1983

Session Law 83-264

Florida Senate & House of Representatives

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### Committee Records

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### Senate/House Journals

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### Tape Recordings

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### Other Documentation

Record series title, folder title, etc.

Location Cite #pp
A bill to be entitled
An act relating to real estate time-share
plans, amending s. 721.02(2), Florida Statutes,
and adding a new subsection (3), providing that
full and fair disclosure to purchasers and
prospective purchasers of time-share plans is
one of the purposes of chapter 721, Florida
Statutes, amending s. 721.03, Florida Statutes,
1982 Supplement, relating to the scope of the
chapter, amending s. 721.05, Florida Statutes,
providing definitions; amending s. 721.04,
Florida Statutes, relating to certain time-
share plans, amending s. 721.06, Florida
Statutes, 1982 Supplement, relating to
contracts for the purchase of time-share
periods, prohibiting attempts to obtain waivers
of cancellation rights; providing requirements
for contracts; amending s. 721.07, Florida
Statutes, providing procedures with respect to
public offering statements, amending s. 721.08,
Florida Statutes, relating to escrow
provisions; amending s. 721.09(2), (3), and
(4), Florida Statutes, requiring escrow agents
to maintain escrow accounts in a specified
manner; providing a penalty for sellers or
escrow agents who intentionally fail to comply
with certain escrow deposit requirements,
amending s. 721.10, Florida Statutes, relating
to the cancellation of purchase transactions
with respect to time-sharing, amending s.
721.11, Florida Statutes, defining advertising
materials and providing restrictions, providing penalties; requiring disclosure with respect to certain advertising, creating s. 721.111, Florida Statutes, relating to price and gift promotional offers, providing requirements; providing penalties; amending s. 721.12(1), Florida Statutes, relating to recordkeeping by the seller, amending s. 721.13(3)(e), Florida Statutes, and adding a new subsection (4); requiring annual audits to be conducted in a certain manner, requiring purchasers to approve certain agreements, amending s. 721.14, Florida Statutes, providing for the appointment of a receiver to run the affairs of the association under certain circumstances, amending s. 721.15(2), Florida Statutes, and adding subsection (6) thereto, prohibiting excuse of time-share owners from paying a share of common expenses; providing exceptions; providing that assessments against time-share purchasers need not be made more frequently than annually; amending s. 721.17, Florida Statutes, providing for the transfer of interest in a time-share plan; creating s. 721.175, Florida Statutes, providing for supervisory duties of developers, amending s. 721.18, Florida Statutes, relating to exchange programs, modifying filing requirements and procedures and providing an annual filing fee; amending s. 721.20, Florida Statutes, prohibiting sellers or developers from employing nonlicensed persons to sell time-share periods, amending s. 721.21, Florida Statutes, relating to purchasers' remedies; amending s. 721.22, Florida Statutes, relating to partition, amending s. 721.26(4) and (5)(c) and (d), Florida Statutes, authorizing the division to bring an action for appropriate relief in circuit court for violations of the chapter, providing rulemaking authority, amending s. 721.27, Florida Statutes, increasing to $1 the annual fee for each time-share period, repealing s. 718.1065, Florida Statutes, relating to condominium partition, amending s. 555.02(1)(a), Florida Statutes; defining certain violations as "racketeering activity", providing application of the act, providing an effective date.

Be it enacted by the Legislature of the State of Florida

Section 1. Subsection (2) of section 721.02, Florida Statutes, is amended, subsection (3) is renumbered as subsection (4), and a new subsection (3) is added to said section, to read

721.02 Purposes -- The purposes of this chapter are to --

(2) Establish procedures for the creation, sale, exchange, promotion, and operation of time-share time-sharing plans

(3) Provide full and fair disclosure to the purchasers and prospective purchasers of time-share plans.

Section 2. Section 721.03, Florida Statutes, 1982 Supplement, is amended to read...
(Substantial wording of section. See § 721 03, F. S., 1982 Supp., for present text.)

721 03 Scope.--

(1) This chapter shall apply to all time-share plans consisting of more than seven time-share periods over a period of at least 3 years in which the facilities or accommodations are located within this state.

(2) All time-share accommodations or facilities which are located outside the state but offered for sale in this state shall be subject only to the provisions of ss 721 01-721 12, 721 18-721 21, 721 26, and 721 28.

(3) Where a time-share 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 herein. 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.

(4) A time-share 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.

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

Section 3 Section 721 05, Florida Statutes, is amended to read:

721 05 Definitions.--As used in this chapter

(1) "Accommodations" means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, or any other private or commercial structure which is situated on real property and designed for occupancy by one or more individuals.

(2) "Agreement for deed" means any written contract utilized in the sale of time-share estates which provides that the legal title will not be conveyed to the purchaser until the contract price has been paid in full, and the terms of payment 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)(a) "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.

(b) "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.

(c) "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.

(d) For plans selling time-share estates, conveyance of the legal title to the time-share period as evidenced by the delivery of a deed to the purchaser, or to the clerk of the court for recording, or conveyance of the equitable title to the time-share period as evidenced by the irrevocable delivery of an agreement for deed to the clerk of the court for recording.

(e) For plans selling time-share licenses, 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.

(5) "Conspicuous type" means type in boldface capital
letters no smaller than the largest type (excluding headings)
on the page on which it appears and, in all cases, at least
10-point type. Where conspicuous type is required, it shall
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.

(6)(a) "Common expenses" means those expenses properly
incurred for the maintenance, operation, and repair of the all
accommodations or facilities, or both, constituting the time-
share time-sharing plan.

(b) "Completion of construction" means:

(a) issuance of a certificate of occupancy for the
entire building in which a time-share unit being sold is
located, or for the improvement, or the equivalent
authorization issued by the governmental body having
jurisdiction, and, in jurisdictions where no certificate of
occupancy or equivalent authorization is issued, substantial
completion of construction, finishing, and equipping of the
building or improvements according to the plans and
specifications, and

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

(7) "Contract" means any agreement conferring the
rights and obligations of the time-share time-sharing plan on
the purchaser.

(9)(a) "Developer" means any the person creating a
time-sharing plan who

(a) Creates the time-share plan, or

(b) Succeeds to any developer right or obligation as
described in § 721.17.

(b) "Division" means the Division of Florida Land
Sales and Condominiums of the Department of Business
Regulation.

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

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

(e) "Escrow agent" includes only

(a) A savings and loan association, bank, trust
company, or other financial lending institution located in
this state having a net worth in excess of 5 million;

(b) An attorney who is a member of The Florida Bar and
who has posted a surety bond issued by a company authorized
and licensed to do business in this state as surety in the
amount of $50,000, or

(c) A real estate broker licensed pursuant to chapter
475 and who has posted a surety bond issued by a company
authorized and licensed to do business in this state as surety
in the amount of $50,000.

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

(g) "Exchange program" means any opportunity or
procedure for the assignment or exchange of time-share periods
among purchasers in the same or other time-share plans.
"Facilities" means amenities including any structure, service, improvement, or real property, improved or unimproved, other than the time-share unit, which is made available to the purchasers of a time-share time-sharing plan.

"Managing entity" means the person responsible for operating and maintaining the time-share time-sharing plan.

"Memorandum of agreement" means a written document, in recordable form, which includes the names of the purchaser and seller, a legal description of the time-share property and time-share period, and a description of the type of time-share license sold by the seller.

"Offer to sell," "offer for sale," "offered for sale," or "offer" means the solicitation, advertisement, inducement of purchasers, the taking of reservations, or any other method or attempt to encourage any person to acquire whereby a purchaser is offered the opportunity to participate in a time-share time-sharing plan.

