. 83-264; s. 5, ch. 84-256; s. 52, ch. 85-62; s. 4, ch. 87-343; s. 2, ch. 88-403; s. 24, ch. 91-103; s. 9, ch. 91-236; s. 5, ch. 91-426; s. 8, ch. 93-58; s. 241, ch. 94-218; s. 11, ch. 95-274; s. 898, ch. 97-102; s. 8, ch. 98-36; s. 20, ch. 2000-302; s. 2, ch. 2002-87; s. 12, ch. 2004-279; s. 101, ch. 2006-1; s. 7, ch. 2007-75; s. 2, ch. 2010-134; s. 90, ch. 2015-2.

721.14 Discharge of managing entity.—

(1) If timeshare estates are being sold to purchasers of a timeshare plan, any contract between the owners' association and a manager or management firm shall be automatically renewable every 3 years, beginning with the third year after the owners' association is first created, unless the purchasers vote to discharge the manager or management firm. Such a vote shall be conducted by the board of administration of the owners' association. The manager or management firm shall be deemed discharged if at least 66 percent of the purchasers voting, which shall be at least 50 percent of all votes allocated to purchasers, vote to discharge.

(2) In the event the manager or management firm is discharged, the board of administration of the owners' association shall remain responsible for operating and maintaining the timeshare plan pursuant to the timeshare instrument and s. 721.13(1). If the board of administration fails to do so, any timeshare owner may apply to the circuit court within the jurisdiction of which the accommodations and facilities lie for the appointment of a receiver to manage the affairs of the owners' association and the timeshare plan. At least 30 days before applying to the circuit court, the timeshare owner shall mail to the owners' association and post in a conspicuous place on the timeshare property a notice describing the intended action. If a receiver is appointed, the owners' association shall be responsible as a common expense of the timeshare plan, for payment of the salary and expenses of the receiver, relating to the discharge of her or his duties and obligations as receiver, together with the receiver's court costs, and reasonable attorney's fees. The receiver shall have all powers and duties of a duly constituted board of administration and shall serve until discharged by the circuit court.

(3) The managing entity of a timeshare plan subject to the provisions of chapter 718 or chapter 719 may be discharged pursuant to chapter 718 or chapter 719, respectively, or its successor or pursuant to this section.

(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).

History.—s. 1, ch. 81-172; s. 14, ch. 83-264; s. 9, ch. 85-63; s. 12, ch. 95-274; s. 899, ch. 97-102; s. 21, ch. 2000-302; s. 13, ch. 2004-279; s. 5, ch. 2015-144.

721.15 Assessments for common expenses.—

(1)(a) Until a managing entity is created or provided pursuant to s. 721.13, the developer shall pay all common expenses. The timeshare instrument shall provide for the allocation of common expenses among all timeshare units or timeshare interests on a reasonable basis, including timeshare interests owned or not yet sold by the developer. The timeshare instrument may provide that the common expenses allocated may differ between those timeshare units that are part of the timeshare plan and those units that are not part of the timeshare plan; however, the different proportion of expenses must be based upon reasonable differences in the benefit provided to each. The timeshare instrument shall allocate common expenses to timeshare interests owned or not yet sold by the developer on the same basis that common expenses are allocated to similar or equivalent timeshare interests sold to purchasers.

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

(2)(a) After the creation or provision of a managing entity, the managing entity shall make an annual assessment against each purchaser for the payment of common expenses, based on the projected annual budget, in the amount specified by the contract between the seller and the purchaser or in the timeshare instrument.

(b) No owner of a timeshare interest may be excused from the payment of her or his share of the common expenses unless all owners are likewise excused from payment, except that the developer may be excused from the payment of her or his share of the common expenses which would have been assessed against her or his timeshare interests during a stated period of time during which the developer has guaranteed to each purchaser in the timeshare instrument, or by agreement between the developer and a majority of the owners of timeshare interests other than

the developer, that the assessment for common expenses imposed upon the owners would not increase over a stated dollar amount. In the event of such a guarantee, the developer is obligated to pay all common expenses incurred during the guarantee period in excess of the total revenues of the timeshare plan. Notwithstanding this limitation, if a developer-controlled owners' association has maintained all insurance coverages required by s. 721.165, the common expenses incurred during the guarantee period resulting from a natural disaster or an act of God, which are not covered by insurance proceeds from the insurance maintained by the owners' association, may be assessed against all purchasers owning timeshare interests on the date of such natural disaster or act of God, and their successors and assigns, including the developer with respect to timeshare interests owned by the developer. In the event of such an assessment, all timeshare interests shall be assessed in accordance with their ownership interest as required by paragraph (1)(a).

(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.

(d) A guarantee pursuant to paragraph (b) may provide that the developer may extend or increase the guarantee for one or more additional stated periods.

(3) Delinquent assessments may bear interest at the highest rate permitted by law or at some lesser rate established by the managing entity. In addition to such interest, the managing entity may charge an administrative late fee in an amount not to exceed \$25 for each delinquent assessment. Any costs of collection, including reasonable collection agency fees and reasonable attorney's fees, incurred in the collection of a delinquent assessment shall be paid by the purchaser and shall be secured by a lien in favor of the managing entity upon the timeshare interest with respect to which the delinquent assessment has been incurred; however, in the event that a managing entity turns the matter over to a collection agency, the managing entity must advise the purchaser at least 60 days prior to turning the matter over to the collection agency that the purchaser may be liable for the fees of the collection agency and that a lien may result therefrom.

(4) Unless otherwise specified in the contract between the seller and the purchaser, any common expenses benefiting fewer than all purchasers shall be assessed only against those purchasers benefited.

(5) Any assessments for common expenses which have not been spent for common expenses during the year for which such assessments were made shall be shown as an item on the annual budget.

(6) Notwithstanding any contrary requirements of s. 718.112(2)(g) or s. 719.106(1)(g), for timeshare plans subject to this chapter, assessments against purchasers need not be made more frequently than annually.

(7)(a) A purchaser, regardless of how her or his timeshare estate or timeshare license has been acquired, including a purchaser at a judicial sale, is personally liable for all assessments for common expenses which come due while the purchaser is the owner of such interest. A successor in interest is jointly and severally liable with her or his predecessor in interest for all unpaid assessments against such predecessor up to the time of transfer of the timeshare interest to such successor without prejudice to any right a successor in interest may have to recover from her or his predecessor in interest any amounts assessed against such predecessor and paid by such successor. The predecessor in interest or his or her agent, or a person providing resale transfer services for the predecessor in interest pursuant to s. 721.17(3) or his or her agent, shall deliver to the managing entity a copy of the recorded deed of conveyance if the interest is a timeshare estate or a copy of the instrument of transfer if the interest is a timeshare license, with the name and mailing address of the successor in interest within 15 days after the date of transfer, and after such delivery the successor in interest shall be listed by the managing entity as the owner of the timeshare interest on the books and records of the timeshare plan. The managing entity shall not be liable to any person for any inaccuracy in the books and records of the timeshare plan arising from the failure of the predecessor in interest to timely and correctly notify the managing entity of the name and mailing address of the successor in interest.

(b) Within 30 days after receiving a written request from a timeshare interest owner, an agent designated in writing by the timeshare interest owner, or a person providing resale transfer services for a consumer timeshare reseller pursuant to s. 721.17(3), a managing entity must provide a certificate, signed by an officer or agent of the managing entity, to the person requesting the certificate, that states the amount of any assessment, transfer fee, or other moneys currently owed to the managing entity, and of any assessment, transfer fee, or other moneys approved by the managing entity that will be due within the next 90 days, with respect to the designated consumer resale timeshare interest, as well as any information contained in the books and records of the timeshare plan regarding the legal description and use plan related to the designated consumer resale timeshare interest.

1. A person who relies upon such certificate shall be protected thereby.
2. A summary proceeding pursuant to s. 51.011 may be brought to compel compliance with this paragraph, and in such an action the prevailing party may recover reasonable attorney fees and court costs.
3. The managing entity may charge a fee not to exceed \$150 for the preparation and delivery of the certificate. The amount of the fee must be included on the certificate.

(8) Notwithstanding the provisions of subsection (7), a first mortgagee or its successor or assignee who acquires title to a timeshare interest as a result of the foreclosure of the mortgage or by deed in lieu of foreclosure of the mortgage shall be exempt from liability for all unpaid assessments attributable to the timeshare interest or chargeable to the previous owner which came due prior to acquisition of title by the first mortgagee.

(9)(a) Anything contained in chapter 718 or chapter 719 to the contrary notwithstanding, the managing entity of a timeshare plan shall not commingle operating funds with reserve funds; however, the managing entity may maintain operating and reserve funds within a single account for a period not to exceed 30 days after the date on which the managing entity received payment of such funds.

(b) Anything contained in chapter 718 or chapter 719 to the contrary notwithstanding, a managing entity which serves as managing entity of more than one timeshare plan, or of more than one component site pursuant to part II, shall not commingle the common expense funds of any one timeshare plan or component site with the common expense funds of any other timeshare plan or component site. However, the managing entity may maintain common expense funds of multiple timeshare plans or multiple component sites within a single account for a period not to exceed 30 days after the date on which the managing entity received payment of such funds.

(10) This section shall not apply to personal property timeshare plans.

(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.

History.—s. 1, ch. 81-172; s. 15, ch. 83-264; s. 5, ch. 87-343; s. 3, ch. 88-403; s. 25, ch. 90-151; s. 65, ch. 91-110; s. 9, ch. 93-58; s. 13, ch. 95-274; s. 900, ch. 97-102; s. 9, ch. 98-36; s. 22, ch. 2000-302; s. 3, ch. 2002-87; s. 14, ch. 2004-279; s. 8, ch. 2007-75; s. 4, ch. 2013-159.

721.16 Liens for overdue assessments; liens for labor performed on, or materials furnished to, a timeshare unit.—

(1) The managing entity has a lien on a timeshare interest for any assessment levied against that timeshare interest from the date such assessment becomes due. The managing entity also

has a lien on a timeshare interest of any purchaser for the cost of any maintenance, repairs, or replacement resulting from an act of such purchaser or purchaser's guest that results in damage to the timeshare property or facilities made available to the purchasers.

(2) The managing entity may bring a judicial action in its name to foreclose a lien under subsection (1) in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. As an alternative to initiating a judicial action, the managing entity may initiate a trustee procedure to foreclose an assessment lien under s. 721.855.

(3) The lien is effective from the date of recording a claim of lien in the official records of the county or counties in which the timeshare interest is located. The claim of lien shall state the name of the timeshare plan and identify the timeshare interest for which the lien is effective, state the name of the purchaser, state the assessment amount due, and state the due dates. Notwithstanding any provision of s. 718.116(5) or s. 719.108(4) to the contrary, the lien is effective until satisfied or until 5 years have expired after the date the claim of lien is recorded unless, within that time, an action to enforce the lien is commenced pursuant to subsection (2). A claim of lien for assessments may include only assessments which are due when the claim is recorded. A claim of lien shall be signed and acknowledged by an officer or agent of the managing entity. Upon full payment, the person making the payment is entitled to receive a satisfaction of the lien.

(4) A judgment in any action or suit brought under this section shall include costs and reasonable attorney's fees for the prevailing party.

(5) Labor performed on a timeshare unit, or materials furnished to a timeshare unit, shall not be the basis for the filing of a lien pursuant to part I of chapter 713, the Construction Lien Law, against the timeshare unit of any timeshare-period owner not expressly consenting to or requesting the labor or materials.

(6) This section shall not apply to personal property timeshare plans.

History.—s. 1, ch. 81-172; s. 53, ch. 85-62; s. 4, ch. 88-403; s. 27, ch. 90-109; s. 26, ch. 90-151; s. 23, ch. 2000-302; s. 15, ch. 2004-279; s. 3, ch. 2010-134.

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 managing entity shall use due diligence to obtain adequate casualty 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.

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

History.—s. 1, ch. 81-172; s. 54, ch. 85-62; s. 24, ch. 2000-302; s. 9, ch. 2007-75.

721.17 Transfer of interest; resale transfer agreements.—

(1) Except in the case of a timeshare plan subject to the provisions of chapter 718 or chapter 719, no developer, owner of the underlying fee, or owner of the underlying personal property shall sell, lease, assign, mortgage, or otherwise transfer his or her interest in the accommodations and facilities of the timeshare plan except by an instrument evidencing the transfer recorded in the public records of the county in which such accommodations and facilities are located or, with respect to personal property timeshare plans, in full compliance with s. 721.08. The instrument shall be executed by both the transferor and transferee and shall state:

(a) That its provisions are intended to protect the rights of all purchasers of the plan.

(b) That its terms may be enforced by any prior or subsequent timeshare purchaser so long as that purchaser is not in default of his or her obligations.

(c) That so long as a purchaser remains in good standing with respect to her or his obligations under the timeshare instrument, including making all payments to the managing entity required by the timeshare instrument with respect to the annual common expenses of the timeshare plan, the transferee shall honor all rights of such purchaser relating to the subject accommodation or facility as reflected in the timeshare instrument.

(d) That the transferee will fully honor all rights of timeshare purchasers to cancel their contracts and receive appropriate refunds.

(e) That the obligations of the transferee under such instrument will continue to exist despite any cancellation or rejection of the contracts between the developer and purchaser arising out of bankruptcy proceedings.

(2) Should any transfer of the interest of the developer, the owner of the underlying fee, or the owner of the underlying property occur in a manner which is not in compliance with subsection (1), the terms set forth in subsection (1) shall be presumed to be a part of the transfer and shall be deemed to be included in the instrument of transfer. Notice shall be mailed to each purchaser of record within 30 days after the transfer unless such transfer does not affect the purchaser's rights in or use of the timeshare plan. Persons who hold mortgages or liens on the property constituting a timeshare plan before the filed public offering statement of such plan is approved by the division shall not be considered transferees for the purposes of subsection (1).

(3)(a) In the course of offering timeshare interest transfer services, no person shall:

1. Engage in any timeshare interest transfer services for consideration, or the expectation of receiving consideration, without first obtaining a written resale transfer agreement signed by the consumer timeshare reseller that complies with this subsection.

2. Fail to provide both the consumer timeshare reseller and the escrow agent required by paragraph (c) with an executed copy of the resale transfer agreement.

3. Fail to comply with the requirements of paragraphs (b) and (c).

(b) Each resale transfer agreement shall contain:

1. A statement that no fee, cost, or other compensation may be paid to the person providing the timeshare resale transfer services before the delivery to the consumer timeshare reseller of written evidence that all promised timeshare interest transfer services have been performed, including, but not limited to, delivery to both the consumer timeshare reseller and the timeshare plan managing entity of a copy of the recorded instrument or other legal document evidencing the transfer of ownership of or legal title to the consumer resale timeshare interest to the transferee, accompanied by the full name, address, and other known contact information for the transferee.

2. The name, address, current phone number, and current e-mail address of the escrow agent required by paragraph (c).

3. A statement that the person providing the timeshare resale transfer services will provide the consumer timeshare reseller with written notice of the full performance of the timeshare resale transfer services, together with a copy of the recorded instrument or other legal document evidencing the transfer of ownership of or legal title to the consumer resale timeshare interest from the consumer timeshare reseller to a transferee.

