

**STORAGE NAME:** h1565s1.rpp  
**DATE:** April 16, 1997

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
REAL PROPERTY & PROBATE  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** CS/HB 1565

**RELATING TO:** Timeshare Plans

**SPONSOR(S):** Committee on Real Property & Probate and Representative Edwards

**STATUTE(S) AFFECTED:** Amending sections 721.03, 721.06, 721.07, 721.075, 721.09, 721.13, 721.15, 721.18, 721.26, and creating Part III of chapter 721, Florida Statutes

**COMPANION BILL(S):** SB 2316

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) REAL PROPERTY & PROBATE YEAS 6 NAYS 0
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**I. SUMMARY:**

CS/HB 1565 revises various provisions of law relating to timeshare plans. The bill authorizes the promulgation of described rules relating to exemptions from chapter 721, F.S. The bill provides that if a proposed amendment to an approved multisite timeshare plan adds a new component site the initial period to approve or to notify the plan of deficiencies will be 45 days.

The bill removes a provision relating to incidental benefits which requires the developer to file an irrevocable letter of credit, surety bond, or other assurance to guarantee the delivery of the incidental benefits to the purchaser. The bill revises language regarding reservation agreements, and revises provisions relating to the duties of the managing entity. The bill permits timeshare plans to vary assessments for common expenses.

HB 1565 creates the "Timeshare Lien Foreclosure Act." This part of the bill creates a streamlined process for foreclosure of timeshare estates that are delinquent in the payment of association levied tax and common expense assessments and private mortgages through a private nonjudicial procedure conducted by a trustee. Currently, all foreclosures must be through the courts.

This bill may have some fiscal impact.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Chapter 721, Florida Statutes, is the Florida Vacation Plan and Timesharing Act. This chapter gives statutory recognition to real property timesharing and personal property timesharing in the state. The chapter establishes procedures for the creation, sale, exchange, promotion, and operation of timeshare plans.

Section 721.03, Florida Statutes, provides that this chapter applies to all timeshare plans consisting of more than 7 timeshare periods over a period of at least 3 years in which the accommodations or facilities are located within this state, unless otherwise exempted. Section 721.03(1)(b), Florida Statutes, provides that with respect to timeshare plans containing accommodations or facilities located in this state which are offered for sale outside the jurisdictional limits of the United States, the offers are exempt from this chapter so long as the seller complies with the specified disclosure requirements, and only if the plans have first been filed with and approved by the Division of Condominiums, Land Sales & Mobile Homes (division), of the Department of Business & Professional Regulation (department) pursuant to s. 721.07 or s. 721.55, F.S. This provides the division with a record of the existence of the timeshare plan so that it can monitor the management and operation of the timeshare plan. The developer's offering activities in the other country are exempt once the Florida filing has been approved.

Section 721.06, Florida Statutes, requires that a conspicuous type disclosure be placed in the timeshare purchase contract stating that the purchaser has a ten-day period in which to cancel the purchase contract without penalty or obligation.

Section 721.07(3), Florida Statutes, provides for the filing of public offering statements with the division for approval. Until the division approves the filing, any contract regarding the sale of the timeshare plan which is the subject of the public offering statement is voidable by the purchaser. Section 721.07(3)(a)1., Florida Statutes, provides that the division has 20 days after receipt of a proposed amendment to an offering statement to approve or cite deficiencies in the proposed amendment. If the division fails to act within 20 days, the amendment is deemed approved. If a developer fails to respond to a deficiency notice within 30 days, the division may reject the amendment.

Section 721.075, Florida Statutes, relates to incidental benefits. An incidental benefit is defined in s. 721.05(17), F.S., to mean an accommodation, product, service, discount, or other benefit which is offered to a purchaser, or a prospective purchaser of a timeshare plan, prior to the expiration of the initial 10-day voidability period pursuant to section 721.10; which is not an exchange program as defined in subsection (15); and which complies with the provisions of section 721.075, F.S. The term does not include an offer of the use of the accommodations and facilities of the timeshare plan on a free or discounted one-time basis. Section 721.075, F.S., requires that a developer file a specified financial assurance of the availability of any incidental benefits if the aggregate represented value of the incidental benefits to a purchaser exceeds 5 percent of the purchase price of the timeshare interest.