"Owner of the underlying fee" means any person having an interest in the real property underlying the accommodations or facilities of the time-share plan at or subsequent to the time of creation of the time-share plan, or any person who purchases 15 or more time-share periods for resale in the ordinary course of business.

"Owners' association" means the association made up of all purchasers of a time-share time-sharing plan who have purchased a time-share estate fee simple interest in real property.

"Purchaser" means any person, other than a developer, who by means of a voluntary transfer acquires a legal or equitable interest in a time-share plan other than as security for an obligation any person who is buying or who has bought a time-share period in a time-sharing plan.

"Seller" means any developer or any other person, or agent or employee thereof, who is offering time-share periods for sale to the public in the ordinary course of business, except a person who has acquired a time-share period for his own occupancy and later offers it for resale.

"Time-share estate" means a right to occupy a time-share unit, coupled with a freehold estate or an estate for years with future interest in a time-share property or a specified portion thereof.

"Time-share instrument" means one or more documents, by whatever name denominated, creating or governing the operation of time-share plans.

"Time-share license" means a right to use a time-share unit, which right is neither coupled with a freehold interest, nor coupled with an estate for years with a future interest, in the time-share property.

"Time-share period" means that period of time when a purchaser of a time-share time-sharing plan is entitled to the possession and use of the accommodations or facilities, or both, of a time-share time-sharing plan.

"Time-share Time-sharing 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, in exchange for a consideration, receives ownership rights in or a right to use accommodations or facilities, or both, for a specified period of time less than a full year.
during any given year, but not necessarily for consecutive
years, and which extends for a period of more than 3 years

(29) "Time-share property" means one or more time-
share units subject to the same time-share instrument,
together with any other property or rights to property
appurtenant to those units.

(30) "Time share unit" means an accommodation or
facility of a time-share time-sharing plan which is divided
into time-share periods.

Section 4  Section 721.04, Florida Statutes, is
amended to read:

721.04 Saving clause.--All time-share time-sharing
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 this chapter.

Section 5  Section 721.06, Florida Statutes, 1982
Supplement, is amended to read:

721.06 Contracts for purchase of time-share periods.--
(1) No seller of a time-share time-sharing plan shall
fail to utilize, and furnish each purchaser of such plan a
fully completed copy of, a contract pertaining to the such
sale, which contract shall include the following information
(a)(1) The actual date the contract is executed by
each party as a party.

(b)(2) The names and addresses of the seller, the
developer, any owner of the underlying fee, and the time-share
time-sharing plan

(c)(3) The total financial obligation of the
purchaser, including the initial purchase price and any
additional charges to which the purchaser may be subject, such
as financing, reservation, maintenance, management, and
recreation charges

(d)(4) The estimated date of completion of
construction availability of each accommodation or facility
which is not completed at the time the contract is executed by
the seller and purchaser, and the estimated date of closing

(e)(5) A description of the nature and duration of the
time-share period being sold, including whether any interest
in real property is being conveyed and the specific number of
years or months constituting the term of the time-share plan
contract

(f)(6) Immediately prior to the space reserved in the
contract for the signature of the purchaser, in substantially and
conspicuous type which shall be larger than the type in the
remaining text of the contract, substantially the following
statements

"YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR
OBLIGATION WITHIN 10 DAYS FROM THE DATE YOU SIGN THIS
CONTRACT, AND UNTIL 10 DAYS AFTER YOU RECEIVE THE PUBLIC
OFFERING STATEMENT, WHICHEVER IS LATER.

IF YOU DECIDE TO CANCEL THIS CONTRACT, YOU MUST NOTIFY
THE DEVELOPER 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 Developer Seller) AT
(Address of Developer Seller) ... ANY ATTEMPT TO OBTAIN A
WAIVER OF YOUR CANCELLATION RIGHTS IS UNLAWFUL 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
NO PURCHASER SHOULD RELY UPON REPRESENTATIONS OTHER THAN THOSE
INCLUDED IN THIS CONTRACT."
(g) If a time-share license to an interest in real property is being conveyed, the contract shall also contain, in conspicuous type, the following statement:

"YOU MAY ALSO CANCEL THIS CONTRACT AT ANY TIME AFTER THE ACCOMMODATIONS OR FACILITIES ARE NO LONGER AVAILABLE AS PROVIDED IN THIS CONTRACT AND THE PUBLIC OFFERING STATEMENT."

(h) If a time-share estate is being conveyed, the contract shall also contain, in boldface and conspicuous type, the following statement:

"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 oral representations cannot be relied upon and that the seller makes no representations other than those contained in the contract and the public offering statement:

(1) A statement that, in the event the purchaser cancels the contract during a 10-day cancellation period, 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. The statement shall further provide that the refund shall 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, of all payments made under the contract within 20 days after receipt of notice of cancellation.

(1) Unless the developer is at the time of offering the plan the owner in fee simple absolute of the accommodations and facilities of the time-share plan, free and clear of all liens and encumbrances, a statement that the developer is not the sole owner of the underlying fee of the accommodations or facilities without liens or encumbrances, and shall include:

1. The names and addresses of all persons or entities having an ownership interest or other interest therein, and
2. The developer's actual interest therein.

(2) If the contract is for the sale or transfer of a time-share period in which the accommodations or facilities are subject to a lease, the contract shall include as an exhibit a copy of the executed lease and shall contain within the text in conspicuous type the following:

"THIS TIME-SHARE PERIOD IS SUBJECT TO A LEASE (OR SUB-LEASE)."

(2) An agreement for deed shall be recorded by the developer, who shall pay all recording costs associated therewith.

(3) The escrow agent shall provide every seller with a receipt for all funds paid to the seller.

(9) If no fee interest in real property is being conveyed, a statement that, in the event of any cancellation by the purchaser after the 10-day cancellation period, the refund shall be the total amount of all payments made by the purchaser under the contract reduced by the proportion of any
contract benefits the purchaser actually has received or has
had the right to receive under the contract during the time
preceding the date when the cancellation becomes effective;
if the seller is to transfer a fee interest in real property
to the purchaser; the seller shall furnish a contract for sale
to the purchaser at least 10 days before the date of closing;
unless the purchaser has waived in writing the 10-day right
of cancellation after such cancellation period has been
disclosed to him by the seller.

Section 6  Section 721.07, Florida Statutes, is
amended to read:

(Substantial rewording of section. See
3 721.07, F.S., for present text.)
721.07 Public offering statement.--Prior to offering
any time-share plan, every developer shall file a public
offering statement with the division for approval. The
developer shall furnish each purchaser with a copy of the
approved public offering statement. Until the division
approves such filing, any contract regarding the sale of the
time-share plan which is the subject of the public offering
statement shall be voidable by the purchaser.
(1) The division shall, upon receiving a public
offering statement from a developer, mail the developer an
acknowledgment of receipt. The failure of the division to
send such acknowledgment shall not, however, relieve the
developer from the duty of complying with this section.
(2) Within 45 days of receipt of a public offering
statement, the division shall determine whether the proposed
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 public offering statement
or found specified deficiencies. If the division fails to
approve or specify deficiencies within 45 days, the filing
shall be deemed approved. The developer may correct the
deficiencies; and, within 20 days after receipt of the
developer's corrections, the division shall notify the
developer by mail that the division has either approved the
filing or found additional specified deficiencies. If the
division fails to approve or specify additional deficiencies
within 20 days after receipt of the developer's corrections,
the filing shall be deemed approved.

(3)(a) Any change to an approved filing shall be filed
with the division for approval as an amendment prior to the
effectiveness of the change. The division shall have 20 days
to approve or cite deficiencies in the proposed amendment. If
the division fails to act within 20 days, the amendment shall
be deemed approved. If the developer fails to file
corrections to any deficiency citation within 30 days, the
division may reject the amendment.