4. A statement in substantially the following form in conspicuous type immediately preceding the space in the resale transfer agreement provided for the consumer timeshare reseller's signature:

(Name) has agreed to provide you with timeshare resale transfer services pursuant to this resale transfer agreement. After those services have been fully performed, (Name) is obligated to provide you with written notice of such full performance and a copy of the recorded instrument or other legal document evidencing the transfer of ownership of or legal title to the consumer resale timeshare interest to the transferee. Any fee or other compensation paid by you under this agreement before such full performance by (Name) must be held in escrow by the escrow agent specified in this agreement, and (Name) is prohibited from receiving any such fee or other compensation until all promised timeshare interest transfer services have been performed.

(c)1. Before entering into any resale transfer agreement, a person providing timeshare resale transfer services shall establish an escrow account with an escrow agent for the purpose of protecting the funds or other property of consumer timeshare resellers required to be escrowed by this subsection. An attorney who is a member in good standing of The Florida Bar, a licensed Florida real estate broker in good standing, or a licensed Florida title insurer or agent in good standing, any of whom also provides timeshare interest transfer services as described in this subsection, may serve as escrow agent under this subsection. The escrow agent shall maintain the escrow account only in such a manner as to be under the direct supervision and control of the escrow agent. The escrow agent shall have a fiduciary duty to each consumer timeshare reseller

to maintain the escrow account in accordance with good accounting practices and to release the consumer timeshare reseller's funds or other property from escrow only in accordance with this subsection.

2. All funds or other property that are received from or on behalf of a consumer timeshare reseller pursuant to a resale transfer agreement shall be deposited into an escrow account pursuant to this paragraph. A fee, cost, or other compensation that is due or that will be paid to the person providing the timeshare resale transfer services must be held in such escrow account until the person providing the timeshare resale transfer services has fully complied with all of his or her obligations under the resale transfer agreement and under this subsection.

3. The funds or other property required to be escrowed pursuant to this paragraph may only be released from escrow as follows:

a. On the order of the person providing the timeshare resale transfer services upon presentation of an affidavit by the person that all promised timeshare interest transfer services have been performed, including delivery to both the consumer timeshare reseller and the timeshare plan managing entity of a copy of the recorded instrument or other legal document evidencing the transfer of ownership of or legal title to the consumer resale timeshare interest to the transferee.

b. To a managing entity to pay any assessments, transfer fees, or other moneys owed with respect to the consumer resale timeshare interest as set forth in the certificate provided for in s. 721.15(7)(b) or to pay a governmental agency for the purpose of completing and perfecting the transfer. A managing entity shall accept any funds remitted to it by an escrow agent pursuant to this sub-subparagraph.

4. The escrow agent shall retain all resale transfer agreements, escrow account records, and affidavits received pursuant to this subsection for a period of 5 years.

(d) A person providing timeshare resale transfer services, an agent or third party service provider for the timeshare resale transfer services provider, or an escrow agent who intentionally fails to comply with the provisions of this subsection concerning the establishment of an escrow account, deposits of funds into escrow, withdrawal therefrom, and maintenance of records is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e) No person shall participate, for consideration or with the expectation of consideration, in a plan or scheme, a purpose of which is to transfer a consumer resale timeshare interest to a transferee that the person knows does not have the ability, means, or intent to pay all assessments and taxes associated with the consumer resale timeshare interest.

(f) Providing timeshare interest transfer services with respect to a consumer resale timeshare interest in a timeshare property located or offered within this state, or in a multisite timeshare

plan registered or required to be registered to be offered in this state, including acting as an agent or third-party service provider for a resale service provider, constitutes operating, conducting, engaging in, or carrying on a business or business venture in this state for the purposes of s. 48.193(1).

(g) A managing entity may bring an action to enforce the provisions of paragraph (e). In any such action, the managing entity may recover its actual damages, and the prevailing party may recover its reasonable attorney fees and court costs.

(h) Paragraphs (a)-(d) do not apply to:

1. A resale broker who offers timeshare interest transfer services to a consumer timeshare reseller, so long as the resale broker complies in all respects with chapter 475 and with s. 721.20; or

2. An attorney who is a member in good standing of The Florida Bar or a licensed Florida title insurer or agent in good standing who offers timeshare interest transfer services to a consumer timeshare reseller, if the total consideration paid by the consumer timeshare reseller to such person does not exceed \$600, exclusive of any assessments, transfer fees, or moneys owed with respect to the consumer resale timeshare interest as set forth in the certificate provided for in s. 721.15(7)(b), and exclusive of any fees owed to a governmental agency for the purpose of completing and perfecting the transfer.

(i) This subsection does not apply to the transfer of ownership of a consumer resale timeshare interest from a consumer timeshare reseller to the developer or managing entity of that timeshare plan.

History.—s. 1, ch. 81-172; s. 16, ch. 83-264; s. 901, ch. 97-102; s. 25, ch. 2000-302; s. 16, ch. 2004-279; s. 5, ch. 2013-159.

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

(1) If a purchaser is offered the opportunity to subscribe to an exchange program, the seller shall deliver to the purchaser, together with the purchaser public offering statement, and prior to the offering or execution of any contract between the purchaser and the company offering the exchange program, written information regarding such exchange program; or, if the exchange company is dealing directly with the purchaser, the exchange company shall deliver to the purchaser, prior to the initial offering or execution of any contract between the purchaser and the company offering the exchange program, written information regarding such exchange program. In either case, the purchaser shall certify in writing to the receipt of such information. Such information shall include, but is not limited to, the following information, the form and substance of which shall first be approved by the division in accordance with subsection (2):

(a) The name and address of the exchange company.

- (b) The names of all officers, directors, and shareholders of the exchange company.
- (c) Whether the exchange company or any of its officers or directors has any legal or beneficial interest in any developer, seller, or managing entity for any timeshare plan participating in the exchange program and, if so, the name and location of the timeshare plan and the nature of the interest.
- (d) Unless otherwise stated, a statement that the purchaser's contract with the exchange company is a contract separate and distinct from the purchaser's contract with the seller of the timeshare plan.
- (e) Whether the purchaser's participation in the exchange program is dependent upon the continued affiliation of the timeshare plan with the exchange program.
- (f) A statement that the purchaser's participation in the exchange program is voluntary. This statement is not required to be given by the seller or managing entity of a multisite timeshare plan to purchasers in the multisite timeshare plan.
- (g) A complete and accurate description of the terms and conditions of the purchaser's contractual relationship with the exchange program and the procedure by which changes thereto may be made.
- (h) A complete and accurate description of the procedure to qualify for and effectuate exchanges.
- (i) A complete and accurate description of all limitations, restrictions, or priorities employed in the operation of the exchange program, including, but not limited to, limitations on exchanges based on seasonality, timeshare unit size, or levels of occupancy, expressed in boldfaced type, and, in the event that such limitations, restrictions, or priorities are not uniformly applied by the exchange program, a clear description of the manner in which they are applied.
- (j) Whether exchanges are arranged on a space-available basis and whether any guarantees of fulfillment of specific requests for exchanges are made by the exchange program.
- (k) Whether and under what circumstances a purchaser, in dealing with the exchange program, may lose the use and occupancy of her or his timeshare period in any properly applied for exchange without her or his being provided with substitute accommodations by the exchange program.
- (l) The fees or range of fees for membership or participation in the exchange program by purchasers, including any conversion or other fees payable to third parties, a statement whether any such fees may be altered by the exchange company, and the circumstances under which alterations may be made.
- (m) The name and address of the site of each timeshare plan participating in the exchange program.

(n) The number of the timeshare units in each timeshare plan which are available for occupancy and which qualify for participation in the exchange program, expressed within the following numerical groupings: 1-5; 6-10; 11-20; 21-50; and 51 and over.

(o) The number of currently enrolled purchasers for each timeshare plan participating in the exchange program, expressed within the following numerical groupings: 1-100; 101-249; 250-499; 500-999; and 1,000 and over; and a statement of the criteria used to determine those purchasers who are currently enrolled with the exchange program.

(p) The disposition made by the exchange company of timeshare periods deposited with the exchange program by purchasers enrolled in the exchange program and not used by the exchange company in effecting exchanges.

(q) The following information, which shall be independently audited by a certified public accountant or accounting firm in accordance with the standards of the Accounting Standards Board of the American Institute of Certified Public Accountants and reported annually:

1. The number of purchasers currently enrolled in the exchange program.
2. The number of accommodations and facilities that have current written affiliation agreements with the exchange program.
3. The percentage of confirmed exchanges, which is the number of exchanges confirmed by the exchange program divided by the number of exchanges properly applied for, together with a complete and accurate statement of the criteria used to determine whether an exchange request was properly applied for.
4. The number of timeshare periods for which the exchange program has an outstanding obligation to provide an exchange to a purchaser who relinquished a timeshare period during the year in exchange for a timeshare period in any future year.
5. The number of exchanges confirmed by the exchange program during the year.

(r) A statement in boldfaced type to the effect that the percentage described in subparagraph (q)3. is a summary of the exchange requests entered with the exchange program in the period reported and that the percentage does not indicate the probabilities of a purchaser's being confirmed to any specific choice or range of choices.

(2) Each exchange company offering an exchange program to purchasers in this state shall file with the division for review the information specified in subsection (1), together with any membership agreement and application between the purchaser and the exchange company, and the audit specified in subsection (1) on or before June 1 of each year. However, an exchange company shall make its initial filing at least 20 days prior to offering an exchange program to any purchaser in this state. Each filing shall be accompanied by an annual filing fee of \$500. Within 20 days after receipt of such filing, the division shall determine whether the filing is adequate to meet the requirements of this section and shall notify the exchange company in writing that the

division has either approved the filing or found specified deficiencies in the filing. If the division fails to respond within 20 days, the filing shall be deemed approved. The exchange company may correct the deficiencies; and, within 10 days after receipt of corrections from the exchange company, the division shall notify the exchange company in writing that the division has either approved the filing or found additional specified deficiencies in the filing. If the exchange company fails to adequately respond to any deficiency notice within 10 days, the division may reject the filing. Subsequent to such rejection, a new filing fee and a new division initial review period pursuant to this subsection shall apply to any refiling or further review of the rejected filing.

(a) Any material change to an approved exchange company filing shall be filed with the division for approval as an amendment prior to becoming effective. Each amendment filing shall be accompanied by a filing fee of \$100. The exchange company may correct the deficiencies; and, within 10 days after receipt of corrections from the exchange company, the division shall notify the exchange company in writing that the division has either approved the filing or found additional specified deficiencies in the filing. Each approved amendment to the approved exchange company filing, other than an amendment that does not materially alter or modify the exchange program in a manner that is adverse to a purchaser, as determined by the exchange company in its reasonable discretion, shall be delivered to each purchaser who has not closed. An approved exchange program filing is required to be updated with respect to added or deleted resorts only once each year, and such annual update shall not be deemed to be a material change to the filing.

(b) If at any time the division determines that any of such information supplied by an exchange company fails to meet the requirements of this section, the division may undertake enforcement action against the exchange company in accordance with the provision of s. 721.26.

(3) No developer shall have any liability with respect to any violation of this chapter arising out of the publication by the developer of information provided to it by an exchange company pursuant to this section. No exchange company shall have any liability with respect to any violation of this chapter arising out of the use by a developer of information relating to an exchange program other than that provided to the developer by the exchange company.

(4) At the request of the exchange company, the division shall review any audio, written, or visual publications or materials relating to an exchange company or an exchange program filed for review by the exchange company and shall notify the exchange company of any deficiencies within 10 days after the filing. If the exchange company corrects the deficiencies, or if there are no deficiencies, the division shall notify the exchange company of its approval of the advertising materials. If the exchange company fails to adequately respond to any deficiency notice within 10 days, the division may reject the advertising materials. Subsequent to such rejection, a new

division initial review period pursuant to this subsection shall apply to any refiling or further review.

(5) The failure of an exchange company to observe the requirements of this section, or the use of any unfair or deceptive act or practice in connection with the operation of an exchange program, is a violation of this chapter.

History.—s. 1, ch. 81-172; s. 158, ch. 83-216; s. 18, ch. 83-264; s. 55, ch. 85-62; s. 902, ch. 97-102; s. 10, ch. 98-36; s. 26, ch. 2000-302; s. 17, ch. 2004-279.

721.19 Provisions requiring purchase or lease of timeshare property by owners' association or purchasers; validity.—In any timeshare plan in which timeshare estates or personal property timeshare interests are sold, no grant or reservation made by a declaration, lease, or other document, nor any contract made by the developer, managing entity, or owners' association, which requires the owners' association or purchasers to purchase or lease any portion of the timeshare property shall be valid unless approved by a majority of the purchasers other than the developer, after more than 50 percent of the timeshare periods have been sold.

History.—s. 13, ch. 83-264; s. 27, ch. 2000-302; s. 18, ch. 2004-279.

721.20 Licensing requirements; suspension or revocation of license; exceptions to applicability; collection of advance fees for listings unlawful.—

(1) Any seller of a timeshare plan must be a licensed real estate broker, broker associate, or sales associate as defined in s. 475.01, except as provided in s. 475.011.

(2) Solicitors who engage only in the solicitation of prospective purchasers and any purchaser who refers no more than 20 people to a developer or managing entity per year or who otherwise provides testimonials on behalf of a developer or managing entity are exempt from the provisions of chapter 475.

(3) A solicitor who has violated the provisions of chapter 468, chapter 718, chapter 719, this chapter, or the rules of the division governing timesharing shall be subject to the provisions of s. 721.26. Any developer or other person who supervises, directs, or engages the services of a solicitor shall be liable for any violation of the provisions of chapter 468, chapter 718, chapter 719, this chapter, or the rules of the division governing timesharing committed by such solicitor.

(4) County and municipal governments shall have the authority to adopt codes of conduct and regulations to govern solicitor activity conducted on public property, including providing for the imposition of penalties prescribed by a schedule of fines adopted by ordinance for violations of any such code of conduct or regulation. Any violation of any such adopted code of conduct or regulation shall not constitute a separate violation of this chapter. This subsection is not intended to restrict or invalidate any local code of conduct or regulation.

(5) This section does not apply to those individuals who offer for sale only timeshare interests in timeshare property located outside this state and who do not engage in any sales activity

within this state or to timeshare plans which are registered with the Securities and Exchange Commission. For the purposes of this section, both timeshare licenses and timeshare estates are considered to be interests in real property.

(6) It is unlawful for any real estate broker, broker associate, or sales associate to collect any advance fee for the listing of any timeshare estate or timeshare license.

(7) It is unlawful for any broker, salesperson, or broker-salesperson to collect any advance fee for the listing of a personal property timeshare interest.

(8) Subsections (1), (2), and (3) do not apply to persons who offer personal property timeshare plans.

(9) A person who meets the definition of a commercial telephone seller or salesperson as defined in s. 501.603 must be licensed under part IV of chapter 501 before doing business in this state under this chapter.