Section 721.09, Florida Statutes, relates to reservation agreements and escrows. This section currently requires that prior to filing the public offering statement with the division, a seller can not offer a timeshare plan for sale, but may accept reservation deposits. This requires approval by the division of a fully executed escrow agreement and properly-filed reservation. It is unclear whether this section prohibits a seller or developer from advertising the timeshare plan in any way prior to filing a public offering statement, or whether it permits the developer to advertise the existence of the reservation agreement without promoting the timeshare plan and without having filed the public offering statement.

Section 721.13, Florida Statutes, requires the timeshare plan managing entity to arrange for an annual independent audit of the books and records of the timeshare plan and to file a copy of the audit with the division. A copy must be sent by the entity to the officers of the owners association. If there is no owners association, the purchasers must be notified that the audit is available upon request. The department, by rule, requires the audit to be filed with the division within 5 months after the end of the timeshare plan's fiscal year. Rule 61B-40.007(4), F.A.C.

Section 732.13(l), Florida Statutes, requires the timeshare plan managing entity to file a statement of receipts and disbursements regarding the ad valorem tax escrow account as required by s. 192.037(6)(e), F.S.

Section 732.13(4), Florida Statutes, provides a mechanism for purchasers of a condominium timeshare plan to request the managing entity to initiate a mail-out to the owners of the timeshare plan if the purpose of the mail-out is to advance legitimate association business, such as a proxy solicitation for any purpose. The purchaser who requests the mailing must reimburse the association in advance for the association's actual costs in performing the mailing. This section prohibits the managing entity from disseminating a list of owners. The ability to request a mail-out only applies to condominium or cooperative timeshare purchasers, not a purchaser of a timeshare license plan.

Section 721.15(1), Florida Statutes, requires a developer to allocate common expenses of a condominium timeshare plan among purchasers on the basis of either square footage or unit type.

Section 721.18, Florida Statutes, relates to exchange programs. Subsection (2) provides that each exchange company offering an exchange program to purchasers in the state shall file the information required in subsection (1) at least 20 days prior to July 1 of each year. Initial filings must be made at least 20 days prior to offering an exchange program to any purchaser in the state. Within 20 days of receipt of the filing, the division must determine whether the filing is adequate to meet the requirements of this section and must notify the exchange company in writing that the division has either approved the filing or found specified deficiencies in the filing.

Section 721.26, Florida Statutes, provides that the division has the power to enforce and ensure compliance with the provisions of this chapter using the powers provided in this chapter, as well as the powers prescribed in chapters 498, 718, and 719. This section specifies the divisions powers and duties. Currently, "any person", including officers, directors, employees, agents, and others connected with a party regulated by the division has personal liability if the person has materially participated in any "offer of

disposition” of a timeshare interest in violation of the chapter or rules involving fraud or other acts of dishonesty.

On July 19, 1996, the Secretary of the Department of Business and Professional Regulation appointed a taskforce to gather information and make recommendations to address the number of timeshare resorts in Florida suffering from serious financial distress and failure to comply with chapters 718 and 721. The taskforce included timeshare industry representatives, public accountants, and department personnel. According to the Department, the taskforce determined that the number and nature of financial problems facing the timeshare plans demand immediate attention in order to protect timeshare purchasers and the industry. Although this bill is not a product of that taskforce, it does address some of the issues raised in the taskforce meetings.

**B. EFFECT OF PROPOSED CHANGES:**

HB 1565 revises various provisions of law relating to timeshare plans. The bill authorizes the promulgation of described rules relating to exemptions from ch. 721, F.S. The bill provides that if a proposed amendment to an approved multisite timeshare plan adds a new component site the initial period to approve or to notify the plan of deficiencies will be 45 days.

The bill removes a provision relating to incidental benefits which requires the developer to file an irrevocable letter of credit, surety bond, or other assurance to guarantee the delivery of the incidental benefits to the purchaser. The bill revises language regarding reservation agreements, and revises provisions relating to the duties of the managing entity. The bill permits timeshare plans to vary assessments for common expenses.

HB 1565 creates the “Timeshare Lien Foreclosure Act.” This part of the bill creates a streamlined process for foreclosure of timeshare estates that are delinquent in the payment of association levied tax and common expense assessments and private mortgages through a private nonjudicial procedure conducted by a trustee. Currently, all foreclosures must be through the courts.