(b) At the time amendments are delivered to
purchasers, as provided in paragraph (a), the developer shall
provide, to those who have not closed, a written statement
that if any of such amendments materially alter or modify the
offering in a manner which is adverse to the purchaser, the
purchaser or lessee shall have a 10-day voidability period.

(4) Upon filing of a public offering statement, the
developer shall pay a filing fee of $1 for each time-share
period which is to be part of the proposed time-share plan.

(5) Every public offering statement shall contain the
following.

(a) A cover page stating only.

CODING: Words in italics are deletions from existing law; words underlined are additions.
1. The name of the time-share plan, and
2. The following, in conspicuous type:

THIS PUBLIC OFFERING STATEMENT CONTAINS IMPORTANT
MATTERS TO BE CONSIDERED IN ACQUIRING A TIME-SHARE PERIOD.

THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A
PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES, EXHIBITS
HERETO, 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 summary containing all statements required to be
in conspicuous type in the offering statements 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) and a cross-
reference to the location in the public offering statement of
each exhibit

(e) A description of the time-share plan, including,
but not limited to.

1. Its name and location
2. An explanation of the form of time-share 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, the location of the lease in the exhibits to the
public offering statement shall be stated.

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
2 Each swimming pool, its general location, approximate size, depths, and capacity, approximate deck size and capacity, and whether the pool is heated.

3. Additional facilities, the number of each facility, its approximate location, approximate size, and approximate capacity.

4. A general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility or, in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

5. The estimated date when each room or other facility will be available for use by the purchaser.

6. An identification of each room, accommodation, or other facility to be used by purchasers that will not be owned by the purchasers or the association.

7. A reference to the location in the disclosure materials of the lease or other agreements providing for the use of those facilities.

8. A description of the terms of the lease or other agreements, including the length of the term, the rent payable, directly or indirectly, by each purchaser, and the total rent payable to the lessor, stated in weekly, monthly, and annual amounts for the entire term of the lease, and a description of any option to purchase the property leased under any such lease, including the time the option may be exercised, the purchase price or how it is to be determined, the manner of payment, and whether the option may be exercised for a purchaser's share or only as to the entire leased property.

9. A statement as to whether the developer may provide additional facilities not described above, their general locations and types; improvements or changes that may be made, the approximate dollar amount to be expended; and the estimated maximum additional common expense or cost to the individual purchaser that may be charged during the first annual period of operation of the modified or added facilities.

(h) A description of the recreational and other commonly used facilities that will not be used exclusively by purchasers of the time-share plan and which require the payment of any portion of the maintenance and expenses of such facilities, either directly or indirectly, by the purchasers. The description shall include, but not be limited to, the following:

1. Each building or facility committed to be built.

2. Facilities not committed to be built except under certain conditions, and a statement of those conditions or contingencies.

3. As to each facility committed to be built, or which will be committed to be built upon the happening of one of the conditions in subparagraph 2., a statement as to whether it will be owned by the purchasers having the use thereof or by an association or other entity which will be controlled by them, or others, and the location in the exhibits of the lease or other document providing for use of those facilities.

4. The year in which each facility will be available for use by the purchasers or, in the alternative, the maximum...
number of purchasers in the project at the time each of the
facilities is committed to be completed.

5 A general description of the items of personal
property, and the approximate number of each item of personal
property, that the developer is committing to furnish for each
room or other facility or, in the alternative, a
representation as to the minimum amount of expenditure that
will be made to purchase the personal property for the
facility.

6 If there are leases, a description thereof,
including the length of the term, the rent payable, and a
description of any option to purchase.

(1) If any recreational facilities or other
facilities offered by the developer for use by purchasers are
to be leased or have club membership associated therewith, one
of the following statements in conspicuous type shall be
included. THERE IS A RECREATIONAL FACILITIES LEASE ASSOCIATED
WITH THIS TIME-SHARE PLAN, or, THERE IS A CLUB MEMBERSHIP
ASSOCIATED WITH THIS TIME-SHARE PLAN. There shall be a
reference to the location in the disclosure materials where
the recreation lease or club membership is described in
detail.

2. If it is mandatory that unit owners pay a fee,
rent, dues, or other charge under a recreational facilities
lease or club membership for the use of facilities, there
shall be in conspicuous type the applicable statement:

a. MEMBERSHIP IN THE RECREATIONAL FACILITIES CLUB IS
MANDATORY FOR PURCHASERS;

b. PURCHASERS ARE REQUIRED, AS A CONDITION OF
OWNERSHIP, TO BE LESSEES UNDER THE RECREATIONAL FACILITIES
LEASE;

c. PURCHASERS ARE REQUIRED TO PAY THEIR SHARE OF THE
COSTS AND EXPENSES OF MAINTENANCE, MANAGEMENT, UPKEEP,
REPLACEMENT, RENT, AND FEES UNDER THE RECREATIONAL FACILITIES
LEASE (OR THE OTHER INSTRUMENTS PROVIDING THE FACILITIES), or

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, the location in the
disclosure materials where the development is described in
detail shall be stated.

3 If the developer, or any other person other than
the purchasers and other persons having use rights in the
facilities, shall reserve, or be entitled to receive, any
rent, fee, or other payment for the use of the facilities,
then there shall be the following statement in conspicuous
type. THE PURCHASERS OR THE ASSOCIATION(S) MUST PAY RENT OR
LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED
FACILITIES Immediately following this statement, the
location in the disclosure materials where the rent or land
use fees are described in detail shall be stated.

4 If, in any recreation format, whether leasehold,
club, or other, any person other than the association shall
have the right to a lien on the time-share periods to secure
the payment of assessments, rent, or other exactions, there
shall appear a statement in conspicuous type in substantially
the following form.

a THERE IS A LIEN OR LIEN RIGHT AGAINST EACH TIME-
SHARE PERIOD TO SECURE THE PAYMENT OF RENT AND OTHER EXACTIONS
UNDER THE RECREATION LEASE. A PURCHASER'S FAILURE TO MAKE
 THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN, or

CODING Words in normal through type are deletions from existing law, words underlined are additions.
b There is a lien or lien right against each time-share period to secure the payment of assessments or other
exactions coming due for the use, maintenance, upkeep, or repair of the recreational or commonly used facilities. A purchaser's failure to make these payments may result in foreclosure of the lien.

Immediately following the applicable statement, the location in the disclosure materials where the lien or lien right is described in detail shall be stated.

(j) If the developer or any other person shall have the right to increase or add to the recreational facilities at any time after the establishment of the time-share plan, without the consent of the purchasers or associations being required, there shall appear a statement in conspicuous type in substantially the following form:

Recreational facilities may be expanded or added without consent of the purchasers or the association(s). Immediately following this statement, the location in the disclosure materials where such reserved rights are described shall be stated.

(k) An explanation of the status of the title to the real property underlying the time-share 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.

(l) A description of any judgment against the developer, the managing entity, or owner of the underlying fee and the status of any pending suit to which the developer, the managing entity, or owner of the underlying fee is a party.

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purchasers, and a description of the management arrangement
and any contracts for these purposes having a term in excess
of 1 year, including the following
1. The names of contracting parties
2. The term of the contract
3. The nature of the services included
4. The compensation, stated on a monthly and annual
basis, and provisions for increases in the compensation
5. Copies of all described contracts shall be attached
as exhibits.

If the developer, or any person other than the
purchaser, has the right to retain control of the board of
administration of the association for a period of time which
can exceed 1 year after the closing of the sale of a majority
of the units in that condominium or cooperative to persons
other than successors or alternate developers, and the plan is
one in which all purchasers automatically become members of
the association, then a statement in conspicuous type in
substantially the following form shall be included: THE
DEVELOPER (OR OTHER PERSON) HAS THE RIGHT TO RETAIN CONTROL OF
THE ASSOCIATION AFTER A MAJORITY OF THE UNITS HAVE BEEN SOLD.
Immediately following this statement, the location in the
disclosure materials where this right to control is described
in detail shall be stated.