History.—s. 1, ch. 81-172; s. 19, ch. 83-264; s. 7, ch. 84-256; s. 56, ch. 85-62; s. 6, ch. 87-343; s. 10, ch. 93-58; s. 14, ch. 95-274; s. 903, ch. 97-102; s. 28, ch. 2000-302; s. 58, ch. 2003-164; s. 19, ch. 2004-279; s. 17, ch. 2006-210; s. 9, ch. 2009-133; s. 12, ch. 2010-134; s. 3, ch. 2012-76; s. 47, ch. 2013-251.

721.205 Resale service providers; disclosure obligations.—

(1)(a) Before engaging in resale advertising services, a resale service provider must provide to the consumer timeshare reseller:

1. A description of any fees or costs related to such services that the consumer timeshare reseller, or any other person, is required pay to the resale service provider or to any third party.

2. A description of when such fees or costs are due.

(b) A resale service provider may not engage in those activities described in s. 475.01(1)(a) without being the holder of a valid and current active license in accordance with chapter 475.

(2) In the course of offering resale advertising services, a resale advertiser may not:

(a) State or imply that the resale advertiser will provide or assist in providing any type of direct sales or resale brokerage services other than the advertising of the consumer resale timeshare interest for sale or rent by the consumer timeshare reseller.

(b) State or imply to a consumer timeshare reseller, directly or indirectly, that the resale advertiser has identified a person interested in buying or renting the timeshare resale interest without providing the name, address, and telephone number of such represented interested resale purchaser.

(c) State or imply to a consumer timeshare reseller, directly or indirectly, that sales or rentals have been achieved or generated as a result of its advertising services unless the resale advertiser, at the time of making such representation, possesses and is able to provide documentation to substantiate the statement or implication made to the consumer timeshare reseller. In addition, to the extent that a resale advertiser states or implies to a consumer

timeshare reseller that the resale advertiser has sold or rented any specific number of timeshare interests, the resale advertiser must also provide the consumer timeshare reseller the ratio or percentage of all the timeshare interests that have resulted in a sale versus the number of timeshare interests advertised for sale by the resale advertiser for each of the previous 2 calendar years if the statement or implication is about a sale or sales, or the ratio or percentage of all the timeshare interests that have actually resulted in a rental versus the number of timeshare interests advertised for rental by the resale advertiser for each of the previous 2 calendar years if the statement or implication is about a rental or rentals.

(d) State or imply to a consumer timeshare reseller that the timeshare interest has a specific resale value.

(e) Make or submit any charge to a consumer timeshare reseller's credit card account; make or cause to be made any electronic transfer of consumer timeshare reseller funds; or collect any payment from a consumer timeshare reseller that exceeds an aggregate total amount of \$75 or more in any 12-month period until after the resale advertiser has received a written contract complying in all respects with paragraph (f) that has been signed by the consumer timeshare reseller.

(f) Engage in any resale advertising services for compensation or valuable consideration without first obtaining a written contract to provide such services signed by the consumer timeshare reseller. Notwithstanding any other law, the contract must be printed in at least 12-point type and must contain the following information:

1. The name, address, telephone number, and web address, if any, of the resale advertiser and a mailing address and e-mail address to which a contract cancellation notice may be delivered at the consumer timeshare reseller's election.

2. A complete description of all resale advertising services to be provided, including, but not limited to, details regarding the publications, Internet sites, and other media in or on which the consumer resale timeshare interest will be advertised; the dates or time intervals for such advertising or the minimum number of times such advertising will be run in each specific medium; the itemized cost to the consumer timeshare reseller of each resale advertising service to be provided; and a statement of the total cost to the consumer timeshare reseller of all resale advertising services to be provided.

3. A statement printed in at least 12-point boldfaced type immediately preceding the space in the contract provided for the consumer timeshare reseller's signature in substantially the following form:

TIMESHARE
RIGHT OF CANCELLATION

OWNER'S

(Name of resale advertiser) will provide resale advertising services pursuant to this contract. If (name of resale advertiser) represents that (name of resale advertiser) has identified a person who is interested in purchasing or renting your timeshare interest, then (name of resale advertiser) must provide you with the name, address, and telephone number of such represented interested resale purchaser.

You have an unwaivable right to cancel this contract for any reason within 10 days after the date you sign this contract. If you decide to cancel this contract, you must notify (name of resale advertiser) in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to (resale advertiser's physical address) or to (resale advertiser's e-mail address). Your refund will be made within 20 days after receipt of notice of cancellation or within 5 days after receipt of funds from your cleared check, whichever is later.

You are not obligated to pay (name of resale advertiser) any money unless you sign this contract and return it to (name of resale advertiser).

IMPORTANT: Before signing this contract, you should carefully review your original timeshare purchase contract and other project documents to determine whether the developer has reserved a right of first refusal or other option to purchase your timeshare interest or to determine whether there are any restrictions or special conditions applicable to the resale or rental of your timeshare interest.

4. A statement that any resale contract entered into by or on behalf of the consumer timeshare reseller must comply in all respects with s. 721.065, including the provision of a 10-day cancellation period for the prospective consumer resale purchaser.

(g) Make or submit any charge to a consumer timeshare reseller's credit card account; make or cause to be made any electronic transfer of consumer timeshare reseller funds; or collect any payment from a consumer timeshare reseller in an aggregate amount totaling less than \$75 in any 12-month period unless the consumer timeshare reseller has been provided a copy of the terms and conditions of the contract provided for in paragraph (f) and the consumer timeshare reseller has agreed to such terms and conditions by mail or electronic transmission.

(h) Fail to honor any cancellation notice sent by the consumer timeshare reseller within 10 days after the date the consumer timeshare reseller signs the contract for resale advertising services in compliance with subparagraph (f)3.

(i) Fail to provide a full refund of all money paid by a consumer timeshare reseller within 20 days after receipt of notice of cancellation or within 5 days after receipt of funds from a cleared check, whichever is later.

(3) If a resale service provider uses a contract for resale advertising services that fails to comply with subsection (2), such contract shall be voidable at the option of the consumer timeshare reseller for a period of 1 year after the date it is executed by the consumer timeshare reseller.

(4) Notwithstanding obligations placed upon any other persons by this section, it is the duty of a resale service provider to supervise, manage, and control all aspects of the offering of resale advertising services by any agent or employee of the resale service provider. Any violation of this section that occurs during such offering shall be deemed a violation by the resale service provider as well as by the person actually committing the violation.

(5) Providing resale advertising services with respect to a consumer resale timeshare interest in a timeshare property located or offered within this state, or in a multisite timeshare plan registered or required to be registered to be offered in this state, including acting as an agent or third-party service provider for a resale service provider, constitutes operating, conducting, engaging in, or carrying on a business or business venture in this state for the purposes of s. 48.193(1).

(6) The use of any unfair or deceptive act or practice by any person in connection with resale advertising services is a violation of this section.

(7) Notwithstanding any other penalties provided for in this section, any violation of this section is subject to a civil penalty of not more than \$15,000 per violation. In addition, a person who violates any provision of this section commits an unfair and deceptive trade practice as prohibited by s. 501.204 and is subject to the penalties and remedies provided in part II of chapter 501.

History.—s. 4, ch. 2012-76.

721.21 Purchasers' remedies.—An action for damages or for injunctive or declaratory relief for a violation of this chapter may be brought by any purchaser or owners' association against the developer, a seller, an escrow agent, or the managing entity. The prevailing party in any such action, or in any action in which the purchaser claims a right of voidability based upon either a closing before the expiration of the cancellation period or an amendment which materially alters or modifies the offering in a manner adverse to the purchaser, may be entitled to reasonable attorney's fees. Relief under this section does not exclude other remedies provided by law.

History.—s. 1, ch. 81-172; s. 20, ch. 83-264; s. 29, ch. 2000-302.

721.22 Partition.—

(1) No action for partition of any timeshare unit shall lie, unless otherwise provided for in the contract between the seller and the purchaser.

(2) If a timeshare estate exists as an estate for years with a future interest, the estate for years shall not be deemed to have merged with the future interest, but neither the estate for

years nor the corresponding future interest shall be conveyed or encumbered separately from the other.

History.—s. 1, ch. 81-172; s. 21, ch. 83-264.

721.23 Securities.—Timeshare plans are not securities under the provisions of chapter 517 or its successor.

History.—s. 1, ch. 81-172; s. 57, ch. 85-62.

721.24 Firesafety.—

(1) Any:

(a) Facility or accommodation of a timeshare plan, as defined in this chapter, chapter 718, or chapter 719, which is of three stories or more and for which the construction contract has been let after September 30, 1983, with interior corridors which do not have direct access from the timeshare unit to exterior means of egress, or

(b) Building over 75 feet in height that has direct access from the timeshare unit to exterior means of egress and for which the construction contract has been let after September 30, 1983,

shall be equipped with an automatic sprinkler system installed in compliance with the provisions prescribed in the National Fire Protection Association publication NFPA No. 13 (1985), “Standards for the Installation of Sprinkler Systems.” The sprinkler installation may be omitted in closets which are not over 24 square feet in area and in bathrooms which are not over 55 square feet in area, which closets and bathrooms are located in timeshare units. Each timeshare unit shall be equipped with an approved listed single-station smoke detector meeting the minimum requirements of NFPA-74 (1984), “Standards for the Installation, Maintenance and Use of Household Fire Warning Equipment,” powered from the building electrical service, notwithstanding the number of stories in the structure, if the contract for construction is let after September 30, 1983. Single-station smoke detection is not required when a timeshare unit’s smoke detectors are connected to a central alarm system which also alarms locally.

(2) Any timeshare unit of a timeshare plan, as defined in this chapter, chapter 718, or chapter 719 which is of three stories or more and for which the construction contract was let before October 1, 1983, shall be equipped with:

(a) A system which complies with subsection (1); or

(b) An approved sprinkler system for all interior corridors, public areas, storage rooms, closets, kitchen areas, and laundry rooms, less individual timeshare units, if the following conditions are met:

1. There is a minimum 1-hour separation between each timeshare unit and between each timeshare unit and a corridor.

2. The building is constructed of noncombustible materials.

3. The egress conditions meet the requirements of s. 5-3 of the Life Safety Code, NFPA 101 (1985).

4. The building has a complete automatic fire detection system which meets the requirements of NFPA-72A (1987) and NFPA-72E (1984), including smoke detectors in each timeshare unit individually annunciating to a panel at a supervised location.

(3) The Division of State Fire Marshal of the Department of Financial Services may prescribe uniform standards for firesafety equipment for timeshare units of timeshare plans for which the construction contracts were let before October 1, 1983. An entire building shall be equipped as outlined, except that the approved sprinkler system may be delayed by the Division of State Fire Marshal until October 1, 1991, on a schedule for complete compliance in accordance with rules adopted by the Division of State Fire Marshal, which schedule shall include a provision for a 1-year extension which may be granted not more than three times for any individual requesting an extension. The entire system must be installed and operational by October 1, 1994. The Division of State Fire Marshal shall not grant an extension for the approved sprinkler system unless a written request for the extension and a construction work schedule is submitted. The Division of State Fire Marshal may grant an extension upon demonstration that compliance with this section by the date required would impose an extreme hardship and a disproportionate financial impact. Any establishment that has been granted an extension by the Division of State Fire Marshal shall post, in a conspicuous place on the premises, a public notice stating that the establishment has not yet installed the approved sprinkler system required by law.

(4) The provisions for installation of single-station smoke detectors required in subsection (1) and subparagraph (2)(b)4. shall be waived by the Division of State Fire Marshal for any establishment for which the construction contract was let before October 1, 1983, and which is under three stories in height, if each individual timeshare unit is equipped with a smoke detector approved by the Division of State Fire Marshal.

(5) The Division of State Fire Marshal shall adopt, in accordance with the provisions of chapter 120, any rules necessary for the implementation and enforcement of this section. The Division of State Fire Marshal shall enforce this section in accordance with the provisions of chapter 633.

(6) Accommodations and facilities of personal property timeshare plans shall be exempt from the requirements of this section.

History.—s. 55, ch. 90-339; s. 30, ch. 2000-302; s. 1893, ch. 2003-261; s. 20, ch. 2004-279.

721.25 Zoning and building.—All laws, ordinances, and regulations concerning buildings or zoning shall be construed and applied with reference to the nature and use of the real estate timeshare plan property, without regard to the form of ownership.

History.—s. 1, ch. 81-172; s. 159, ch. 83-216; s. 58, ch. 85-62.

721.26 Regulation by division.—The division has the power to enforce and ensure compliance with this chapter, except for parts III and IV, using the powers provided in this chapter, as well as the powers prescribed in chapters 718 and 719. In performing its duties, the division shall have the following powers and duties:

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

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

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

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

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

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

2. Any person who materially participates in any offer or disposition of any interest in, or the management or operation of, a timeshare plan in violation of this chapter or relevant rules involving fraud, deception, false pretenses, misrepresentation, or false advertising or the

disbursement, concealment, or diversion of any funds or assets, which conduct adversely affects the interests of a purchaser, and which person directly or indirectly controls a regulated party or is a general partner, officer, director, agent, or employee of such regulated party, shall be jointly and severally liable under this subsection with such regulated party, unless such person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts giving rise to the violation of this chapter. A right of contribution shall exist among jointly and severally liable persons pursuant to this paragraph.

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

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

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

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

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

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

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

If, under the circumstances, it appears that the events giving rise to the petition for receivership cannot be reasonably and timely corrected in a cost-effective manner consistent with the timeshare instrument, the receiver may petition the circuit court to implement such amendments or revisions to the timeshare instrument as may be necessary to enable the managing entity to resume effective operation of the timeshare plan, or to enter an order terminating the timeshare plan, or to enter such further orders regarding the disposition of the timeshare property as the court deems appropriate, including the disposition and sale of the timeshare property held by the owners' association or the purchasers. In the event of a receiver's sale, all rights, title, and

interest held by the owners' association or any purchaser shall be extinguished and title shall vest in the buyer. This provision applies to timeshare estates, personal property timeshare interests, and timeshare licenses. All reasonable costs and fees of the receiver relating to the receivership shall become common expenses of the timeshare plan upon order of the court.

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

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

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

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

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

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

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

(6) The division has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of this chapter.

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

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

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

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

History.—s. 1, ch. 81-172; s. 22, ch. 83-264; s. 23, ch. 87-102; s. 15, ch. 95-274; s. 11, ch. 98-36; s. 223, ch. 98-200; s. 31, ch. 2000-302; s. 1894, ch. 2003-261; s. 21, ch. 2004-279; s. 68, ch. 2008-240.

721.265 Service of process.—

(1) In addition to the methods of service provided for in the Florida Rules of Civil Procedure and the Florida Statutes, service of process may be made by delivering a copy of the process to the director of the division, which shall be binding upon the defendant or respondent, if:

(a) The plaintiff, which may be the division, immediately sends a copy of the process and the pleading by certified mail to the defendant or respondent at her or his last known address.