This bill will take effect upon becoming a law; however, with respect to any timeshare plan filing approved by the division prior to the date this act becomes a law, the amendment to s. 721.06(1)(f), F.S., shall not apply to such filing until January 1, 1998, unless and only to the extent the developer otherwise voluntarily agrees to comply with all or a portion of such provisions.

**C. APPLICATION OF PRINCIPLES:**

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

Yes. The bill increases rulemaking authority, and provides for a nonjudicial foreclosure procedure.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The bill provides a more complex method of assessing common expenses. This may result in more complaints and lengthier investigations by the division. In addition, the bill authorizes the division to penalize regulated entities for violations of division rules.

- (3) any entitlement to a government service or benefit?

N/A

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No. However, the bill does authorize the division to impose penalties for violation of its rules.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

**D. SECTION-BY-SECTION RESEARCH:**

**Section 1.**

Section 721.03(1)(b), Florida Statutes, is amended to clarify that the offering exemption in this paragraph is effective so long as the filing is approved within 6 months of filing unless the division stipulates to a longer time frame. The bill further clarifies existing law that requires that filing fees be paid as to the filing made under this section in the same manner as every other filing reviewed by the division. The bill adds a disclosure requirement to the purchase contract disclosure required to be contained in the

contracts used in another country to inform the other country purchasers about the status of title in the Florida accommodations or facilities.

Section 721.03(1)(c), Florida Statutes, is amended to add rulemaking authority to clarify what documentation need not be addressed in a filing, based upon the consideration that the documentation may not be applicable in the instance of an out-of-country offering.

## **Section 2.**

Section 721.06(1)(f), Florida Statutes, is amended to clarify that the 10-day period during which a contract for purchase of timeshare periods may be canceled without penalty or obligation is 10 "calendar" days after the date you sign the contract and within 10 "calendar" days after the date you receive the approved public offering statement, whichever is later. Existing law provides for 10 days, and does not specify whether this is calendar or business days.

## **Section 3.**

Section 721.07(3)(a)1., Florida Statutes, is amended to provide that in the event that a 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 will be 45 days. Current law permits 20 days, which, according to the division is not a workable period.

## **Section 4.**

The bill deletes the requirement in s. 721.075(4), F.S., for posting of financial assurances for incidental benefits exceeding 5 percent of the purchase price. According to the division, the required amount of assurances is constantly changing and requires a significant amount of time to monitor. The division points out that there are private purchaser remedies and attorneys fees provided in the statute for a purchaser whose incidental benefit was not available in the manner portrayed.

## **Section 5.**

Section 721.09(1), Florida Statutes, is amended to provide that a seller may advertise the reservation deposit program prior to filing the public offering statement with the division, upon approval by the division of a fully executed escrow agreement and reservation agreement. The advertisement would include restricted details about the proposed timeshare plan, and can run for a period of 90 days. At the end of the 90 day period, if the developer has not filed a public offering statement for the proposed timeshare plan, the developer must cease collection of reservation deposits and advertisement of the reservation agreement, and cancel and return all reservation deposits.

## **Section 6.**

Section 721.13(3)(c), Florida Statutes, is amended to specify that the managing entity must include with their final budget, 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 pursuant to s. 721.27, F.S.

Section 721.13(3)(e), Florida Statutes, is amended to conform the statutes to the current administrative rule, requiring the annual audit of the timeshare plan financial records to be filed with the division within 5 months after the end of the timeshare plan fiscal year. The bill also provides that the certified public accountants performing the audits must be licensed in Florida, provides that the timeshare plan financial statements must be prepared on an accrual basis of accounting, and presented in accordance with generally accepted accounting principles. This section is further amended to provide that notwithstanding any requirement of s. 718.111(13) or (14), the audited financial statements required by this section will be the only annual financial reporting requirements for timeshare condominiums.

Section 721.13(3)(l), Florida Statutes, is amended to require the timeshare plan managing entity to accompany its filing of the receipts and disbursements statement with a statement disclosing whether ad valorem property taxes have been paid for the timeshare development or the amounts of any delinquent taxes, interest, and penalties for each assessment year. According to the division, this will enable them to monitor this aspect of the management of each timeshare plan and to incorporate this information into on-going settlement negotiations or enforcement cases pending against financially troubled timeshare plans.