If there are any restrictions upon the sale,
transfer, conveyance, or leasing of a time-share period, then
a statement in conspicuous type in substantially the following
form shall be included: THE SALE, LEASE, OR TRANSFER OF TIME-
SHARE PERIODS IS RESTRICTED OR CONTROLLED. Immediately
following this statement, the location in the disclosure
materials where the restriction, limitation, or control on the
sale, lease, or transfer of time-share periods is described in
detail shall be stated.

(t) If the time-share plan is part of a phase project,
there shall be a statement to that effect and a complete
description of the phasing.

(u) A summary of the restrictions, if any, to be
imposed on time-share periods concerning the use of any of the
accommodations or facilities, including statements as to
whether there are restrictions upon children and pets, and
reference to the volumes and pages of the time-share plan
documents where such restrictions are found, or if such
restrictions are contained elsewhere, then a copy of the
documents containing the restrictions shall be attached as an
exhibit. If there are no restrictions, then a statement of
such fact.

(v) If there is any land that is offered by the
developer for use by the purchasers and which is neither owned
by them nor leased to them, the association, or any entity
controlled by the purchasers, a statement shall be made
describing the land, how it will serve the time-share plan,
and the nature and term of service. Immediately following
this statement, the location in the disclosure materials where
the declaration or other instrument creating such servitude
shall be stated.

(w) The manner in which utility and other services,
including, but not limited to, sewage and waste disposal,
water supply, and storm drainage will be provided, and the
person or entity furnishing them.

(x) An estimated operating budget for the time-share
plan and the association or managing entity and a schedule of
the purchaser's expense shall be attached as an exhibit and shall contain the following information:

1. The estimated annual expenses of the time-share plan collectible from purchasers by assessments. A purchaser's estimated payments 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 smallest time-share period offered for sale by the developer. If the time-share plan provides for the offer and sale of units to be used on a non-time-share basis, the estimated monthly and annual expenses shall be set forth in a separate schedule.

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

3. The estimated items of expenses of the time-share plan and the managing entity, except as excluded under subparagraph 2, including, but not limited to, the following items, which shall be stated either as a management expense collectible by assessments or as purchaser's expenses 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 recreational and other commonly used facilities
      (V) Taxes upon time-share property

   b. Expenses for a purchaser.
      (I) Rent for the unit, if subject to a lease.
      (II) Rent payable by the purchaser directly to the lessor or agent under any recreational lease or lease for the use of commonly used facilities, which use and payment is a mandatory condition of ownership and is not included in the common expense or assessments for common maintenance paid by the purchasers to the association.

4. The estimated amounts shall be stated for a period of at least 12 months and may distinguish between the period prior to 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, a description of such arrangement, including, but not limited to:
a. The specific time period during which the guarantee will be in effect.
b. A statement that the developer will pay all expenses incurred in excess of the amounts collected from purchasers or unit owners other than the developer if the developer has excused himself from the payment of assessments during the guarantee period.
c. The level, expressed in total dollars, at which the developer guarantees the budget.

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.

(y) A schedule of estimated closing expenses to be paid by a purchaser or lessee of a time-share period and a statement as to whether a title opinion or title insurance policy is available to the purchaser and, if so, at whose expense.

(z) The identity of the developer and the chief operating officer or principal directing the creation and sale of the time-share plan and a statement of the experience of both in this field, or, if no experience, a statement of that fact.

   (aa) Any service, maintenance, or recreation contracts or leases that may be canceled by the purchasers.
   (bb) The total financial obligation of the purchaser, including the initial purchase price and any additional charges to which the purchaser may be subject.
   (cc) 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.
   (dd) An explanation of the purchaser's rights of cancellation.
   (ee) A description of the insurance coverage provided for the benefit of the purchasers.
   (ff) A statement as to whether the time-share plan is participating in an exchange program and, if so, the name and address of the exchange company offering the exchange program.
   (gg) Any other information that the seller, with the approval of the division, desires to include in the public offering statement.
   (hh) Copies of the following, to the extent they are applicable, shall be included as exhibits:
      1. The declaration of condominium, or the proposed declaration if the declaration has not been recorded.
      2. The cooperative documents, or the proposed cooperative documents if the documents have not been recorded.
      3. The declaration of covenants and restrictions, or proposed declaration if the declaration has not been recorded.
4. The articles of incorporation creating the association.
5. The bylaws of the association.
6. The ground lease or other underlying lease of the real property on which the time-share plan is situated.
7. The management agreement and all maintenance and other contracts regarding the management and operation of the time-share property which have a term in excess of 1 year.
8. The estimated operating budget for the time-share plan and the required schedule of purchasers' expenses.
9. A copy of the floor plan of each type of accommodation and the plot plan showing the location of all accommodations and facilities of the time-share plan.
10. The lease of recreational and other facilities that will be used only by purchasers of the time-share plan.
11. The lease of facilities used by purchasers and others.
12. The form of time-share period lease, if the offer is of a leasehold.
13. A declaration of servitude of properties serving the accommodations or facilities but not owned by purchasers or leased to them or the association.
14. The statement of condition of the existing building or buildings, if the offering is of time-share periods in an operation being converted to condominium or cooperative ownership.
15. The statement of inspection for termite damage and treatment of the existing improvements, if the time-share property is a conversion.
16. The form of agreement for sale or lease of time-share periods.

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section only in such a manner as to be under the direct supervision and control of the escrow agent. A fiduciary relationship shall exist between the escrow agent and the purchaser. 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 the escrowed funds or property, the escrow agent shall immediately either, with the consent of all parties, submit the matter to arbitration or, by interpleader or otherwise, seek an adjudication of the matter by court.

(1) One hundred percent of all funds or other property constituting the deposit, which is received from or on behalf of purchasers of the time-share plan or time-share period, shall be deposited pursuant to an escrow agreement approved by the division. The escrow agreement shall provide that the funds or property may be released from escrow only as follows:

(a) CANCELLATION --

1. 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 property constituting the deposit made by the purchaser, or the proceeds thereof, shall be returned to the purchaser no later than 20 days after receipt by the developer of the notice of cancellation, or within 5 days after receipt of funds from the purchaser's cleared check, whichever is later.

2. If the purchaser has received benefits under the contract prior to the effective date of the cancellation, the funds or 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 his obligations under the terms of the contract to purchase or such other agreement by which the seller sells the time-share period, the developer shall provide an affidavit to the escrow agent requesting release of the escrowed funds or 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. The developer's statement that the purchaser has defaulted and that the developer has not;

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. If the time-share plan is one in which time-share licenses are to be sold and no cancellation or default has occurred, the escrow agent may release the escrowed funds or property upon presentation of:

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

(1) Expiration of the cancellation period.

(II) Completion of construction

(III) Closing.
1. (IV) Execution and recordation of the nondisturbance and notice to creditors instrument, as described in this section.
   a. A certified copy of the recorded nondisturbance and notice to creditors instrument.
   b. A copy of a memorandum of agreement, as defined in s 721.05(15), which has been irretrievably delivered for recording.

2. If the time-share plan is one in which time-share estates are to be sold and no cancellation or default has occurred, the escrow agent may release the escrowed funds or property 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 time-share estate is sold by agreement for deed, a certified copy of the recorded nondisturbance and notice to creditors instrument, as described in this section.