(b) The plaintiff files an affidavit of compliance with this section on or before the return date of the process or within the time set by the court.

(2) If any person, including any nonresident of this state, allegedly engages in conduct prohibited by this chapter, or by any rule or order of the division, and has not filed a consent to service of process, and personal jurisdiction over her or him cannot otherwise be obtained in this state, the director shall be authorized to receive service of process in any noncriminal proceeding against that person or her or his successor which grows out of the conduct and which is brought under this chapter or any rule or order of the division. The process shall have the same force and validity as if personally served. Notice shall be given as provided in subsection (1).

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

History.—s. 16, ch. 95-274; s. 904, ch. 97-102; s. 12, ch. 98-36.

721.27 Annual fee for each timeshare unit in plan.—On January 1 of each year, each managing entity of a timeshare plan located in this state shall collect as a common expense and pay to the division an annual fee of \$2 for each 7 days of annual use availability that exist within the timeshare plan at that time, subject to any limitations on the amount of such annual fee pursuant to s. 721.58. If any portion of the annual fee is not paid by March 1, the managing entity may be assessed a penalty pursuant to s. 721.26.

History.—s. 1, ch. 81-172; s. 23, ch. 83-264; s. 10, ch. 91-236; s. 11, ch. 93-58; s. 17, ch. 95-274; s. 32, ch. 2000-302.

721.28 Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.—All funds collected by the division and any amounts paid as fees or penalties under this chapter shall

be deposited in the State Treasury to the credit of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund created by s. 718.509.

History.—s. 1, ch. 81-172; s. 22, ch. 83-339; s. 24, ch. 87-102; s. 69, ch. 2008-240.

721.29 Recording.—If any timeshare plan accommodations or facilities are located in any jurisdiction that does not have recording laws or will not record any document or instrument required to be recorded pursuant to this chapter, the division shall have the discretion to accept an alternative method of protecting purchasers' rights that will be effective under the laws of that other jurisdiction.

History.—s. 33, ch. 2000-302.

721.301 Florida Timesharing, Vacation Club, and Hospitality Program.—

(1)(a) There is established the Florida Timesharing, Vacation Club, and Hospitality Program. The primary purpose of this program is to provide the opportunity for a public-private partnership between the state and the timeshare, vacation club, hospitality, and tourism industries affecting this state.

(b) In conducting the program, the director, or the director's designee, shall:

1. Solicit research and educational projects and proposals from the timeshare, vacation club, hospitality, and tourism industries;
2. Consult with the Florida chapter of the American Resort Development Association (ARDA-Florida), the Chancellor of the State University System, or the chancellor's designee; and
3. Assist in the preparation of appropriate reports produced by the program partnership.

(c) The director may designate funds from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund, not to exceed \$50,000 annually, to support the projects and proposals undertaken pursuant to paragraph (b). All state trust funds to be expended pursuant to this section must be matched equally with private moneys and shall comprise no more than half of the total moneys expended annually.

(2) The division is authorized to adopt, amend, and repeal rules prescribing criteria for processing and approval of project applications.

History.—s. 28, ch. 95-274; s. 13, ch. 97-93; s. 905, ch. 97-102; s. 72, ch. 99-5; s. 70, ch. 2008-240.

721.32 Effect of ch. 2000-302.—This act shall take effect June 15, 2000; however, all documents filed and approved in accordance with this chapter prior to June 15, 2000, or any amendments to such documents made subsequent to June 15, 2000, that are otherwise in compliance with this chapter prior to June 15, 2000, shall be deemed to be in compliance with the filing requirements of this chapter.

History.—s. 64, ch. 2000-302.

PART II

VACATION CLUBS

721.50 Short title.

721.51 Legislative purpose; scope.

721.52 Definitions.

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721.55 Multisite timeshare plan public offering statement.

721.551 Delivery of multisite timeshare plan purchaser public offering statement.

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

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

721.58 Filing fee; annual fee.

721.50 Short title.—This part may be cited as the “McAllister Act” in recognition and appreciation for the years of extraordinary and insightful contributions by Mr. Bryan C. McAllister, Examinations Supervisor of the former Division of Florida Land Sales, Condominiums, and Mobile Homes.

History.—s. 12, ch. 93-58; s. 33, ch. 95-274; s. 71, ch. 2008-240.

721.51 Legislative purpose; scope.—

(1) The purpose of this part is to advance the purposes of this chapter as set forth in s. 721.02 with respect to multisite vacation and timeshare plans, also known as vacation clubs.

(2) All multisite timeshare plans shall be governed by both part I and this part except where otherwise provided in this part. In the event of a conflict between the provisions of part I and this part, the provisions of this part shall prevail.

History.—s. 12, ch. 93-58; s. 18, ch. 95-274; s. 34, ch. 2000-302.

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

(1) “Applicable law” means the law of the jurisdiction where the accommodations and facilities referred to are located.

(2) “Component site” means a specific geographic site where a portion of the accommodations and facilities of the multisite timeshare plan are located. If permitted under applicable law, separate phases operated as a single development located at a specific geographic site under common management shall be deemed a single component site for purposes of this part.

(3) “Inventory” means the accommodations and facilities located at a particular component site or sites owned, leased, licensed, or otherwise acquired for use by a developer and offered as part of the multisite timeshare plan.

(4) “Multisite timeshare plan” means any method, arrangement, or procedure with respect to which a purchaser obtains, by any means, a recurring right to use and occupy accommodations or facilities of more than one component site, only through use of a reservation system, whether or not the purchaser is able to elect to cease participating in the plan. However, the term “multisite timeshare plan” shall not include any method, arrangement, or procedure wherein:

(a) The contractually specified maximum total financial obligation on the purchaser’s part is \$3,000 or less, during the entire term of the plan; or

(b) The term is for a period of 3 years or less, regardless of the purchaser’s contractually specified maximum total financial obligation, if any. For purposes of determining the term of such use and occupancy rights, the period of any optional renewals which a purchaser, in his or her sole discretion, may elect to exercise, whether or not for additional consideration, shall not be included. For purposes of determining the term of such use and occupancy rights, the period of any automatic renewals shall be included unless a purchaser has the right to terminate the membership at any time and receive a pro rata refund or the purchaser receives a notice no less than 30 days and no more than 60 days prior to the date of renewal informing the purchaser of the right to terminate at any time prior to the date of automatic renewal.

Multisite timeshare plan does not mean an exchange program as defined in s. 721.05. Timeshare estates may only be offered in a multisite timeshare plan pursuant to s. 721.57.

(5) “Nonspecific multisite timeshare plan” means a multisite timeshare plan 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.

(6) “Reservation system” means the method, arrangement, or procedure by which a purchaser, in order to reserve the use and occupancy of any accommodation or facility of the multisite timeshare plan for one or more use periods, is required to compete with other purchasers in the same multisite timeshare plan regardless of whether such reservation system is operated and maintained by the multisite timeshare plan managing entity, an exchange company, or any other person. In the event that a purchaser is required to use an exchange program as the purchaser’s principal means of obtaining the right to use and occupy a multisite timeshare plan’s accommodations and facilities, such arrangement shall be deemed a reservation system. When an exchange company utilizes a mechanism for the exchange of use of timeshare periods among members of an exchange program, such utilization is not a reservation system of a multisite timeshare plan.

(7) “Specific multisite timeshare plan” means a multisite timeshare plan 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.

(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).

History.—s. 12, ch. 93-58; s. 19, ch. 95-274; s. 906, ch. 97-102; s. 35, ch. 2000-302; s. 22, ch. 2004-279; s. 10, ch. 2007-75; s. 6, ch. 2015-144.

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:

(a) The interestholder has executed and recorded a nondisturbance and notice to creditors instrument pursuant to s. 721.08.

(b) The interestholder has executed a subordination and notice to creditors instrument and recorded it among the appropriate public records in the jurisdiction in which the subject accommodation or facility is located. The subordination instrument shall expressly subordinate the interest or lien of the interestholder in the subject accommodation or facility to the rights of purchasers of the multisite timeshare plan created with respect to such accommodation or facility by the timeshare instrument, and shall provide that:

1. If the party seeking enforcement is not in default of its obligations, the instrument may be enforced by both the seller and any purchaser of the multisite timeshare plan;

2. The instrument shall be effective as between the timeshare purchaser and interestholder despite any rejection or cancellation of the contract between the timeshare purchaser and developer as a result of bankruptcy proceedings of the developer; and

3. So long as a purchaser remains in good standing with respect to her or his obligations under the timeshare instrument, including making all payments to the managing entity required by the timeshare instrument with respect to the annual common expenses of the multisite timeshare plan, then the interestholder will honor all rights of such purchaser relating to the subject accommodation or facility as reflected in the timeshare instrument.

The subordination instrument shall also contain language sufficient to provide subsequent creditors of the developer and the interestholder with notice of the existence of the timeshare plan and of the rights of purchasers and shall serve to protect the interest of the timeshare purchasers from any claims of such subsequent creditors.

(c) The interestholder has transferred the subject accommodation or facility or all use rights therein to a nonprofit organization or owners' association to be held for the use and benefit of the purchasers, which entity shall act as a fiduciary to the purchasers. Prior to such transfer, any lien or other encumbrance against such accommodation or facility shall be made subject to a subordination and notice to creditors instrument pursuant to either paragraph (a) or paragraph (b). No transfer pursuant to this paragraph shall become effective until the nonprofit organization or owners' association accepts such transfer and the responsibilities set forth in subsection (2).

(d) The subject accommodation or facility is free and clear of the claims of any interestholder, and the purchasers' rights in and to the subject accommodation or facility as described in and limited by the timeshare instrument are protected by a recorded instrument against the claims of any subsequent creditors of any owner of the underlying fee.

(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.

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.

(f) With respect to any personal property accommodations or facilities, the developer and any other interestholder have complied fully with the applicable provisions of s. 721.08.

(2) The nonprofit organization or owners' association described in paragraph (1)(c) shall comply with the following provisions:

(a) The nonprofit organization or owners' association shall not convey, hypothecate, mortgage, assign, or otherwise transfer or encumber in any fashion any 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 by the entity is deleted from a multisite timeshare plan pursuant to s. 721.552(3).

(b) The nonprofit organization or owners' association shall notify the division and the managing entity of the multisite timeshare plan of any proposed transfer of the accommodations or facilities or use rights therein which is permitted by paragraph (a) at least 30 days prior to said transfer.

(c) All expenses reasonably incurred by the nonprofit organization or owners' association in the performance of its duties, pursuant to paragraph (a), shall be common expenses of the timeshare plan.

(3) In lieu of the requirements of subsection (1) or subsection (2), the director of the division may accept other assurances from the developer with respect to the subject accommodation or facility, including, but not limited to, a surety or fidelity bond or an irrevocable letter of credit, based upon the value of the subject accommodation or facility as established by independent appraisal or other evidence acceptable to the director.

History.—s. 12, ch. 93-58; s. 20, ch. 95-274; s. 907, ch. 97-102; s. 36, ch. 2000-302; s. 23, ch. 2004-279; s. 26, ch. 2006-217; s. 7, ch. 2015-144.

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:

- (1) A cover page containing:
 - (a) The name of the multisite timeshare plan.
 - (b) The following statement in conspicuous type:

This public offering statement contains important matters to be considered in acquiring an interest in a multisite timeshare plan (or multisite vacation ownership plan or multisite vacation plan or vacation club). The statements contained herein are only summary in nature. A prospective purchaser should refer to all references, accompanying exhibits, contract documents, and sales materials. The prospective purchaser should not rely upon oral representations as being correct and should refer to this document and accompanying exhibits for correct representations.

(2) A summary containing all statements required to be in conspicuous type in the public offering statement and in all exhibits thereto.

(3) A separate index for the contents and exhibits of the public offering statement.

(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, form of ownership, and 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.

(b) A description of the structure and ownership of the reservation system together with a disclosure of the entity responsible for the operation of the reservation system. The description shall include the financial terms of any lease of the reservation system, if applicable. The developer shall not be required to disclose the financial terms of any such lease if such lease is prepaid in full for the term of the multisite timeshare plan or to any extent that neither purchasers nor the managing entity will be required to make payments for the continued use of the system following default by the developer or termination of the managing entity.

(c)1. A description of the manner in which the reservation system operates. The description shall include a disclosure in compliance with the demand balancing standard set forth in s. 721.56(6) and shall describe the developer's efforts to comply with same in creating the reservation system. The description shall also include a summary of the rules and regulations governing access to and use of the reservation system.

2. In lieu of describing the rules and regulations of the reservation system in the public offering statement text, the developer may attach the rules and regulations as a separate public offering statement exhibit, together with a cross-reference in the public offering statement text to such exhibit.

(d) The existence of and an explanation regarding any priority reservation features that affect a purchaser's ability to make reservations for the use of a given accommodation or facility on a first come, first served basis, including, if applicable, the following statement in conspicuous type:

Component sites contained in the multisite timeshare plan (or multisite vacation ownership plan or multisite vacation plan or vacation club) are subject to priority reservation features which may affect your ability to obtain a reservation.

(e) A summary of the material rules and regulations, if any, other than the reservation system rules and regulations, affecting the purchaser's use of each accommodation and facility at each component site.

(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 to use night requirement ratio.

(g) A description of the developer and the managing entity of the multisite timeshare plan, including:

1. The identity of the developer; the developer's business address; the number of years of experience the developer has in the timeshare, hotel, motel, travel, resort, or leisure industries; and a description of any pending lawsuit or judgment against the developer which is material to the plan. If there are no such pending lawsuits or judgments, there shall be a statement to that effect.

2. The identity of the managing entity of the multisite timeshare plan; the managing entity's business address; the number of years of experience the managing entity has in the timeshare, hotel, motel, travel, resort, or leisure industries; and a description of any lawsuit or judgment against the managing entity which is material to the plan. If there are no pending lawsuits or judgments, there shall be a statement to that effect. The description of the managing entity shall also include a description of the relationship among the managing entity of the multisite timeshare plan and the various component site managing entities.

(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 sub-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.

(i) If there are any restrictions upon the sale, transfer, conveyance, or leasing of an interest in a multisite timeshare plan, a description of the restrictions together with a statement in conspicuous type in substantially the following form:

The sale, lease, or transfer of interests in this multisite timeshare plan is restricted or controlled.

(j) The following statement in conspicuous type in substantially the following form:

The purchase of an interest in a multisite timeshare plan (or multisite vacation ownership plan or multisite vacation plan or vacation club) should be based upon its value as a vacation experience or for spending leisure time, and not considered for purposes of acquiring an appreciating investment or with an expectation that the interest may be resold.

(k) If the multisite timeshare plan provides purchasers with the opportunity to participate in an exchange program, a description of the name and address of the exchange company and the method by which a purchaser accesses the exchange program. In lieu of this requirement, the public offering statement text may contain a cross-reference to other provisions in the public offering statement or in an exhibit containing this information.