Section 721.13(4), Florida Statutes, is amended to enable purchasers of license timeshare plans to have the same ability to request a mail-out as purchasers of condominium or cooperative timeshare plans.

#### **Section 7.**

Section 721.15(1), Florida Statutes, is amended to permit the developer of a condominium timeshare plan to allocate common expenses of the timeshare plan in a manner different from the requirements currently applicable to all condominiums. The developer will be able to differentiate in the allocation between whole-unit condominium units and timeshare condominium units on any reasonable basis including, but not limited to, unit size, unit type, unit location, specific identification, or a combination of these factors, so long as 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 division is given rule making authority.

#### **Section 8.**

Section 721.18(2), Florida Statutes, is amended to require that both the offering and audit information required in subsection (1) be filed on or before June 1 of each year. According to the division, the existing language has led to some confusion.

#### **Section 9.**

Section 721.26, Florida Statutes, is amended to give the division authority to seek personal liability against regulated parties and related parties who violate the chapter or rules involving acts of dishonesty during the management and operation phase of the

timeshare plan. This is an expansion of the current authority to seek personal liability during the offer and disposition phase of the timeshare plan. In addition, the bill gives the division authority to seek penalties for violation of its rules. Part III, which is the new part relating to nonjudicial foreclosures is specifically excluded from the division's regulatory jurisdiction.

**Section 10.**

This section creates Part III of chapter 721, Florida Statutes, the "Timeshare Lien Foreclosure Act." According to the bill, the purposes of this part are to:

- (1) give statutory recognition to timeshare estates as parcels of real property used for vacation experience rather than for homestead purposes.
- (2) recognize that the economic health and efficient operation of the vacation ownership industry are in part dependent upon the availability of an efficient and economical process for foreclosure.
- (3) establish streamlined procedures for the foreclosure of any and all assessment liens and mortgage liens against a timeshare estate.
- (4) recognize the need to assist vacation ownership resort owners' associations by simplifying and expediting the process of foreclosure of assessment liens and mortgage liens.
- (5) give statutory recognition to the right of persons to privately contract for a power of sale as their remedy in lieu of a judicial remedy to foreclose liens on timeshare estates.

Section 721.82, Florida Statutes, is created to provide for definitions as follows:

- (1) "Assessment lien" means: (a) a lien for delinquent assessments as provided in ss. 721.16 and 718.116 as to timeshare condominiums; or (b) a lien for unpaid taxes and special assessments as provided in s. 192.037(8).
- (2) "Claim of lien" means a claim of an assessment lien recorded as provided in ss. 721.16 and 718.116 as to timeshare condominiums.
- (3) "Junior interestholder" means any person who has a lien or interest of record prior to the recording of the notice of sale pursuant to s. 721.85(8) against a timeshare estate in the county in which the timeshare estate is located which is inferior to the mortgage lien or assessment lien being foreclosed under this part.
- (4) "Lienholder" means a holder of an assessment lien or a holder of a mortgage lien, as applicable. A receiver appointed pursuant to s. 721.26 shall be considered a lienholder for purposes of this part.
- (5) "Mortgage" has the same meaning as set forth in s. 697.01.
- (6) "Mortgage lien" means a security interest in a timeshare estate created by a mortgage encumbering the timeshare estate.

(7) "Mortgagee" means a person holding a mortgage lien.

(8) "Mortgagor" means a person granting a mortgage lien.

(9) "Notice address" is defined for an assessment lien and a mortgage lien, and for a junior interestholder.

(10) "Obligor" means either the mortgagor, the person obligated under a claim of lien, or the record owner of the timeshare estate, as the context requires.

(11) "Power of sale" is either an express written agreement in a mortgage identifying the mortgagor, mortgagee, and the trustee; or it is an express written provision in a timeshare instrument identifying the managing entity and the trustee, which authorizes the trustee to sell the timeshare estate without judicial action at a foreclosure sale regularly conducted and duly held in accordance with this part. The bill provides that as to assessment liens only, no written agreement is required for a receiver for the association to sell a timeshare estate without judicial action at a foreclosure sale regularly conducted and duly held in accordance with this part.