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

(d) NONDISTURBANCE AND NOTICE TO CREDITORS INSTRUMENT --The nondisturbance and notice to creditors instrument, where required, shall be executed by every person having an interest in the accommodations or facilities or having a lien, mortgage, or other encumbrance to which the facilities or accommodations are subject. The instrument shall state that, provided 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 time-share plan; that it shall be effective as between the time-share purchaser and interest holder despite any rejection or cancellation of the contract between the time-share purchaser and developer during bankruptcy proceedings of the developer; and that so long as the interest holder has any interest in the accommodations, facilities, or plan, the interest holder will fully honor all the rights of the time-share purchasers in and to the time-share plan, will honor the purchasers’ right to cancel their contracts and receive appropriate refunds, and will comply with all other requirements of this chapter and rules promulgated hereunder. The instrument shall contain language sufficient to provide subsequent creditors of the developer and interest holders with notice of the existence of the time-share plan and of the rights of purchasers. It shall serve to protect the interest of the time-share purchasers from any claims of subsequent creditors.

A copy of the recorded nondisturbance and notice to creditors instrument, where required, shall be provided to each time-share purchaser at the time the purchase contract is executed.

(2) 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.
(3) 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.

(4) 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 property are paid unless otherwise specified by contract.

(5) Each escrow agent shall maintain separate books and records for each time-sharing plan and shall maintain such books and records in accordance with good accounting practices.

(6) Any developer, seller, or escrow agent who intentionally fails to comply with the provisions of this section concerning establishment of an escrow account, deposits of funds into escrow, and withdrawal therefrom shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, or the successors thereof. The failure to establish an escrow account or to place funds therein as required in this section shall be prima facie evidence of an intentional and purposeful violation of this section.

Section 8. Subsections (2), (3), and (4) of section 721.09, Florida Statutes, are amended to read:

721.09 Reservation agreements, escrows --

(2) Each executed reservation agreement shall be signed by the developer, seller, and the escrow agent 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 either the purchaser's or the seller's written request 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 release 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, relating to escrow accounts, escrow agents, and nonattunance instruments.

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

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

(e) The name and address of the escrow agent and a statement that the purchaser may obtain a receipt from the escrow agent shall provide a receipt upon request.

(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) Escrow agents 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. All funds paid in connection with the reservation of a time-share shall be placed in an escrow account established solely for that purpose with an attorney who is a member of The Florida Bar, a bank having trust powers and located in this state; a savings and loan company located in this state; a trust company located in this state; or a real estate broker registered under chapter 475 or its successors in lieu of the foregoing; with the approval of the division, the funds may be deposited into an escrow account required by the jurisdiction in which the same took place.

(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 right to receive the interest generated by any such investments shall be payable to the party entitled to receive the escrowed funds or property shall be as specified by the reservation agreement.

(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 time-share time-sharing 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 shall be guilty of a felony of the third degree, punishable as provided
this section shall preclude the execution of documents in advance of closing for delivery after expiration of the cancellation period.

(2) Any notice of cancellation given by mail or telegraphic communication shall be considered given on the date postmarked, if mailed, or when transmitted from the place of origin, if telegraphed. A notice given by means of a writing transmitted other than by mail or telegraph shall be considered given at the time of delivery at the place of business of the developer. If given by means of a writing transmitted other than by mail or telegraph, it 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, or in the event the plan is one in which time-share licenses are sold and at any time the accommodations or facilities are no longer available, the developer shall honor the right of any purchaser to cancel the contract which granted the time-share purchaser rights in and to the plan. Upon such cancellation, the developer shall refund to the purchaser all payments made by the purchaser which exceed the proportionate amount of benefits made available under the plan, using the number of years of the proposed plan as the base. 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.

Section 10. Section 721.11, Florida Statutes, is amended to read:

721.11 Advertising materials --

(1) All advertising materials relating to a time-share plan shall be filed with the division by the developer 10 days prior to use. All such advertising materials shall be substantially in compliance with this chapter, and in full compliance with the mandatory provisions of this chapter. In the event that such materials are not in compliance, the division may require the developer to correct the deficiency and, in the event the developer fails to correct the deficiency, the division may file administrative charges against the developer using such materials, and exact such penalties as provided in s. 721.26 within 10 days of such.

(2) "Advertising materials" include:

(a) Promotional brochures, pamphlets, advertisements, or other materials to be disseminated to the public in connection with the sale of a time-share plan.

(b) Transcripts of radio and television advertisements.

(c) Lodging or vacation certificates.

(d) Transcripts of standard oral verbal sales presentations.

(e) Billboards and other signs posted on and off the premises. Any other advertising materials.

(f) Photographs, drawings, or artists' representations of accommodations or facilities of a time-share plan which exists or which will or may exist.

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

(h) Any other promotional device or statement related to a time-share plan, including prize and gift promotional offers as described in s. 721.111.

(3) "Advertising materials" shall not include:

(a) Stockholder communications such as annual reports and interim financial reports, proxy materials, registration statements, securities prospectuses, registrations, property reports, or other materials required to be delivered to a...
prospective purchaser by an agency of any other state or the Federal Government.

(b) All communications addressed to and relating to the account of any person who has previously executed a contract for the sale and purchase of a time-share period in the time-share plan to which the communication relates, except when directed to the sale of additional time-share periods.

(c) Audio, written, or visual publications or materials relating to an exchange company or exchange program.

(d) No advertising or oral statement made by any seller shall:

(a) Misrepresent a fact or create a false or misleading impression regarding the time-share time-sharing plan or promotion thereof.

(b) Make a prediction of specific or immediate increases in the price or value of time-share periods.

(c) Contain a statement concerning future price increases by the 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 improvement to the time-share time-sharing plan 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" with the date of promised completion clearly indicated.

(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 services incident to the time-share time-sharing plan.

(i) Make any misleading or deceptive representation with respect to the contents of the public offering statement and the contract or the purchasers' rights, privileges, benefits, or obligations 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 offered by or on behalf of the developer.

(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 and/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 its source 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 such 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.

(5)(a) No written advertising material no promotional device, including any sweepstakes, lodging certificate, gift award, premium, discount, drawing, or display booth, may be utilized without a disclosure in conspicuous type that THIS ADVERTISING MATERIAL IS BEING USED FOR THE PURPOSE OF SOLICITING SALES OF TIME-SHARE PERIODS.

(a) This subsection shall 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 time-share periods, including, but not limited to, lot sales, condominium or home sales, or the rental of resort accommodations. However, if the sale of time-share periods, 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 time-share periods and may include other types of sales)... 

(b) Factors which the division may consider in determining whether the primary purpose of the advertising material is the sale of time-share periods include

1. The retail value of the time-share periods 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 time-share 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.

(a) The promotional device is being used for the purpose of soliciting sales of time-share periods; and

(b) The promotional device is being used to obtain the names and addresses of prospective purchasers and that any names and addresses acquired may be used for the purpose of soliciting sales of time-share periods.

(4) When a time-share project uses free offers, gift enterprises, drawings, sweepstakes, or discounts as a promotional program, the rules of such promotional program shall be disclosed to the public and shall state-

(a) The name of each time-sharing plan or business entity participating in the program-

(b) The day and year by which all prizes stated or offered will be awarded-

(c) The method by which all prizes are to be awarded-

(d) At least one of each prize featured in a promotional program shall be awarded by the day and year specified in the promotion- When a promotion promises the award of a certain number of each prize, such number of prizes shall be awarded by the day and year specified in the promotion-

(e) The division shall require full disclosure of all pertinent information concerning the use of lodging certificates in a promotional campaign, including the terms and conditions of the campaign and the fact and extent of participation in such campaign by the developer- The division further may require reasonable assurances that the obligation ensured by a seller or the seller's agent in a lodging

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Certificate program can be met—such programs are subject to
the prior approval of the division.

(7) If at any time the division determines that any
advertising fails to meet the requirements of this section,
the division may undertake enforcement action under the
provisions of s. 721.26.