(l) A description of each component site, which description may be disclosed in a written, graphic, tabular, or other form approved by the division. The description of each component site shall include the following information:

1. The name and address of each component site.
2. The number of accommodations, timeshare interests, and timeshare periods, expressed in periods of 7-day use availability, committed to the multisite timeshare plan and available for use by purchasers.
3. Each type of accommodation in terms of the number of bedrooms, bathrooms, sleeping capacity, and whether or not the accommodation contains a full kitchen. For purposes of this description, a full kitchen shall mean a kitchen having a minimum of a dishwasher, range, sink, oven, and refrigerator.
4. A description of facilities available for use by the purchaser at each component site, including the following:
 - a. The intended use of the facility, if not apparent from the description.
 - b. Any user fees associated with a purchaser's use of the facility.
5. A cross-reference to the location in the public offering statement of the description of any priority reservation features which may affect a purchaser's ability to obtain a reservation in the component site.

(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).

(b) If a developer has, in good faith, attempted to comply with this chapter, and if, in fact, the developer has substantially complied with 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.

(6) Any other information that the developer, with the approval of the division, desires to include in the public offering statement text.

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

- (a) The timeshare instrument.
- (b) The reservation system rules and regulations.
- (c) The multisite timeshare plan budget pursuant to subparagraph (4)(h)5.
- (d) Any document containing the material rules and regulations described in paragraph (4)(e).
- (e) Any contract, agreement, or other document through which component sites are affiliated with the multisite timeshare plan.
- (f) Any escrow agreement required pursuant to s. 721.08 or s. 721.56(3).
- (g) The form agreement for sale or lease of an interest in the multisite timeshare plan.
- (h) The form receipt for multisite timeshare plan documents required to be given to the purchaser pursuant to s. 721.551(2)(b).
- (i) The description of documents list required to be given to the purchaser by s. 721.551(2)(b).
- (j) The component site managing entity affidavit or statement required by s. 721.56(1).
- (k) Any subordination instrument required by s. 721.53.
- (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 an interest in a specific multisite timeshare plan 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.

(8)(a) A timeshare plan containing only one component site must be filed with the division as a multisite timeshare plan if the timeshare instrument reserves the right for the developer to add future component sites. However, if the developer fails to add at least one additional component site to a timeshare plan described in this paragraph within 3 years after the date the plan is initially filed with the division, the multisite filing for such plan shall thereupon terminate, and the developer may not thereafter offer any further interests in such plan unless and until he or she refiles such plan with the division pursuant to this chapter.

(b) The public offering statement for any timeshare plan described in paragraph (a) must include the following disclosure in conspicuous type:

This timeshare plan has been filed as a multisite timeshare plan (or multisite vacation ownership plan or multisite vacation plan or vacation club); however, this plan currently

contains only one component site. The developer is not required to add any additional component sites to the plan. Do not purchase an interest in this plan in reliance upon the addition of any other component sites.

History.—s. 12, ch. 93-58; s. 22, ch. 95-274; s. 14, ch. 97-93; s. 908, ch. 97-102; s. 37, ch. 2000-302; s. 25, ch. 2004-279; s. 11, ch. 2007-75; s. 9, ch. 2015-144.

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

(1) The division is authorized to prescribe by rule the form of the approved multisite timeshare plan public offering statement that must be furnished by a seller to each purchaser pursuant to this section. The form of the public offering statement that is furnished to purchasers must provide fair, meaningful, and effective disclosure of all aspects of the multisite timeshare plan.

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

(a) A copy of the approved multisite timeshare plan public offering statement text containing the information required by s. 721.55(1)-(6).

(b) A receipt for multisite timeshare plan documents and a list describing any exhibit to the filed public offering statement which is not delivered to the purchaser. The division is authorized to prescribe by rule the form of the receipt for multisite timeshare plan documents and the description of exhibits list that must be furnished to the purchaser pursuant to this section.

(c) If the purchaser will receive an interest in a specific multisite timeshare plan 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 component site.

(d) Any other exhibit that the developer elects to include as part of the purchaser public offering statement, provided that the developer first files the exhibit with the division.

(e) An executed copy of any document which the purchaser signs.

(f) The developer shall be required to provide the managing entity of the multisite timeshare plan with a copy of the approved filed public offering statement and any approved amendments thereto to be maintained by the managing entity as part of the books and records of the timeshare plan pursuant to s. 721.13(3)(d).

History.—s. 23, ch. 95-274; s. 38, ch. 2000-302; s. 26, ch. 2004-279; s. 10, ch. 2015-144.

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.—

(a) The timeshare instrument must provide for:

1. 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.

2. 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.

3. The extent, if any, to which purchasers of the multisite timeshare plan will have the right to consent to any proposed 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 to use night requirement ratio is maintained at all times.

(2) SUBSTITUTIONS.—

(a) Substitutions are available only for nonspecific multisite timeshare plans. Specific multisite timeshare plans 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 the experience available at 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 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.

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 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. The person authorized to make substitutions may delete accommodations for substitution only after such accommodations have no pending purchaser use reservations.

(f) The person authorized to make substitutions may make unlimited substitutions in a given year without compliance with paragraphs (d) and (e) if a proposed substitution is 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. 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) 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.—

(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 to use night requirement 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 to use night

requirement 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 to use night requirement 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 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.

(4) **VIOLATIONS; PURCHASER REMEDIES.**—All purchaser remedies pursuant to s. 721.21 shall be available for any violation of the provisions of this section.

History.—s. 24, ch. 95-274; s. 909, ch. 97-102; s. 39, ch. 2000-302; s. 27, ch. 2004-279; s. 12, ch. 2007-75; s. 11, ch. 2015-144.

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

(1) The developer as a prerequisite for approval of his or her public offering statement filing or his or her phase filing must obtain an affidavit, or other evidence satisfactory to the director of the division, from the component site managing entity containing all of the following:

(a) A statement that all assessments on inventory are fully paid as required by applicable law.

(b) A statement as to the amount of delinquent assessments existing at the component site, if any.

(c) If required by applicable law, a statement that the latest annual audit of the component site shows that, if required, reserves are adequately maintained with respect to each component site.

(d) A statement that the component site managing entity specifically acknowledges the existence of the multisite timeshare plan relating to the use of the accommodations and facilities of the component site by purchasers of the plan.

(2) In the event that the developer files an affidavit or other evidence with the division pursuant to subsection (1) and subsequently determines that the status of the component site has materially changed such that any portion of the affidavit or other evidence is consequently materially changed, the developer shall immediately notify the division of the change.

(3)(a) The managing entity of the multisite timeshare plan shall establish an escrow account with an escrow agent qualified pursuant to s. 721.05 and deposit into such account all payments received by the managing entity from time to time from the developer and purchasers of the plan that relate to common expenses and real estate taxes due with respect to any component site. The managing entity of the multisite timeshare plan shall not be required to escrow payments received from the developer or purchasers that relate to other plan expenses, including those pertaining to the compensation of the managing entity of the multisite timeshare plan and pertaining to the operation of the reservation system.

(b) Funds may only be disbursed from the escrow account described in paragraph (a) by the escrow agent upon receipt of an affidavit from the managing entity of the multisite timeshare plan specifying the purpose for which the disbursement is requested and making reference to the budgetary source of authority for such disbursement. The escrow agent shall only disburse moneys from escrow relating to a particular component site directly to the managing entity of that component site. Real estate tax payments shall only be disbursed from the escrow account to the component site managing entity or to the appropriate tax collection authority pursuant to applicable law.

(c) The escrow agent shall be entitled to rely upon the affidavit of the managing entity and shall have no obligation to independently ascertain the propriety of the requested disbursement so long as the escrow agent has no actual knowledge that the affidavit is false in any respect.

(d) An escrow agent shall maintain the account called for in this section only in such a manner as to be under the direct supervision and control of the escrow agent. The escrow agent shall have a fiduciary duty to each purchaser to maintain the escrow account in accordance with good accounting principles and to release funds from escrow only in accordance with this subsection. The escrow agent shall retain all affidavits received pursuant to this subsection for a period of 5 years. Should the escrow agent receive conflicting demands for the escrowed funds, the escrow agent shall immediately notify the division of the dispute and either promptly submit the matter to arbitration or, by interpleader or otherwise, seek an adjudication of the matter by court.

(e) Any managing entity or escrow agent who intentionally fails to comply with the provisions of this subsection concerning the establishment of an escrow account, deposit of funds into

escrow, and withdrawal therefrom commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, or the successor thereof. The failure to establish an escrow account or to place funds therein as required in this subsection is prima facie evidence of an intentional and purposeful violation of this subsection.

(f) In lieu of the escrow required by this subsection, the director of the division shall have the discretion to accept other assurances in accordance with s. 721.08, provided that such other assurances are maintained at a minimum amount equal to the total common expense assessment payments for the then-current fiscal year.

(g) The provisions of this subsection shall not apply to any payments made directly to a component site managing entity by the developer or a purchaser of a multisite timeshare plan.

(4) The managing entity of a multisite timeshare plan shall comply fully with the requirements of s. 721.13, subject to the provisions of s. 721.13(11) for personal property timeshare plans; however, with respect to a given component site, the managing entity of the multisite timeshare plan shall not be responsible for compliance as the managing entity of that component site unless the managing entity of the multisite timeshare plan is also the managing entity of that component site. Unless the timeshare instrument provides otherwise, the operator of the reservation system is the managing entity of a multisite timeshare plan.

(5) 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.

(6) Prior to offering the multisite timeshare plan, the developer shall create the reservation system and shall establish rules and regulations for its operation. In establishing these rules and regulations, the developer shall take into account the location and anticipated relative use demand of each component site that he or she intends to offer as a part of the plan and shall use his or her best efforts, in good faith and based upon all reasonably available evidence under the circumstances, to further the best interests of the purchasers of the plan as a whole with respect to their opportunity to use and enjoy the accommodations and facilities of the plan. The rules and regulations shall also provide for periodic adjustment or amendment of the reservation system by the managing entity from time to time in order to respond to actual purchaser use patterns and changes in purchaser use demand for the accommodations and facilities existing at that time within the plan. The person authorized to make additions and substitutions during the term of the multisite timeshare plan shall also comply with the requirements of this subsection in ascertaining the desirability of the proposed addition, substitution, adjustment, or amendment

and the impact of same upon the demand for and availability of existing plan accommodations and facilities.

History.—s. 12, ch. 93-58; s. 26, ch. 95-274; s. 910, ch. 97-102; s. 41, ch. 2000-302; s. 28, ch. 2004-279; s. 12, ch. 2015-144.

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 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.

History.—s. 12, ch. 93-58; s. 911, ch. 97-102; s. 29, ch. 2004-279; s. 13, ch. 2015-144.

721.58 Filing fee; annual fee.—

(1) The developer of the multisite timeshare plan shall pay the filing fee required by s. 721.07(4)(a); however, the maximum amount of such filing fee shall be \$25,000 or the total filing fee due with respect to the timeshare units in the multisite timeshare plan that are located in this state pursuant to s. 721.07(4)(a), whichever is greater.

(2) The managing entity of the multisite timeshare plan shall pay the annual fee required by s. 721.27; provided, however, that the maximum amount of such annual fee shall be \$25,000 or the total annual fee due with respect to the timeshare units in the multisite timeshare plan that are located in this state calculated pursuant to s. 721.07(4)(a), whichever is greater.

History.—s. 12, ch. 93-58.

PART III

FORECLOSURE OF LIENS ON TIMESHARE INTERESTS

721.80 Short title.

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721.86 Miscellaneous provisions.

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

History.—s. 13, ch. 98-36.

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

(1) Recognize that timeshare interests are used for vacation experience rather than for homestead or investment purposes and that there are numerous timeshare interests in this state.

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

(3) Recognize the need to assist both owners’ associations and mortgagees by simplifying and expediting the process for the judicial and trustee foreclosure of assessment liens and mortgage liens against timeshare interests.

(4) Improve judicial economy and reduce court congestion and the cost to taxpayers by establishing streamlined procedures for the judicial and trustee foreclosure of assessment liens and mortgage liens against timeshare interests.

(5) Recognize that nearly all timeshare interest foreclosures are uncontested.

(6) Protect the ability of consumers who own timeshare interests located in this state to choose a judicial proceeding for the foreclosure of an assessment lien or a mortgage lien against their timeshare interest.

(7) Recognize that the use of the trustee foreclosure procedure established under ss. 721.855 and 721.856 shall have the same force and effect as the use of the judicial foreclosure procedure against a timeshare interest with respect to the provisions of this chapter or any other applicable law. However, obligors shall not be subject to a deficiency judgment even if the proceeds from the sale of the timeshare interest are insufficient to offset the amounts secured by the lien.

History.—s. 13, ch. 98-36; s. 42, ch. 2000-302; s. 5, ch. 2010-134.

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

(1) “Amounts secured by the lien” means all amounts secured by an assessment lien or mortgage lien, including, but not limited to, all past due amounts, accrued interest, late fees, taxes, advances for the payment of taxes, insurance and maintenance of the timeshare interest, and any fees or costs incurred by the lienholder or trustee, including any reasonable attorney’s fees, trustee’s fees, and costs incurred in connection with the default.

(2) “Assessment lien” means:

(a) A lien for delinquent assessments as provided in ss. 718.116, 719.108, and 721.16; or

(b) A lien for unpaid ad valorem assessments, tax assessments, and special assessments as provided in s. 192.037(8).

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

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

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

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

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

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

(9) “Notice address” means:

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

(b) As to a mortgage lien:

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

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

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

(d) As to an owner of a timeshare interest, mortgagor, or junior interestholder whose current address is not the address as determined by paragraph (a), paragraph (b), or paragraph (c), such address as is known to be the current address.

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

(11) “Permitted delivery service” means any nationally recognized common carrier delivery service, international airmail service that allows for return receipt service, or a service recognized by an international jurisdiction as the equivalent of certified, registered mail for that jurisdiction.

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

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

(14) “Trustee” means an attorney who is a member in good standing of The Florida Bar and who has been practicing law for at least 5 years or that attorney’s law firm, or a title insurer authorized to transact business in this state under s. 624.401 and who has been authorized to transact business for at least 5 years, appointed as trustee or as substitute trustee in accordance with s. 721.855 or s. 721.856. A receiver appointed under s. 721.26 may act as a trustee under s. 721.855. A trustee must be independent as defined in s. 721.05(20).

History.—s. 13, ch. 98-36; s. 43, ch. 2000-302; s. 6, ch. 2010-134; s. 6, ch. 2013-159.

721.83 Consolidation of judicial foreclosure actions.—

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

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

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

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

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

(e) No more than 15 timeshare interests, without regard to the number of defendants, are joined within the same consolidated foreclosure action.

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

(3) A consolidated timeshare foreclosure action shall be considered a single action, suit, or proceeding for the payment of filing fees and service charges pursuant to general law. In addition to the payment of such filing fees and service charges, an additional filing fee of up to \$10 for each timeshare interest joined in that action shall be paid to the clerk of court.

History.—s. 13, ch. 98-36; s. 112, ch. 2003-402; s. 74, ch. 2004-265; s. 39, ch. 2008-111; s. 7, ch. 2010-134.