(12) "Trustee" means any person entitled to exercise a power of sale. The lienholder may not serve as the trustee.

Section 721.83, Florida Statutes, is created to provide for qualifications of trustees and for appointment of successor trustees. Subsection (1) provides that a trustee can be an attorney, a title insurance company, title insurance agent that is licensed pursuant to s. 626.8417, or title insurance agency that is licensed pursuant to s. 626.8418. An attorney who is a trustee may represent the lienholder foreclosing under this part in addition to performing the duties of a trustee under a power of sale. Subsection (3) provides that successor trustees may be appointed by a lienholder at any time by recording a notice of substitution. The bill specifies how the notice is to be filed and its contents.

Section 721.84, Florida Statutes is created to provide for disclosure and acknowledgment.

Section 721.84(1), Florida Statutes, provides that in order to foreclose a mortgage lien pursuant to this part, certain conditions must be met, including:

(a) the timeshare instrument recorded in the public records of the county in which the timeshare estate being foreclosed is located must contain a specified statement in conspicuous type. This statement includes an acknowledgment of the mortgage, and the possibility of foreclosure in the event of default. The acknowledgment provides that a foreclosure can occur through a nonjudicial procedure. The owner is not liable for a deficiency resulting from the nonjudicial foreclosure procedure. This section provides for notice, provisions for objection to the nonjudicial procedure, and provides that upon objection, the matter will be transferred to a judicial procedure. The owner agrees that in a judicial foreclosure procedure, he may be subject to a deficiency judgment or personal liability. If the court finds that there is a complete absence of a justiciable issue of either law or fact raised by the owner's objection or defense, the owner may be personally liable for the costs and attorney's fees incurred by the lienholder in the judicial foreclosure.

Section 721.84(2), Florida Statutes, provides that in order to foreclose an assessment lien pursuant to this part, certain specified conditions must be met. Those conditions are similar to the conditions in subsection (1) for foreclosure on a mortgage lien. This subsection further provides that if an amendment to the timeshare instrument is sought, it must include a specific notice.

Section 721.84(3), Florida Statutes, provides that notwithstanding anything to the contrary in this part, a receiver for the association may exercise a power of sale as to assessment liens regardless of whether the notices or the acknowledgment required by subsection (2) have been given.

Section 721.85, Florida Statutes, is created to provide conditions to the exercise of power of sale by a trustee. A trustee may exercise the power of sale if: the requirements of s. 721.84 have been met; any substitution of trustee is filed; there is a default, and the default is available for foreclosure pursuant to law or contract; there is no pending lis pendens recorded regarding a judicial action for foreclosure of the mortgage lien or the assessment lien against the same timeshare estate, and the trustee has not been served notice of the filing of any action to enjoin the power of sale procedure; a claim of lien and attendant documents is recorded in the public records; the trustee has sent written notice of default and intent to sell to the obligor's and junior interestholders with a conspicuous notice statement as specified in this section; and at least 30 calendar days has elapsed since the sending of the notice of default and intent to sell, there has been no written objection to the sale. If the trustee receives a written objection as specified in subsection (7), the trustee shall not proceed under this part, but the mortgagee or the managing entity, as applicable, shall be required to file a foreclosure action as provided in ch. 702, F.S. This will make the obligor susceptible to attorney's fees and costs, if there is a complete absence of a justiciable issue of law or fact raised by the objections or defenses. The notice of sale must be recorded in the public records. The owner has the right to cure the default at any time before the sale of the timeshare estate by payment of all past due loan payments or assessments; accrued interest; late fees; taxes; and all fees and costs incurred by the lienholder and trustee, including attorney's fees and costs, in connection with the default.

Section 721.86, Florida Statutes, provides the manner of delivery of notice of default and intent to sell. Notice is by certified or registered mail, if "refused" by first-class mail, or if not delivered by publication as specified in this section. The trustee exercise due diligence in locating the obligor's address, and must file an affidavit indicating the perfecting of notice as specified in this section.

Section 721.87, Florida Statutes, specifies the contents of the notice of sale, and provides for the trustee to send a copy of the notice of sale by first class mail to the notice addresses of the obligor and the junior interestholder, and by certified or registered mail to the lienholder. Except as provided in this part, no notice is required to any person claiming an interest subsequent to the recording of the notice of sale as set forth in this section. The notice of sale has the same force and effect as the filing of a lis pendens in a judicial proceeding.