Section 11. Section 721.111, Florida Statutes, is
created to read:

721.111 Prize and gift promotional offers —
(1) As used herein, "prize and gift promotional offer"
means any advertising materials wherein a prospective
purchaser may receive goods or services other than the time­
share 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) Any use of game promotions, such as contests,
games of chance, gift enterprises, or sweepstakes, in which
the elements of chance and prize are present shall not be used
in connection with the sale of time-share periods; however,
those time-sharing plans in which the developer currently has
in effect a promotional or prize program utilizing the
elements of chance and prize shall be permitted to continue
the use of that program until January 1, 1985.

(3) Any prize, gift, or other item offered pursuant to
a prize and gift promotional offer shall be delivered to the
prospective purchaser on the day he appears to claim it,
whether or not he purchases a time-share period.

(4) A separate filing for each prize and gift
promotional offer to be used in the sale of time-share periods
shall be made with the division at least 10 days prior to the
use of said offer by the developer. No advertising materials
related to a prize and gift promotional offer shall be
distributed unless filed first with the division with one item
of each prize or gift made available for inspection by the
division (except cash). If the division determines that any
prize or gift has been misrepresented, and upon notification,
the developer fails to correct such misrepresentation, the
division may file administrative charges against the developer
using such prize or gift promotional offers, and exact such
penalties as provided in s. 721.26.

(5) Each filing of a gift and promotional offer with
the division shall include, where applicable
(a) A copy of all advertising materials 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 gift, prize, 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
(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
Florida of the promotional entity for service of process
purposes
(g) The number of anticipated recipients of each item
of advertising material related to the prize and gift
promotional offer.
(h) 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 division may require reasonable assurances
that the obligation incurred by a seller or his agent in a
lodging certificate program can be met.

(6) Each developer shall pay to the division a fee of
$10 for the filing of each prize and gift promotional offer,
at the time of filing. No additional fee shall be charged for
the submission of corrected advertising materials related to a
prize and gift promotional offer, or for the submission of
additional materials related to prize and gift promotional
offers for which a prior filing has been made.

(7) 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 the manufacturer's suggested retail price, or if
none is available, the verifiable retail value
(b) All rules, terms, requirements, and preconditions
which must be fulfilled or met before a prospective purchaser
may claim any gift, prize, 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 gifts, prizes, 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.

(8) All developers shall file with the division by
March 1st of each year the following information regarding
each prize and gift promotional offer used during the prior
calendar year.
(a) The total number of each prize, gift, or other
item actually awarded or given away.
(b) The names and addresses of all persons who
actually received a prize, gift, or other item which had a
verifiable retail value or manufacturer's suggested retail
price in excess of $200. This regulation shall not apply to
recipients of lodging or vacation certificates
(9) All prizes, gifts, or other items represented by
the developer to be awarded in connection with all prize and
gift promotional offers shall be awarded by the date
referenced in the advertising material used in connection
therewith.

Section 12 Subsection (1) of section 721.12, Florida
Statutes, is amended to read:

721 12 Recordkeeping by seller --Each seller of a
time-share time-sharing plan shall maintain among its business
records the following:
(1) A copy of each contract for the sale of a time-
share period, which contract has not been canceled. If a
time-share estate is being sold fee simple is being conveyed,
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.
Section 13  Paragraph (e) of subsection (3) of section 721.13, Florida Statutes, is amended, present subsection (4) is renumbered as subsection (5), and a new subsection (4) is added to said section, to read:

721.13 Management.--

(3) The duties of the managing entity shall include, but are not limited to:

(e) Arranging for an annual independent audit to be conducted of all the books and financial records of the time-share plan by a certified public accountant in accordance with generally accepted auditing standards as defined by the rules of the Board of Accountancy of the Department of Professional Regulation and the standards of the Accounting Standards Board of the American Institute of Certified Public Accountants. A copy of the audit shall be forwarded to the officers of the owners' association; or, if no association exists, the owner of each time-share period shall be notified that such audit is available upon request.

(4) In those time-share plans in which time-share estates 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 unit owners to purchase or lease any portion of the time-share property shall be valid unless approved by a majority of the purchasers other than the developer, after more than 50 percent of the time-share periods have been sold.

Section 14. Section 721.14, Florida Statutes, is amended to read:

721.14 Discharge of managing entity.--

(1) If time-share estates are a fee simple interest in real property being sold to purchasers of a time-share time-sharing plan, the contract retaining a managing entity shall be automatically renewable every 3 years, beginning with the third year after the managing entity is first created or provided for the time-share time-sharing plan, unless the purchasers vote to discharge the managing entity. Such a vote shall be conducted by the board of the owners' association. The managing entity shall be 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 the managing entity.

(2) In the event the managing entity is discharged, the board of the owners' association shall be responsible for obtaining another managing entity. If it fails to do so, any time-share owner may apply to the circuit court within whose jurisdiction the accommodations and facilities lie for the appointment of a receiver to manage the affairs of the association. At least 30 days prior to applying to the circuit court, the time-share owner shall mail to the association and post in a conspicuous place on the time-share property a notice describing the intended action, giving the association the opportunity to fill the vacancies. If during such time the association fails to fill the vacancies, the time-share owner may proceed with the petition. If a receiver is appointed, the association shall be responsible for the salary of the receiver, court costs, and attorney's fees. The receiver shall have all powers and duties of a duly constituted board of administration and shall serve until the association fills vacancies on the board sufficient to constitute a quorum.
Section 15. Subsection (2) of section 721.15, Florida Statutes, is amended, and subsection (6) is added to said section, to read:

721.15 Assessments for common expenses --

(2) 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. No owner of a time-share period may be excused from his share of the common expenses unless all unit owners are likewise excused from payment, except the developer may be excused from the payment of his share of the common expenses which would have been assessed against those units during a stated period of time during which he has guaranteed to each purchaser in the time-share documents, or by agreement between the developer and a majority of the owners of time-share periods 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 shall be obligated to pay any amount of common expenses incurred during the guarantee period which was not produced by the assessments at the guarantee level from other unit owners. The seller shall be assessed for the share of common expenses allocated to all time-share periods owned by the seller at the time such assessment is made, unless the seller guarantees all common expenses of the time-share plan pursuant to the provisions of the contract or until the time contract is turned over to the purchasers.

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

Section 16. Section 721.17, Florida Statutes, is amended to read:

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

Section 17. Transfer of interest.--Except for those time-share plans subject to the provisions of chapter 718 or chapter 719, no developer or owner of the underlying fee shall sell, lease, assign, mortgage, or otherwise transfer the owner's or developer's interest in the accommodations or facilities of the time-share plan except by an instrument evidencing the transfer recorded in the public records of the county in which the accommodations or facilities are located. The instrument shall be executed by both the transferor and transferee and shall state:

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

(2) That its terms may be enforced by any prior or subsequent time-share purchaser so long as that purchaser is not in default of his obligations.

(3) That the transferee will fully honor the rights of the purchasers to occupy and use the accommodations and facilities as provided in their original contracts and the time-share instruments.
(4) That the transferee will fully honor all time-share purchasers' rights to cancel their contracts and receive appropriate refunds.

(5) That the transferee's obligations thereunder will continue to exist despite any cancellation or rejection of the contracts between the developer and purchaser arising out of bankruptcy proceedings.

Should any transfer of the interest of the developer or owner of the underlying fee occur in a manner not in compliance with the above, the terms set forth in this section 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 of the transfer. Persons who hold mortgages on the property constituting a time-share plan before the public offering statement of such plan is approved by the division shall not be considered transferees for the purposes of this section.