721.84 Appointment of a registered agent; duties.—

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

- (a) Provide the name of the registered agent and the street address for the registered office;
- (b) Identify the obligor for whom the registered agent serves;
- (c) Indicate the purpose of the appointment;
- (d) Specify the instruments out of which the liens arise;
- (e) Designate the address the obligor wishes to use to receive mail from the registered agent;

and

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

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

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

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

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

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

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

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

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

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

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

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

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

History.—s. 13, ch. 98-36; s. 77, ch. 99-3; s. 55, ch. 99-7; s. 44, ch. 2000-302; s. 30, ch. 2004-279; s. 7, ch. 2013-159.

721.85 Service to notice address or on registered agent.—

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

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

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

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

(3) Substituted notice under s. 721.855 or s. 721.856 for any party who has appointed a registered agent under s. 721.84 may be made on such registered agent at the registered office.

History.—s. 13, ch. 98-36; s. 45, ch. 2000-302; s. 8, ch. 2010-134.

721.855 Procedure for the trustee foreclosure of assessment liens.—The provisions of this section establish a trustee foreclosure procedure for assessment liens.

(1) **APPOINTMENT OF TRUSTEE.**—

(a) A trustee or a substitute trustee may be appointed by a lienholder at any time by recording a notice of appointment of trustee or notice of substitution of trustee in the official records of the county or counties in which the timeshare interest is located. A lienholder may appoint multiple trustees in a single appointment, and any appointed trustee may be used by the lienholder regarding the trustee foreclosure of any assessment lien under any timeshare plan for which the trustee is appointed.

(b) A trustee shall use good faith, skill, care, and diligence in discharging all of the trustee duties under this section and shall deal honestly and fairly with all parties.

(c) The recorded notice of appointment of trustee or notice of substitution of trustee shall contain the name and address of the trustee or substitute trustee, the name and address of the lienholder, and the name and address of the timeshare plan.

(2) **INITIATING THE USE OF A TRUSTEE FORECLOSURE PROCEDURE.**—

(a) Before initiating the trustee foreclosure procedure against any timeshare interest in a given timeshare plan:

1. If a timeshare instrument contains any provision specifically prohibiting the use of the trustee foreclosure procedure, or if the managing entity otherwise determines that the timeshare instrument should be amended to specifically provide for the use of the trustee foreclosure procedure, an amendment to the timeshare instrument permitting the use of the trustee foreclosure procedure set forth in this section must be adopted and recorded prior to the use of the trustee foreclosure procedure. Such amendment to the timeshare instrument shall contain a statement in substantially the following form and may be adopted by a majority of those present and voting at a duly called meeting of the owners' association at which at least 15 percent of the voting interests are present in person or by proxy:

If a timeshare owner fails to make timely payments of timeshare plan common expenses, ad valorem taxes, or special assessments, an assessment lien against the timeshare owner's timeshare interest may be foreclosed in accordance with a judicial foreclosure procedure or a trustee foreclosure procedure, either of which may result in the loss of the timeshare owner's timeshare interest. If the managing entity initiates a trustee foreclosure procedure, the timeshare owner shall have the option to object pursuant to Florida law, and in such event the managing entity may thereafter proceed only by filing a judicial foreclosure action.

2. The managing entity shall inform owners of timeshare interests in the timeshare plan in writing that the managing entity has the right to elect to use the trustee foreclosure procedure with respect to foreclosure of assessment liens as established in this section. The managing entity shall be deemed to have complied with the requirements of this subparagraph if the owners of timeshare interests in the given timeshare plan are informed by mail sent to each owner's notice address, in the notice of an annual or special meeting of the owners, by posting on the website of the applicable timeshare plan, or by any owner communication used by the managing entity.

(b) Before initiating the trustee foreclosure procedure against any timeshare interest, a claim of lien against the timeshare interest shall be recorded under s. 721.16 or, if applicable, s. 718.116 or s. 719.108, and the notice of the intent to file a lien shall be given under s. 718.121 for timeshare condominiums and s. 719.108 for timeshare cooperatives.

(c)1. In order to initiate a trustee foreclosure procedure against a timeshare interest, the lienholder shall deliver an affidavit to the trustee that identifies the obligor; the notice address of the obligor; the timeshare interest; the date that the notice of the intent to file a lien was given, if applicable; the official records book and page number where the claim of lien is recorded; and the name and notice address of any junior interestholder.

2. The affidavit shall also state the facts that establish that the obligor has defaulted in the obligation to make a payment under a specified provision of the timeshare instrument or applicable law.

3. The affidavit shall also specify the amounts secured by the lien as of the date of the affidavit and a per diem amount to account for further accrual of the amounts secured by the lien.

4. The affidavit shall also state that the assessment lien was properly created and authorized pursuant to the timeshare instrument and applicable law.

(3) OBLIGOR'S RIGHTS.—

(a) The obligor may object to the lienholder's use of the trustee foreclosure procedure for a specific default any time before the sale of the timeshare interest under subsection (7) by delivering a written objection to the trustee using the objection form provided for in subsection (5). If the trustee receives the written objection from the obligor, the trustee may not proceed with the trustee foreclosure procedure as to the default specified in the notice of default and intent to foreclose under subsection (5), and the lienholder may proceed thereafter only with a judicial foreclosure action as to that specified default.

(b) At any time before the trustee issues the certificate of sale under paragraph (7)(f), the obligor may cure the default and redeem the timeshare interest by paying the amounts secured by the lien in cash or certified funds to the trustee. After the trustee issues the certificate of sale, there is no right of redemption.

(4) CONDITIONS TO TRUSTEE'S EXERCISE OF POWER OF SALE.—A trustee may sell an encumbered timeshare interest foreclosed under this section if:

(a) The trustee has received the affidavit from the lienholder under paragraph (2)(c);

(b) The trustee has not received a written objection to the use of the trustee foreclosure procedure under paragraph (3)(a) and the timeshare interest was not redeemed under paragraph (3)(b);

(c) There is no lis pendens recorded and pending against the same timeshare interest before the recording of the notice of lis pendens pursuant to paragraph (5)(h), and the trustee has not been served notice of the filing of any action to enjoin the trustee foreclosure sale;

(d) The trustee has provided written notice of default and intent to foreclose as required under subsection (5) and a period of at least 30 calendar days has elapsed after such notice is deemed perfected under subsection (5);

(e) The notice of sale required under subsection (6) has been recorded in the official records of the county or counties in which the timeshare interest is located; and

(f) The lienholder has provided the trustee with a title search of the timeshare interest identifying any junior interestholders of record, the effective date of which search must be

within 60 calendar days before the date it is delivered to the trustee. If a title search reveals that incorrect obligors or junior interestholders have been served or additional obligors or junior interestholders have not been served, the foreclosure action may not proceed until the notices required pursuant to this section have been served on the correct or additional obligors or junior interestholders and all applicable time periods have expired.

(5) NOTICE OF DEFAULT AND INTENT TO FORECLOSE.—

(a) In any foreclosure proceeding under this section, the trustee is required to notify the obligor of the proceeding by sending the obligor a written notice of default and intent to foreclose to the notice address of the obligor by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail, postage prepaid, as follows:

1. The notice of default and intent to foreclose shall identify the obligor, the notice address of the obligor, the legal description of the timeshare interest, the nature of the default, the amounts secured by the lien, and a per diem amount to account for further accrual of the amounts secured by the lien and shall state the method by which the obligor may cure the default, including the period of time after the date of the notice of default and intent to foreclose within which the obligor may cure the default.

2. The notice of default and intent to foreclose shall include an objection form with which the obligor can object to the use of the trustee foreclosure procedure by signing and returning the objection form to the trustee. The objection form shall identify the obligor, the notice address of the obligor, the timeshare interest, and the return address of the trustee and shall state: *“The undersigned obligor exercises the obligor’s right to object to the use of the trustee foreclosure procedure contained in section 721.855, Florida Statutes.”*

3. The notice of default and intent to foreclose shall also contain a statement in substantially the following form:

If you fail to cure the default as set forth in this notice or take other appropriate action with regard to this foreclosure matter, you risk losing ownership of your timeshare interest through the trustee foreclosure procedure established in section 721.855, Florida Statutes. You may choose to sign and send to the trustee the enclosed objection form, exercising your right to object to the use of the trustee foreclosure procedure. Upon the trustee’s receipt of your signed objection form, the foreclosure of the lien with respect to the default specified in this notice shall be subject to the judicial foreclosure procedure only. You have the right to cure your default in the manner set forth in this notice at any time before the trustee’s sale of your timeshare interest. If you do not object to the use of the trustee foreclosure procedure, you will not be subject to a deficiency judgment even if the proceeds from the sale of your timeshare interest are insufficient to offset the amounts secured by the lien.

4. The trustee shall also mail a copy of the notice of default and intent to foreclose, without the objection form, to the notice address of any junior interestholder by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail, postage prepaid.

5. Notice under this paragraph is considered perfected upon the trustee receiving the return receipt bearing the signature of the obligor or junior interestholder, as applicable, within 30 calendar days after the trustee sent the notice under this paragraph. Notice under this paragraph is not perfected if:

a. The notice is returned as undeliverable within 30 calendar days after the trustee sent the notice;

b. The trustee cannot, in good faith, ascertain that the obligor or junior interestholder, as applicable, is the person who signed the receipt because all or a portion of the obligor's or junior interestholder's name is not on the signed receipt or because the trustee cannot otherwise determine that the obligor or junior interestholder signed the receipt; or

c. The receipt from the obligor or junior interestholder, as applicable, is returned or refused within 30 calendar days after the trustee sent the notice.

(b) If the notice required by paragraph (a) is returned as undeliverable within 30 calendar days after the trustee sent the notice, the trustee shall perform a diligent search and inquiry to obtain a different address for the obligor or junior interestholder. For purposes of this paragraph, any address known and used by the lienholder for sending regular mailings or other communications from the lienholder to the obligor or junior interestholder, as applicable, shall be included with other addresses produced from the diligent search and inquiry, if any.

1. If the trustee's diligent search and inquiry produces an address different from the notice address, the trustee shall mail a copy of the notice by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail, postage prepaid, to the new address. Notice under this subparagraph is considered perfected upon the trustee receiving the return receipt bearing the signature of the obligor or junior interestholder, as applicable, within 30 calendar days after the trustee sent the notice under this subparagraph. Notice under this subparagraph is not perfected if the receipt from the obligor or junior interestholder, as applicable, is refused, returned, or the trustee cannot, in good faith, ascertain that the obligor or junior interestholder, as applicable, is the person who signed the receipt because all or a portion of the obligor's or junior interestholder's name is not on the signed receipt or because the trustee cannot otherwise determine that the obligor or junior interestholder signed the receipt. If the trustee does not perfect notice under this subparagraph, the trustee shall perfect service in the manner set forth in paragraph (c).

2. If the trustee's diligent search and inquiry does not locate a different address for the obligor or junior interestholder, as applicable, the trustee may perfect notice against that person under paragraph (c).

(c) If the notice is not perfected under subparagraph (a)5., and such notice was not returned as undeliverable, or if the notice was not perfected under subparagraph (b)1., the trustee may perfect notice by publication in a newspaper of general circulation in the county or counties in which the timeshare interest is located. The notice shall appear at least once a week for 2 consecutive weeks. The notice of default and intent to foreclose perfected by publication shall identify the obligor, the notice address of the obligor, the legal description of the timeshare interest, the nature of the action in short and simple terms, the name and contact information of the trustee, and the period of time after the date of the notice of default and intent to foreclose within which the obligor may cure the default. The trustee may group an unlimited number of notices in the same publication, if all of the notices pertain to the same timeshare plan. Notice under this paragraph is considered perfected upon publication as required in this paragraph.

(d) If notice is perfected under subparagraph (a)5., the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall state the nature of the notice, the date on which the notice was mailed, the name and address on the envelope containing the notice, the manner in which the notice was mailed, and the basis for that knowledge.

(e) If notice is perfected under subparagraph (b)1., the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall state the nature of the notice, the dates on which the notice was mailed, the name and addresses on the envelopes containing the notice, the manner in which the notices were mailed, and the fact that a signed receipt from the certified mail, registered mail, or permitted delivery service was timely received.

(f) If notice is perfected by publication under paragraph (c), the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall include all the information contained in either paragraph (d) or paragraph (e), as applicable, shall state that the notice was perfected by publication, and shall state that diligent search and inquiry was made for the current address for the person, if paragraph (b) applies. The affidavit shall also include the information required, as applicable, by s. 49.041 in the case of a natural person or s. 49.051 in the case of a corporation. No other action of the trustee is necessary to perfect notice.

(g) Notice under paragraph (a) or paragraph (b) is perfected as to all obligors who have the same address if notice is perfected as to at least one obligor at that address pursuant to the provisions of this subsection.

(h) The initiation of a trustee foreclosure action operates as a lis pendens on the timeshare interest pursuant to s. 48.23 if a notice of lis pendens is recorded in the official records of the county in which the deed conveying the timeshare interest to the obligor was recorded and such notice has not expired pursuant to s. 48.23(2) or been withdrawn or discharged. The notice of lis pendens must contain the following:

1. The name of the obligor.
2. The date of the initiation of the trustee foreclosure action, which date shall be the date of the sending of the notice of default and intent to foreclose to the obligor.
3. The name and contact information of the trustee.
4. The legal description of the timeshare interest.
5. A statement that a trustee foreclosure action has been initiated against the timeshare interest pursuant to this section.

(6) NOTICE OF SALE.—

(a) The notice of sale shall set forth:

1. The name and notice addresses of the obligor and any junior interestholder.
2. The legal description of the timeshare interest.
3. The name and address of the trustee.
4. A description of the default that is the basis for the foreclosure.
5. The official records book and page numbers where the claim of lien is recorded.
6. The amounts secured by the lien and a per diem amount to account for further accrual of the amounts secured by the lien.
7. The date, location, and starting time of the trustee's sale.
8. The right of and the method by which the obligor may cure the default or the right of any junior interestholder to redeem its interest up to the date the trustee issues the certificate of sale in accordance with paragraph (7)(f).

(b) The trustee shall send a copy of the notice of sale within 3 business days after the date it is submitted for recording, by first-class mail or permitted delivery service, postage prepaid, to the notice addresses of the obligor and any junior interestholder.

(c) After the date of recording of the notice of sale, notice is not required to be given to any person claiming an interest in the timeshare interest except as provided in this section. If a notice of lis pendens has not previously been recorded pursuant to paragraph (5)(h), the recording of the notice of sale has the same force and effect as the filing of a lis pendens in a judicial proceeding under s. 48.23.

(d)1. The trustee shall publish the notice of sale in a newspaper of general circulation in the county or counties in which the timeshare interest is located at least once a week for 2 consecutive weeks before the date of the sale. The last publication shall occur at least 5 calendar days before the sale.

2. The trustee may group an unlimited number of notices of sale in the same publication, if all of the notices of sale pertain to the same timeshare plan.