Section 721.88, Florida Statutes, provides for publication of the notice of sale.

Section 721.89, Florida Statutes is created to provide for the trustees' certificate of compliance on the date the trustee conducts a sale.

Section 721.90, Florida Statutes, is created to provide for the manner of sale. The sale of a timeshare estate must be held pursuant to the notice of sale. Any person may bid at the sale. The trustee may bid for the lienholder, but not for himself or herself. The person conducting the sale may postpone the sale from time to time. This section provides criteria for postponement, and for amended notice of sale. The buyer must pay at the time of sale, the price bid. On the date of sale, the trustee must issue a certificate of sale as specified in this section.

Section 721.91, Florida Statutes, is created to specify the effect of the trustee's sale. A trustee's sale shall foreclose and terminate all interest in the timeshare estate of all persons to whom notice is given pursuant to ss. 721.85(5) and 721.87(2), and of any other person claiming by, through or under such person. On the issuance of a certificate of sale pursuant to s. 721.90(6), all rights of redemption foreclosed pursuant to this part shall terminate.

This section provides a presumption of validity of a sale upon the recording of the certificate of compliance and issuance of the certificate of sale.

Section 721.91, Florida Statutes, is created to provide for the issuance of a trustee's deed. Ten days after a sale, absent a filing of a judicial action to enjoin issuance of the trustee's deed to the timeshare estate or objecting to the sale, the trustee must issue a trustee's deed. The deed must be recorded.

Section 721.93, Florida Statutes, is created to provide for disposition of the proceeds of the sale by the trustee as follows:

- (a) to the expenses of the sale
- (b) to the indebtedness owed
- (c) to all junior interestholders as their liens or interests may appear of record in the order of priority
- (d) the surplus, if any, to an obligor entitled to such surplus

Subsection (2), provides that in disposing of the proceeds of sale, the trustee may rely on the information provided in the public records as to the claims of junior interestholders 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 otherwise. All costs and fees of adjudication shall be paid out of the proceeds of sale after payment of the amounts pursuant to paragraphs (1)(a) and (b).

Section 721.94, Florida Statutes, is created to provide for the form and effect of the trustee's deed.

Section 721.94(2), Florida Statutes, is created to provide that upon the recording of the trustee's deed, the certificate of compliance and trustee's deed together shall be conclusive evidence of the truth of the matters set forth therein.

Section 721.94(4), Florida Statutes, is created to provide that if an action is filed based on any claim that the trustee failed to follow the procedures in this part or that the sale

was otherwise improper, it shall be presumed that the trustee was acting solely as the agent of the lienholder, and any liability resulting therefrom shall be the whole responsibility of the mortgagee or managing entity and not the trustee.

Section 721.95, Florida Statutes, is created to provide miscellaneous provisions. This section includes a provision that the procedures in this part do not impair or affect the continuing right to bring a judicial action to foreclose a mortgage lien or claim of lien; a provision that nothing in this part shall be construed to impair the right of any person to assert a legal and equitable right in a court of competent jurisdiction; however, no action may be pursued to set aside a sale or void a trustee's deed subsequent to the recordation; a severability clause; a statement that the division has no authority to regulate, enforce, or ensure compliance with any provision of this part; and a provision that notwithstanding anything in s. 721.13 to the contrary, a managing entity must release the address of the owner of a timeshare estate to a lienholder who can demonstrate that the timeshare estate is subject to an assessment lien or a mortgage lien held by such lienholder.

**Section 11.**

This act shall take effect upon becoming a law. With respect to any timeshare plan filing approved by the division prior to the date this act becomes a law, the amendments to s. 721.06(1)(f), F.S., will not apply to such filing until January 1, 1998, unless and only to the extent that the developer otherwise voluntarily agrees to comply with all or a portion of the provisions.

**III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:**

1. Non-recurring Effects:

Unknown.

2. Recurring Effects:

Unknown. According to the division, penalties imposed for rule violations will be deposited into the division's trust account. Currently, there are very few rule violations that would result in the imposition of penalties.