Section 17. Section 721.175, Florida Statutes, is created to read:

721.175 Supervisory duties of developer.-- Notwithstanding obligations placed upon any other persons by this chapter, it shall be the duty of the developer to supervise, manage, and control all aspects of the offering of the time-share 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.

Section 18. Section 721.18, Florida Statutes, is amended to read:

721.18 Exchange programs --

(1) If a purchaser is offered the opportunity to subscribe to any exchange program that provides exchanges of time-share periods among purchasers in either the same time-sharing plan or other time-sharing plans; or both, the seller shall deliver to the purchaser, together with the public offering statement, and prior to the offering or execution of any contract between the purchaser and the company offering the 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, and, in either case, the purchaser shall certify in writing to the receipt thereof, written information regarding such exchange program, including and the purchaser shall certify in writing to the receipt of such written information, which information shall include, but is not limited to, the following, 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 time-sharing plan participating in the exchange program and, if so, the name and location of the time-sharing 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 time-sharing plan

(e) Whether the purchaser's participation in the
exchange program is dependent upon the continued affiliation
of the time-sharing plan with the exchange program

(f) A statement that the purchaser's participation in
the exchange program is voluntary

(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
thereof 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, 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 his time-share period in any properly applied for
exchange without his being provided with substitute
accommodations by the exchange program.

CODING: Words in square through type are deletions from existing law, words underlined are additions.
2 The number of accommodations and facilities that have current affiliation agreements with the exchange program.

3 The percentage of confirmed exchanges, which shall be 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 time-share periods for which the exchange program has an outstanding obligation to provide an exchange to a purchaser who relinquished a time-share period during the year in exchange for a time-share period in any future year.

5 The number of exchanges confirmed by the exchange program during the year.

5. A statement in boldfaced type to the effect that the percentage described in subparagraph (q). is a summary of the exchange requests entered with the exchange program in the period reported and that the percentage does not indicate a purchaser's probabilities of 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 the information specified in subsection (1) at least 20 days prior to July 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 Florida. Each filing shall be accompanied by an annual filing fee of $500. Within 20 days of 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. 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 the exchange company's corrections, the division shall notify the exchange company in writing that the division has either approved the filing or found additional specified deficiencies with the division annually. 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 provisions of s. 721.25. 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.

3 Audio, written or visual publications or materials relating to an exchange company or an exchange program shall be filed with the division within 3 days of their use. Only a person who has purchased a time-share period in a time-share what may participate in an exchange program.

4 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.

Section 19. Section 721.20, Florida Statutes, is amended to read:
721.20 License required to sell -- Any seller of a
time-share time-sharing plan shall be a licensed real estate
salesman, broker, or broker-salesman, as defined in s. 475 01
pursuant to chapter 475 or its successor. No seller or
developer shall employ any person for the purposes of offering
time-share periods for sale unless such person is a licensed
salesman, broker, or broker-salesman as defined in s. 475 01
or its successor 7 and shall be subject to all of the
provisions of that chapter. This section shall not apply to
those individuals who offer for sale only time-share periods
located outside of this state and who do not engage in any
sales activities within this state, nor to those time-share
those individuals who are except from chapter 475 or to those
time-sharing plans which are registered with the Securities
and Exchange Commission. For purposes of this section, both
time-share licenses and time-share estates are considered to
be interests in real property.

Section 20. Section 721.21, Florida Statutes, is
amended to read:

721.21 Purchasers' remedies -- An action for damages or
injunctive or declaratory relief for a violation of this
chapter may be brought by any purchaser or association of
purchasers 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 prior to 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 any other
remedies provided by law.

Section 21. Section 721.22, Florida Statutes, is
amended to read:

721 22 Partition --
(1) No action for partition of any time-share unit
shall lie, unless otherwise provided for in the contract
between the seller and the purchaser.
(2) If a time-share 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.

Section 22 Subsection (4) and paragraphs (c) and (d)
of subsection (5) of section 721.26, Florida Statutes, are
amended to read:

721 26 Regulation by division -- In addition to other
powers and duties prescribed by chapters 498, 718, and 719,
the division has the power to enforce and ensure compliance
with the provisions of this chapter. In performing its
duties, the division shall have the following powers and
duties:

(4) The division may prepare and disseminate a
prospectus and other information to assist prospective
purchasers, sellers, and managing entities of time-share time-
sharing plans in assessing the rights, privileges, and duties
pertaining thereto. The division is authorized to promulgate
rules pursuant to chapter 120 as necessary to implement,
enforce, and interpret this chapter.

(5) Notwithstanding any remedies available to
purchasers, if the division has reasonable cause to believe
that a violation of this chapter has occurred, the division
may institute enforcement proceedings in its own name against
any developer, exchange program, seller, managing entity, association, or other person as follows.

(c) The division may bring an action in circuit court for declaratory or injunctive relief or other appropriate relief, including appointment of receivers and restitution.

(d) The division may impose a civil penalty against any developer, exchange program, seller, managing entity, association, escrow agent, or other person for a violation of this chapter. A penalty may be imposed on the basis of each day of continuing violation, but in no event shall the penalty for any offense exceed $10,000. All accounts collected shall be deposited with the Treasurer to the credit of the Florida Real Estate Time-Sharing Trust Fund.

2. If a developer, exchange program, seller, escrow agent, or other person fails to pay the civil penalty, the division shall thereupon issue an order directing that such developer, exchange program, seller, escrow agent, or other person cease and desist from further operation until such time as the civil penalty is paid, or the division may pursue enforcement of the penalty in a court of competent jurisdiction. If an association or managing entity fails to pay the civil penalty, the division shall thereupon pursue enforcement in a court of competent jurisdiction.

Section 23. Section 721 27, Florida Statutes, is amended to read:

721.27 Annual fee for each time-share period in plan.--On or before January 1 of each year, each managing entity shall collect as a common expense and pay to the division an annual fee of $1.50 cents for each time-share period within the time-share time-sharing plan.

Section 24. Section 718.1065, Florida Statutes, is hereby repealed.

Section 25. Paragraph (a) of subsection (1) of section 895.02, Florida Statutes, is amended to read:

1. "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit

(a) Any crime which is chargeable by indictment or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 409.325, relating to public assistance fraud.

3. Chapter 517, relating to sale of securities.

4. Section 550.24, s. 550.35, or s. 550.36, relating to dog racing and horseracing.

5. Section 551.09, relating to jai alai frontons.

6. Chapter 552, relating to the manufacture, distribution, and use of explosives.

7. Chapter 562, relating to beverage law enforcement.

8. Chapter 687, relating to interest and usurious practices.

9. Chapter 782, relating to homicide.

10. Chapter 784, relating to assault and battery.

11. Chapter 787, relating to kidnapping.

12. Chapter 790, relating to weapons and firearms.

13. Section 796.01, s. 796.03, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.

14. Chapter 806, relating to arson.
15. Chapter 812, relating to theft, robbery, and related crimes

16. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.

17. Chapter 831, relating to forgery and counterfeiting

18. Chapter 832, relating to issuance of worthless checks and drafts.

19. Chapter 837, relating to perjury.

20. Chapter 838, relating to bribery and misuse of public office.

21. Chapter 843, relating to obstruction of justice.

22. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.

23. Section 849.09, s. 849.14, s. 849.15, s. 849.23, s. 849.24, or s. 849.25, relating to gambling

24. Chapter 893, relating to drug abuse prevention and control.

25. Sections 918.12-918.14, relating to tampering with jurors, evidence, and witnesses.

26. Sections 721.08, 721.09, or 721.13, relating to real estate time-share plans.

Section 27. It is the intent of the Legislature that this act shall apply to time-share plans existing on or after the effective date of this act, but that this act shall not be construed to effect an impairment of any existing contract; and, further, that the developer of any time-share plan which is subject to the provisions of chapter 718, Florida Statutes, and which plan has been filed and approved by the Division of Land Sales and Condominiums prior to the effective date of this act, may continue to rely on the provisions of s. 718.202, Florida Statutes, relating to sales or reservation deposits prior to closing. It is further the intent of the Legislature that any amendments made to a time-share plan which was approved by the division prior to October 1, 1983, and which amendments are made only for the purpose of bringing the time-share plan into compliance with s. 721.07, Florida Statutes, as amended by this act, shall be deemed not to be material or adverse.