(7) MANNER OF SALE.—

(a) The sale of a timeshare interest by the trustee in a public auction shall be held in the county in which the timeshare interest is located, on the date, location, and starting time designated in the notice of sale, which shall be after 9:00 a.m. but before 4:00 p.m. on a business day not less than 30 calendar days after the recording of the notice of sale. The trustee's sale may occur online at a specific website on the Internet or in any other manner used by the clerk of the court for a judicial foreclosure sales procedure in the county or counties in which the timeshare interest is located.

(b) The trustee shall conduct the sale and act as the auctioneer. The trustee may use a third party to conduct the sale on behalf of the trustee, and the trustee is liable for the conduct of the sale and the actions of the third party with respect to the conduct of the sale.

(c) The lienholder and any person other than the trustee may bid at the sale. In lieu of participating in the sale, the lienholder may send the trustee written bidding instructions that the trustee shall announce as appropriate during the sale.

(d) The trustee may postpone the sale from time to time. In such case, notice of postponement must be given by the trustee at the date, time, and location contained in the notice of sale. The notice of sale for the postponed sale shall be mailed under paragraph (6)(b), recorded under paragraph (4)(e), and published under paragraph (6)(d). The effective date of the initial notice of sale under paragraph (6)(b) is not affected by a postponed sale.

(e) The highest bidder of the timeshare interest shall pay the price bid to the trustee in cash or certified funds on the day of the sale. If the lienholder is the highest bidder, the lienholder shall receive a credit up to the amount set forth in the notice of sale as required under subparagraph (6)(a)6.

(f) On the date of the sale and upon receipt of the cash or certified funds due from the highest bidder, the trustee shall issue to the highest bidder a certificate of sale stating that a foreclosure conforming to the requirements of this section has occurred, including the time, location, and date of the sale, that the timeshare interest was sold, the amounts secured by the lien, and the amount of the highest bid. A copy of the certificate of sale shall be mailed by certified mail, registered mail, or permitted delivery service, return receipt requested, to all persons entitled to receive a notice of sale under subsection (6).

(g) Before a sale conducted under this subsection, a junior interestholder may pursue adjudication by court, by interpleader, or in any other authorized manner respecting any matter that is disputed by the junior interestholder.

(8) EFFECT OF TRUSTEE'S SALE.—

(a) A sale conducted under subsection (7) forecloses and terminates all interests of any person with notice to whom notice is given under paragraph (4)(d) and paragraph (6)(b), and of any other person claiming interests by, through, or under any such person, in the affected timeshare interest. A failure to give notice to any person entitled to notice does not affect the validity of the sale as to the interests of any person properly notified. A person entitled to notice but not given notice has the rights of a person not made a defendant in a judicial foreclosure.

(b) On the issuance of a certificate of sale under paragraph (7)(f), all rights of redemption that have been foreclosed under this section shall terminate.

(c) A sale conducted under subsection (7) releases the obligor's liability for all amounts secured by the lien. The lienholder has no right to any deficiency judgment against the obligor after a sale of the obligor's timeshare interest under this section.

(d) The issuance and recording of the trustee's deed is presumed valid and may be relied upon by third parties without actual knowledge of irregularities in the foreclosure proceedings. If for any reason there is an irregularity in the foreclosure proceedings, a purchaser becomes subrogated to all the rights of the lienholder to the indebtedness that it secured to the extent necessary to reforeclose the assessment lien in order to correct the irregularity and becomes entitled to an action de novo for the foreclosure of such assessment lien. Any subsequent reforeclosure required to correct an irregularity may be conducted under this section.

(9) TRUSTEE'S CERTIFICATE OF COMPLIANCE.—

(a) Within 10 calendar days after the trustee conducts a sale, the trustee shall execute and acknowledge a certificate of compliance that:

1. Confirms delivery of the notice of default and intent to foreclose and attaches the affidavit required under subsection (5).

2. States that the default was not cured, that the trustee did not receive any written objection under paragraph (3)(a), and that the timeshare interest was not redeemed under paragraph (3)(b).

3. Confirms that the notice of sale was published as required under paragraph (6)(d) and attaches an affidavit of publication for the notice of sale.

4. Confirms that the notice of sale was mailed under paragraph (6)(b), together with a list of the parties to whom the notice of sale was mailed.

(b) In furtherance of the execution of the certificate of compliance required under this subsection, the trustee is entitled to rely upon an affidavit or certification from the lienholder as to the facts and circumstances of default and failure to cure the default.

(10) TRUSTEE'S DEED.—

(a) The trustee's deed shall include the name and address of the trustee, the name and address of the highest bidder, the name of the former owner, a legal description of the timeshare interest, and the name and address of the preparer of the trustee's deed. The trustee's deed shall contain no warranties of title from the trustee. The certificate of compliance shall be attached as an exhibit to the trustee's deed.

(b) Ten calendar days after a sale, absent the prior filing and service on the trustee of a judicial action to enjoin issuance of the trustee's deed to the timeshare interest, the trustee shall:

1. Issue a trustee's deed to the highest bidder.
2. Record the trustee's deed in the official records of the county or counties in which the timeshare interest is located.

(c)1. The certificate of compliance and trustee's deed together are presumptive evidence of the truth of the matters set forth in them, and an action to set aside the sale and void the trustee's deed may not be filed or otherwise pursued against any person acquiring the timeshare interest for value.

2. The trustee's deed conveys to the highest bidder all rights, title, and interest in the timeshare interest that the former owner had, or had the power to convey, at the time of the recording of the claim of lien, together with all rights, title, and interest that the former owner or his or her successors in interest acquired after the recording of the claim of lien.

3. The issuance and recording of a trustee's deed shall have the same force and effect as the issuance and recording of a certificate of title by the clerk of the court in a judicial foreclosure action.

(11) DISPOSITION OF PROCEEDS OF SALE.—

(a) The trustee shall apply the proceeds of the sale as follows:

1. To the expenses of the sale, including compensation of the trustee.
2. To the amount owed and set forth in the notice as required in subparagraph (6)(a)6.
3. If there are junior interestholders, the trustee may file an action in interpleader, pay the surplus to a court of competent jurisdiction, name the competing junior interestholders, and ask the court to determine the proper distribution of the surplus. In any interpleader action, the trustee shall recover reasonable attorney's fees and costs.
4. If there are no junior interestholders, or if all junior interestholders have been paid, any surplus shall be paid to the former owner. If the trustee is unable to locate the former owner

within 1 year after the sale, the surplus, if any, shall be deposited with the Chief Financial Officer under chapter 717.

(b) In disposing of the proceeds of the sale, the trustee may rely on the information provided in the affidavit of the lienholder under paragraph (2)(c), and, in the event of a dispute or uncertainty over such claims, the trustee has the discretion to submit the matter to adjudication by court, by interpleader, or in any other authorized manner and shall recover reasonable attorney's fees and costs.

(12) TRUSTEE FORECLOSURE ACTIONS.—The trustee foreclosure procedure established in this section does not impair or otherwise affect the lienholder's continuing right to bring a judicial foreclosure action, in lieu of using the trustee foreclosure procedure, with respect to any assessment lien.

(13) APPLICATION.—This section applies to any default giving rise to the imposition of an assessment lien which occurs after the effective date of this section.

(14) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE PROCEDURE.—

(a) An action for actual damages for a material violation of this section may be brought by an obligor against the lienholder for the failure to follow the trustee foreclosure procedure contained in this section.

(b) Any trustee who intentionally violates the provisions of this section concerning the trustee foreclosure procedure commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A trustee who incorrectly ascertains that the obligor signed the return receipt as required in subsection (5) does not violate this section if the trustee made a good faith effort to properly ascertain that the obligor signed the return receipt in accordance with subsection (5).

History.—s. 9, ch. 2010-134; s. 8, ch. 2013-159.

721.856 Procedure for the trustee foreclosure of mortgage liens.—The provisions of this section establish a trustee foreclosure procedure for mortgage liens.

(1) APPOINTMENT OF TRUSTEE.—

(a) A trustee or a substitute trustee may be appointed by a lienholder at any time by recording a notice of appointment of trustee or notice of substitution of trustee in the official records of the county or counties in which the timeshare interest is located. A lienholder may appoint multiple trustees in a single appointment, and any appointed trustee may be used by the lienholder regarding the trustee foreclosure of any mortgage lien.

(b) A trustee shall use good faith, skill, care, and diligence in discharging all of the trustee duties under this section and shall deal honestly and fairly with all parties.

(c) The recorded notice of appointment of trustee or notice of substitution of trustee shall contain the name and address of the trustee or substitute trustee, the name and address of the lienholder, and the name and address of the timeshare plan.

(2) INITIATING THE TRUSTEE FORECLOSURE OF MORTGAGE LIENS.—

(a) Before initiating the trustee foreclosure against a timeshare interest, the mortgage, or an amendment to a mortgage executed by the obligor before the effective date of this section, must contain a statement in substantially the following form:

If the mortgagor fails to make timely payments under the obligation secured by this mortgage, or is otherwise deemed in uncured default of this mortgage, the lien against the mortgagor's timeshare interest created by this mortgage may be foreclosed in accordance with either a judicial foreclosure procedure or a trustee foreclosure procedure and may result in the loss of your timeshare interest. If the mortgagee initiates a trustee foreclosure procedure, the mortgagor shall have the option to object and the mortgagee may proceed only by filing a judicial foreclosure action.

(b)1. In order to initiate a trustee foreclosure procedure against a timeshare interest, the lienholder shall deliver an affidavit to the trustee that identifies the obligor, the notice address of the obligor, the timeshare interest, the official records book and page number where the mortgage is recorded, and the name and notice address of any junior interestholder.

2. The affidavit shall also state the facts that establish that the obligor has defaulted in the obligation to make a payment under a specified provision of the mortgage or is otherwise deemed in uncured default under a specified provision of the mortgage.

3. The affidavit shall also specify the amounts secured by the lien as of the date of the affidavit and a per diem amount to account for further accrual of the amounts secured by the lien.

4. The affidavit shall also state that the appropriate amount of documentary stamp tax and intangible taxes has been paid upon recording of the mortgage, or otherwise paid to the state.

5. The affidavit shall also state that the lienholder is the holder of the note and has complied with all preconditions in the note and mortgage to determine the amounts secured by the lien and to initiate the use of the trustee foreclosure procedure.

(3) OBLIGOR'S RIGHTS.—

(a) The obligor may object to the lienholder's use of the trustee foreclosure procedure for a specific default any time before the sale of the timeshare interest under subsection (7) by delivering a written objection to the trustee using the objection form provided for in subsection (5). If the trustee receives the written objection from the obligor, the trustee may not proceed with the trustee foreclosure procedure as to the default specified in the notice of default and

intent to foreclose under subsection (5), and the lienholder may proceed thereafter only with a judicial foreclosure action as to that specified default.

(b) At any time before the trustee issues the certificate of sale under paragraph (7)(f), the obligor may cure the default and redeem the timeshare interest by paying the amounts secured by the lien in cash or certified funds to the trustee. After the trustee issues the certificate of sale, there is no right of redemption.

(4) **CONDITIONS TO TRUSTEE'S EXERCISE OF POWER OF SALE.**—A trustee may sell an encumbered timeshare interest foreclosed under this section if:

(a) The trustee has received the affidavit from the lienholder under paragraph (2)(b);

(b) The trustee has not received a written objection to the use of the trustee foreclosure procedure under paragraph (3)(a) and the timeshare interest was not redeemed under paragraph (3)(b);

(c) There is no lis pendens recorded and pending against the same timeshare interest before the initiation of the trustee foreclosure action and provided a notice of lis pendens has been recorded pursuant to paragraph (5)(h), and the trustee has not been served notice of the filing of any action to enjoin the trustee foreclosure sale;

(d) The trustee is in possession of the original promissory note executed by the mortgagor and secured by the mortgage lien;

(e) The trustee has provided written notice of default and intent to foreclose as required under subsection (5) and a period of at least 30 calendar days has elapsed after such notice is deemed perfected under subsection (5);

(f) The notice of sale required under subsection (6) has been recorded in the official records of the county in which the mortgage was recorded; and

(g) The lienholder has provided the trustee with a title search of the timeshare interest identifying any junior interestholders of record, the effective date of which search must be within 60 calendar days before the date it is delivered to the trustee. If a title search reveals that incorrect obligors or junior interestholders have been served or additional obligors or junior interestholders have not been served, the foreclosure action may not proceed until the notices required pursuant to this section have been served on the correct or additional obligors or junior interestholders and all applicable time periods have expired.

(5) **NOTICE OF DEFAULT AND INTENT TO FORECLOSE.**—

(a) In any foreclosure proceeding under this section, the trustee is required to notify the obligor of the proceeding by sending the obligor a written notice of default and intent to foreclose to the notice address of the obligor by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail, postage prepaid, as follows:

1. The notice of default and intent to foreclose shall identify the obligor, the notice address of the obligor, the legal description of the timeshare interest, the nature of the default, the amounts secured by the lien, and a per diem amount to account for further accrual of the amounts secured by the lien and shall state the method by which the obligor may cure the default, including the period of time after the date of the notice of default and intent to foreclose within which the obligor may cure the default.

2. The notice of default and intent to foreclose shall include an objection form with which the obligor can object to the use of the trustee foreclosure procedure by signing and returning the objection form to the trustee. The objection form shall identify the obligor, the notice address of the obligor, the timeshare interest, and the return address of the trustee and shall state: *“The undersigned obligor exercises the obligor’s right to object to the use of the trustee foreclosure procedure contained in section 721.856, Florida Statutes.”*

3. The notice of default and intent to foreclose shall also contain a statement in substantially the following form:

If you fail to cure the default as set forth in this notice or take other appropriate action with regard to this foreclosure matter, you risk losing ownership of your timeshare interest through the trustee foreclosure procedure established in section 721.856, Florida Statutes. You may choose to sign and send to the trustee the enclosed objection form, exercising your right to object to the use of the trustee foreclosure procedure. Upon the trustee’s receipt of your signed objection form, the foreclosure of the lien with respect to the default specified in this notice shall be subject to the judicial foreclosure procedure only. You have the right to cure your default in the manner set forth in this notice at any time before the trustee’s sale of your timeshare interest. If you do not object to the use of the trustee foreclosure procedure, you will not be subject to a deficiency judgment even if the proceeds from the sale of your timeshare interest are insufficient to offset the amounts secured by the lien.

4. The trustee shall also mail a copy of the notice of default and intent to foreclose, without the objection form, to the notice address of any junior interestholder by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail, postage prepaid.

5. Notice under this paragraph is considered perfected upon the trustee receiving the return receipt bearing the signature of the obligor or junior interestholder, as applicable, within 30 calendar days after the trustee sent the notice under this paragraph. Notice under this paragraph is not perfected if:

a. The notice is returned as undeliverable within 30 calendar days after the trustee sent the notice;

b. The trustee cannot, in good faith, ascertain from the receipt that the obligor or junior interestholder, as applicable, is the person who signed the receipt because all or a portion of the obligor's or junior interestholder's name is not on the signed receipt or the trustee cannot otherwise determine that the obligor or junior interestholder signed the receipt; or

c. The receipt from the obligor or junior interestholder, as applicable, is returned or refused within 30 calendar days after the trustee sent the notice.