According to the division, the changes in the method of assessing common expenses is more flexible yet more complex than current law. This may generate more complaints and lengthier investigations. The division is unable to determine whether the increased complexity will result in more or fewer enforcement cases or an increase in litigation.

3. Long Run Effects Other Than Normal Growth:

Unknown.

4. Total Revenues and Expenditures:

Unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Unknown.

2. Recurring Effects:

According to the division, local governments may see an increase in the number of timeshare plans that fully pay the annual ad valorem tax assessments as a result of the more expedient non-judicial foreclosure process for unit owners who are not paying their assessments.

3. Long Run Effects Other Than Normal Growth:

Unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The bill provides a more expedient, non-judicial method of foreclosing on timeshare properties. The bill provides for notice by certified or registered mail, if notice by mail is not successful, then by publication. This could result in out-of-state obligors who have not maintained a current address with the required entity, losing their timeshare property without actual notice. However, the bill was amended to require the trustee to exercise due diligence in locating the notice address of the obligor, and to provide an affidavit that due diligence has been exercised.

In addition, the bill provides that an obligor who objects upon receipt of an intent to initiate a non-judicial foreclosure, may be subject to attorney's fees and costs in the resulting judicial foreclosure action.

2. Direct Private Sector Benefits:

According to the division, the timeshare industry has been faced with a number of financially troubled resorts that are unable to pay the full tax assessment on the timeshare property because of the operation of s. 192.037, F.S., which requires a lump sum payment by the association to the county tax collector. Because property taxes are individually assessed against owners but collectively paid by the association, and because taxes that are not paid by delinquent owners may not be assessed against paying owners as a common expense, a number of timeshare

associations have been unable to pay the property tax when due. This results in a tax lien on the timeshare property, which leads to statutory foreclosure of the entire timeshare plan.

The bill gives timeshare plans a method of quickly foreclosing on non-paying owners so that the collective tax bill can be paid. Timeshare plans gain flexibility to meet the tax debts for full payment, and at the same time, protect the interests of the remaining timeshare owners who have paid their share of the tax.

This bill will also provide a more expedient remedy for timeshare plans whose owners have not paid their common expenses. These assessments may currently be passed on to paying owners; however, this creates an additional financial burden for responsible owners.

3. Effects on Competition, Private Enterprise and Employment Markets:

Unknown.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

Section 721.26, Florida Statutes, is amended to give the division authority to seek personal liability against regulated parties and related parties who violate the chapter or rules involving acts of dishonesty during the management and operation phase of the timeshare plan. This is an expansion of the current authority to seek personal liability during the offer and disposition phase of the timeshare plan. In addition, the bill gives the division authority to seek penalties for violation of its rules. Existing law provides that 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.



Section 721.94(2), Florida Statutes, is created to provide that upon the recording of the trustee's deed, the certificate of compliance and trustee's deed together shall be conclusive evidence of the truth of the matters set forth therein. This can occur after constructive notice.

**VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

The Committee on Real Property & Probate adopted a strike everything amendment along with 3 amendments to the strike everything. The strike everything amendment was a clean-up amendment. The differences include correcting drafting and grammatical errors, clarifying certain provisions, specifying that the division does not have any regulatory power over nonjudicial foreclosures, and changing the qualifications of a trustee.

In addition, the committee deleted a sentence in 721.91(4), which provided "The certificate of compliance and the issuance of the certificate of sale may be relied upon by all third parties without actual knowledge of a defect or irregularity in the sale. This provision was removed to address concerns regarding title insurance. Similarly, a provision in 721.93(2), was removed which stated that "no action to set aside the sale and void the trustee's deed may be filed or otherwise pursued against any person acquiring an interest in the timeshare estate for value, including any subsequent mortgagee or buyer."

Finally, section 721.86 relating to the manner of delivery of notice of default and intent to sell was amended to require diligent search and inquiry to obtain a valid address for the obligor, and to require that if notice is perfected by publication under this subsection, the trustee must attach an affidavit of publication to the certificate of compliance and shall state that the notice was perfected by publication after diligent search and inquiry was made for the obligor's address.

**VII. SIGNATURES:**

**COMMITTEE ON REAL PROPERTY & PROBATE:**

Prepared by:

Legislative Research Director:

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P.K. Jameson

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P.K. Jameson