(b) If the notice required by paragraph (a) is returned as undeliverable within 30 calendar days after the trustee sent the notice, the trustee shall perform a diligent search and inquiry to obtain a different address for the obligor or junior interestholder. For purposes of this paragraph, any address known and used by the lienholder for sending regular mailings or other communications from the lienholder to the obligor or junior interestholder, as applicable, shall be included with other addresses produced from the diligent search and inquiry, if any.

1. If the trustee's diligent search and inquiry produces an address different from the notice address, the trustee shall mail a copy of the notice by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail, postage prepaid, to the new address. Notice under this subparagraph is considered perfected upon the trustee receiving the return receipt bearing the signature of the obligor or junior interestholder, as applicable, within 30 calendar days after the trustee sent the notice under this subparagraph. Notice under this subparagraph is not perfected if the receipt from the obligor or junior interestholder is refused, returned, or the trustee cannot, in good faith, ascertain that the obligor or junior interestholder, as applicable, is the person who signed the receipt because all or a portion of the obligor's or junior interestholder's name is not on the signed receipt or because the trustee cannot otherwise determine that the obligor or junior interestholder signed the receipt. If the trustee does not perfect notice under this subparagraph, the trustee shall perfect service in the manner set forth in paragraph (c).

2. If the trustee's diligent search and inquiry does not locate a different address for the obligor or junior interestholder, as applicable, the trustee may perfect notice against that person under paragraph (c).

(c) If the notice is not perfected under subparagraph (a)5., and such notice was not returned as undeliverable, or if the notice was not perfected under subparagraph (b)1., the trustee may perfect notice by publication in a newspaper of general circulation in the county or counties in which the timeshare interest is located. The notice shall appear at least once a week for 2 consecutive weeks. The notice of default and intent to foreclose perfected by publication shall identify the obligor, the notice address of the obligor, the legal description of the timeshare interest, the nature of the action in short and simple terms, the name and contact information of the trustee, and the period of time after the date of the notice of default and intent to foreclose

within which the obligor may cure the default. The trustee may group an unlimited number of notices in the same publication, if all of the notices pertain to the same timeshare plan. Notice under this paragraph is considered perfected upon publication as required in this paragraph.

(d) If notice is perfected under subparagraph (a)5., the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall state the nature of the notice, the date on which the notice was mailed, the name and address on the envelope containing the notice, the manner in which the notice was mailed, and the basis for that knowledge.

(e) If notice is perfected under subparagraph (b)1., the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall state the nature of the notice, the dates on which the notice was mailed, the name and addresses on the envelopes containing the notice, the manner in which the notice was mailed, and the fact that a signed receipt from the certified mail, registered mail, or permitted delivery service was timely received.

(f) If notice is perfected under paragraph (c), the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall include all the information contained in either paragraph (d) or paragraph (e), as applicable, shall state that the notice was perfected by publication and shall state that diligent search and inquiry was made for the current address for the person, if paragraph (b) applies. The affidavit shall also include the information required, as applicable, by s. 49.041 in the case of a natural person or s. 49.051 in the case of a corporation. No other action of the trustee is necessary to perfect notice.

(g) Notice under paragraph (a) or paragraph (b) is perfected as to all obligors who have the same address if notice is perfected as to at least one obligor at that address pursuant to the provisions of this subsection.

(h) The initiation of a trustee foreclosure action operates as a lis pendens on the timeshare interest pursuant to s. 48.23 if a notice of lis pendens is recorded in the official records of the county or counties in which the mortgage is recorded and such notice has not expired pursuant to s. 48.23(2) or been withdrawn or discharged. The notice of lis pendens must contain the following:

1. The name of the obligor.
2. The date of the initiation of the trustee foreclosure action, which date shall be the date of the sending of the notice of default and intent to foreclose to the obligor.
3. The name and contact information of the trustee.

4. The legal description of the timeshare interest.
5. A statement that a trustee foreclosure action has been initiated against the timeshare interest pursuant to this section.

(6) NOTICE OF SALE.—

- (a) The notice of sale shall set forth:
 1. The name and notice addresses of the obligor and any junior interestholder.
 2. The legal description of the timeshare interest.
 3. The name and address of the trustee.
 4. A description of the default that is the basis for the foreclosure.
 5. The official records book and page numbers where the mortgage is recorded.
 6. The amounts secured by the lien and a per diem amount to account for further accrual of the amounts secured by the lien.
 7. The date, location, and starting time of the trustee's sale.
 8. The right of and the method by which the obligor may cure the default or the right of any junior interestholder to redeem its interest up to the date the trustee issues the certificate of sale in accordance with paragraph (7)(f).

(b) The trustee shall send a copy of the notice of sale within 3 business days after the date it is submitted for recording, by first-class mail or permitted delivery service, postage prepaid, to the notice addresses of the obligor and any junior interestholder.

(c) After the date of recording of the notice of sale, notice is not required to be given to any person claiming an interest in the timeshare interest except as provided in this section. If a notice of lis pendens has not previously been recorded pursuant to paragraph (5)(h), the recording of the notice of sale has the same force and effect as the filing of a lis pendens in a judicial proceeding under s. 48.23.

(d)1. The trustee shall publish the notice of sale in a newspaper of general circulation in the county or counties in which the timeshare interest is located at least once a week for 2 consecutive weeks before the date of the sale. The last publication shall occur at least 5 calendar days before the sale.

2. The trustee may group an unlimited number of notices of sale in the same publication, if all of the notices of sale pertain to the same timeshare plan.

(7) MANNER OF SALE.—

(a) The sale of a timeshare interest by the trustee in a public auction shall be held in the county in which the timeshare interest is located, on the date, location, and starting time designated in the notice of sale, which shall be after 9:00 a.m. but before 4:00 p.m. on a business day not less than 30 calendar days after the recording of the notice of sale. The trustee's sale may occur online at a specific website on the Internet or in any other manner used

by the clerk of the court for a judicial foreclosure sales procedure in the county or counties in which the timeshare interest is located.

(b) The trustee shall conduct the sale and act as the auctioneer. The trustee may use a third party to conduct the sale on behalf of the trustee, and the trustee is liable for the conduct of the sale and the actions of the third party with respect to the conduct of the sale.

(c) The lienholder and any person other than the trustee may bid at the sale. In lieu of participating in the sale, the lienholder may send the trustee written bidding instructions that the trustee shall announce as appropriate during the sale.

(d) The trustee may postpone the sale from time to time. In such case, notice of postponement must be given by the trustee at the date, time, and location contained in the notice of sale. The notice of sale for the postponed sale shall be mailed under paragraph (6)(b), recorded under paragraph (4)(f), and published under paragraph (6)(d). The effective date of the initial notice of sale under paragraph (6)(b) is not affected by a postponed sale.

(e) The highest bidder of the timeshare interest shall pay the price bid to the trustee in cash or certified funds on the day of the sale. If the lienholder is the highest bidder, the lienholder shall receive a credit up to the amount set forth in the notice of sale as required under subparagraph (6)(a)6.

(f) On the date of the sale and upon receipt of the cash or certified funds due from the highest bidder, the trustee shall issue to the highest bidder a certificate of sale stating that a foreclosure conforming to the requirements of this section has occurred, including the time, location, and date of the sale, that the timeshare interest was sold, the amounts secured by the lien, and the amount of the highest bid. A copy of the certificate of sale shall be mailed by certified mail, registered mail, or permitted delivery service, return receipt requested, to all persons entitled to receive a notice of sale under subsection (6).

(g) Before a sale conducted pursuant to this subsection, a junior interestholder may pursue adjudication by court, by interpleader, or in any other authorized manner respecting any matter that is disputed by the junior interestholder.

(8) EFFECT OF TRUSTEE'S SALE.—

(a) A sale conducted under subsection (7) forecloses and terminates all interests of any person with notice to whom notice is given under paragraph (4)(e) and paragraph (6)(b), and of any other person claiming interests by, through, or under any such person, in the affected timeshare interest. A failure to give notice to any person entitled to notice does not affect the validity of the sale as to the interests of any person properly notified. A person entitled to notice but not given notice has the rights of a person not made a defendant in a judicial foreclosure.

(b) On the issuance of a certificate of sale under paragraph (7)(f), all rights of redemption that have been foreclosed under this section shall terminate.

(c) A sale conducted under subsection (7) releases the obligor's liability for all amounts secured by the lien. The lienholder has no right to any deficiency judgment against the obligor after a sale of the obligor's timeshare interest under this section.

(d) The issuance and recording of the trustee's deed is presumed valid and may be relied upon by third parties without actual knowledge of any irregularities in the foreclosure proceedings. If for any reason there is an irregularity in the foreclosure proceedings, a purchaser becomes subrogated to all the rights of the lienholder to the indebtedness that it secured to the extent necessary to reforeclose the mortgage lien in order to correct the irregularity and becomes entitled to an action de novo for the foreclosure of such mortgage lien. Any subsequent reforeclosure required to correct an irregularity may be conducted under this section.

(9) TRUSTEE'S CERTIFICATE OF COMPLIANCE.—

(a) Within 10 calendar days after the trustee conducts a sale, the trustee shall execute and acknowledge a certificate of compliance which:

1. Confirms delivery of the notice of default and intent to foreclose and attaches the affidavit required under subsection (5).

2. States that the default was not cured, that the trustee did not receive any written objection under paragraph (3)(a), and that the timeshare interest was not redeemed under paragraph (3)(b).

3. States that the trustee is in possession of the original promissory note executed by the mortgagor and secured by the mortgage lien.

4. Confirms that the notice of sale was published as required under paragraph (6)(d) and attaches an affidavit of publication for the notice of sale.

5. Confirms that the notice of sale was mailed under paragraph (6)(b), together with a list of the parties to whom the notice of sale was mailed.

(b) In furtherance of the execution of the certificate of compliance required under this subsection, the trustee is entitled to rely upon an affidavit or certification from the lienholder as to the facts and circumstances of default and failure to cure the default.

(10) TRUSTEE'S DEED.—

(a) The trustee's deed shall include the name and address of the trustee, the name and address of the highest bidder, the name of the former owner, a legal description of the timeshare interest, and the name and address of the preparer of the trustee's deed. The trustee's deed shall contain no warranties of title from the trustee. The certificate of compliance shall be attached as an exhibit to the trustee's deed.

(b) Ten calendar days after a sale, absent the prior filing and service on the trustee of a judicial action to enjoin issuance of the trustee's deed to the timeshare interest, the trustee shall:

1. Cancel the original promissory note executed by the mortgagor and secured by the mortgage lien.

2. Issue a trustee's deed to the highest bidder.

3. Record the trustee's deed in the official records of the county or counties in which the timeshare interest is located.

(c)1. The certificate of compliance and trustee's deed together are presumptive evidence of the truth of the matters set forth in them, and an action to set aside the sale and void the trustee's deed may not be filed or otherwise pursued against any person acquiring the timeshare interest for value.

2. The trustee's deed conveys to the highest bidder all rights, title, and interest in the timeshare interest that the former owner had, or had the power to convey, together with all rights, title, and interest that the former owner or his or her successors in interest acquired after the execution of the mortgage.

3. The issuance and recording of a trustee's deed shall have the same force and effect as the issuance and recording of a certificate of title by the clerk of the court in a judicial foreclosure action.

(11) DISPOSITION OF PROCEEDS OF SALE.—

(a) The trustee shall apply the proceeds of the sale as follows:

1. To the expenses of the sale, including compensation of the trustee.

2. To the amount owed and set forth in the notice as required under subparagraph (6)(a)6.

3. If there are junior interestholders, the trustee may file an action in interpleader, pay the surplus to a court of competent jurisdiction, name the competing junior interestholders, and ask the court to determine the proper distribution of the surplus. In any interpleader action, the trustee shall recover reasonable attorney's fees and costs.

4. If there are no junior interestholders, or if all junior interestholders have been paid, any surplus shall be paid to the former owner. If the trustee is unable to locate the former owner within 1 year after the sale, the surplus, if any, shall be deposited with the Chief Financial Officer under chapter 717.

(b) In disposing of the proceeds of the sale, the trustee may rely on the information provided in the affidavit of the lienholder under paragraph (2)(b), and, in the event of a dispute or uncertainty over such claims, the trustee has the discretion to submit the matter to adjudication by court, by interpleader, or in any other authorized manner and shall recover reasonable attorney's fees and costs.

(12) JUDICIAL FORECLOSURE ACTIONS.—The trustee foreclosure procedure established in this section does not impair or otherwise affect the lienholder's continuing right to bring a judicial

foreclosure action, in lieu of using the trustee foreclosure procedure, with respect to any mortgage lien.

(13) **ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE PROCEDURE.**—

(a) An action for actual damages for a material violation of this section may be brought by an obligor against the lienholder for the failure to follow the trustee foreclosure procedure contained in this section.

(b) Any trustee who intentionally violates the provisions of this section concerning the trustee foreclosure procedure commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A trustee who incorrectly ascertains that the obligor signed the return receipt as required in subsection (5) does not violate this section if the trustee made a good faith effort to properly ascertain that it is the obligor who signed the return receipt in accordance with subsection (5).

History.—s. 10, ch. 2010-134; s. 9, ch. 2013-159.

721.8561 Administrative fee—An administrative fee of \$50 per trustee deed for each deed recorded pursuant to the trustee foreclosure procedures set forth in ss. 721.855 and 721.856 shall be paid and remitted at the same time and in the same manner as documentary stamp taxes imposed pursuant to s. 201.02. Revenues from such fees shall be remitted to the Department of Revenue in the same manner as documentary stamp taxes and deposited in the State Courts Revenue Trust Fund.

History.—s. 13, ch. 2010-134.

721.86 Miscellaneous provisions.—

(1) In the event of a conflict between the provisions of this part and the other provisions of this chapter, chapter 702, or other applicable law, the provisions of this part shall prevail. The procedures in this part must be given effect in the context of any foreclosure proceedings against timeshare interests governed by this chapter, chapter 702, chapter 718, or chapter 719.

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

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

(4) In addition to assessment liens and mortgage liens arising after the effective date of this part, except as provided in s. 721.855(13), the provisions of this part apply to all assessment liens and mortgage liens existing prior to the effective date of this act regarding which a foreclosure proceeding has not yet commenced.

History.—s. 13, ch. 98-36; s. 46, ch. 2000-302; s. 11, ch. 2010-134.

PART IV

COMMISSIONER OF DEEDS

721.96 Purpose.

721.97 Timeshare commissioner of deeds.

721.98 Powers of the division.

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

History.—s. 14, ch. 98-36; s. 31, ch. 2004-279.

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.

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

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

History.—s. 14, ch. 98-36; s. 18, ch. 98-322; s. 32, ch. 2004-279; s. 13, ch. 2007-75.

721.98 Powers of the division.—The division has no duty or authority to regulate, enforce, or ensure compliance with any provision of this part.
History.—s. 14, ch. 98-36.