Section 28. This act shall take effect October 1, 1983.
Committee Substitute for Senate Bill 476

Statement of Substantial Changes Contained in
Committee Substitute for Senate Bill 476

This bill is a substantial revision of ch. 721, F.S. The major changes are as follows:

Section 721.03, F.S., 1982 Supp., is amended to include within the purview of this chapter, those plans which are subject to ch. 718, F.S. (Condominiums). Certain requirements of ch. 718 are exempt upon compliance with the similar provisions of this act. Otherwise, time-sharing plans must comply with the provisions of both acts. In the event of a conflict, ch. 721, F.S., would prevail.

Section 721.05, F.S., is amended to provide definitions for the following words: agreement for deed, closing, conspicuous type, completion of construction, enrolled (relating to exchange companies), escrow account, escrow agent, exchange company, exchange program, memorandum of agreement, owner of the underlying fee, time-share estate, time-share instrument, time-share license, and time-share property. The term purchaser is redefined.

Section 721.04, F.S., is amended to provide that those plans "grandfathered in" by ch. 81-172, L.O.F., shall be subject to the requirements of this act.

Section 721.06, F.S., 1982 Supp., is amended to delete waiver of cancellation rights. Also, any contract construed as an agreement for deed must be recorded by the developer.

Section 721.07, F.S., is amended to allow the division 45 days to review a public offering statement and 20 days to review corrections and amendments. The filing fee is increased from 50 cents to $1 per time-share period. Descriptions of the time-share plan required in the public offering statement are substantially expanded.

Section 721.08, F.S., is amended to require that the developer establish an escrow account with an independent escrow agent pursuant to an agreement approved by the division. One hundred percent of the funds received from purchasers must be deposited and released only as specifically provided: (1) within 20 days of cancellation; (2) upon the developer's affidavit describing the details of a default by the purchaser; or (3) where there has been no cancellation or default, upon the developer's affidavit that the cancellation period has expired, construction is completed, closing has occurred, and in non-fee projects or those sold by agreement for deed, that nondisturbance and notice to creditors instruments have been executed and recorded. The requirements of the nondisturbance and notice to creditors instruments have been made more stringent to protect purchasers in the event of developer bankruptcy.

Section 721.10, F.S., is amended to provide a nonwaivable 10-day cancellation period. Any attempt to obtain such a waiver would result in a 1-year voidability period.

Section 721.11, F.S., is amended to require that advertising materials be filed with the division 10 days prior to their use. Exceptions as to what material constitutes advertising material is included in this section. All written advertising material must contain a disclosure that the material is being used for the purpose of soliciting sales of time-share periods; however, those projects which include sales of real estate or other commodities in addition to time-share periods, are exempted from this disclosure requirement. The requirements for promotional programs are removed from this section.

A new section is created (s. 721.111, F.S.) relating to promotional programs which include advertising offering goods or services, whether free or at a discount, other than the time-share plan itself. Contests, games of chance, gift enterprises, or sweepstakes may no longer be used in connection with the sale of time-share periods; however, those plans which are currently in effect may continue for 18 months. A separate filing with the division shall be made for prize and game promotional offers 10 days prior to their use (a filing fee of $10 is included in this section). The information required in this filing has been expanded. One item of each prize or gift offered is to be made available for inspection by the division. The developer shall also file annually certain information regarding the offer, including the total number...
of items awarded and the names and address of recipients of any item valued over $200. Additional disclosures, such as a description of the prize or gift, the suggested retail price, terms which must be met in order to claim the prize, and the date the offer expires, must be contained in the advertising material distributed to the public.

- Section 721.13, F.S., is amended to provide that no contract, grant, or reservation made by the developer, managing entity, or owner's association which requires the owner's association or unit owners to purchase or lease any portion of the property shall be valid unless approved by a majority of the purchasers other than the developer after more than 50% of the time-share periods have been sold.

- Section 721.14, F.S., is amended to provide procedures for the appointment of a receiver to manage the affairs of the association if the board fails to make such an appointment.

- Section 721.15, F.S., is amended to provide that assessments need not be made more frequently than annually. It is also clarified that where the developer is excused from an obligation to pay assessments and has guaranteed the level of assessments to the unit owners, the developer is liable for expenses incurred over and above the amount produced by the assessments.

- Section 721.17, F.S., is amended to provide further protection to purchasers where transfer of the developer's interest occurs. If the instrument evidencing transfer is not in compliance with this section, the terms provided shall be deemed to be included in the instrument.

- A new section is created (s. 721.175, F.S.) obligating the developer to supervise, manage, and control all aspects of the time-share plan.

- Section 721.18, F.S., is amended to provide that the information required to be provided to purchasers prior to execution of a contract with the exchange company be approved by the division. Filings shall be made annually and at least 20 days prior to the offer. All exchange company materials must be provided to the division within 3 days of use. A filing fee of $500 is provided.

- Section 721.20, F.S., is amended to provide that no seller or developer employ any person for the purpose of offering time-share periods for sale unless that person is licensed pursuant to ch. 475, F.S.

- Section 721.21, F.S., is amended to include a provision for attorney's fees in an action in which a purchaser claims a right of voidability based upon a closing prior to expiration of the cancellation period, or based upon an amendment which materially and adversely alters the offering.

- Section 721.22, F.S., is amended to provide that a time-share estate for years coupled with a future interest shall not be deemed to have merged.

- Section 721.26, F.S., is amended to provide the division rule-making authority.

- Section 721.27, F.S., is amended to increase the annual fee collected by a managing entity from 50 cents to $1.

- Section 718.1065, F.S., is repealed.

- Section 895.02, F.S., is amended to provide for prosecution under the RICO Act crimes involving certain sections of ch. 721, F.S.

A severability clause is included along with a Legislative intent section providing that it is intended that the provisions in this bill apply to existing plans as well as those filed in the future, to the extent that impairment of existing contracts is not affected. Also, those plans structured as condominiums which have been filed and approved prior to the effective date of this act may continue to use deposited funds for construction purposes as provided in s. 718.202, F.S.
Proposed Committee Bill 3
(Fourth Draft)

A bill to be entitled
An act relating to real estate time-share
plans; amending s. 721.02(2), Florida Statutes,
and adding a new subsection (3), providing that
full and fair disclosure to prospective purchasers of time-share plans is
one of the purposes of chapter 721, Florida
Statutes; amending s. 721.03, Florida Statutes,
1982 Supplement, relating to the scope of the
chapter; amending s. 721.05, Florida Statutes,
providing definitions; amending s. 721.04,
Florida Statutes, relating to certain time­
share plans; amending s. 721.06, Florida
Statutes, 1982 Supplement, relating to
contracts for the purchase of time-share
periods; prohibiting attempts to obtain waivers
of cancellation rights; providing requirements
for contracts; amending s. 721.07, Florida
Statutes, providing procedures with respect to
public offering statements; amending s. 721.08,
Florida Statutes, relating to escrow
provisions; amending s. 721.09(2), (3), and
(4), Florida Statutes; requiring escrow agents
to maintain escrow accounts in a specified
manner; providing a penalty for sellers or
escrow agents who intentionally fail to comply
with certain escrow deposit requirements;
amending s. 721.10, Florida Statutes, relating
to the cancellation of purchase transactions
with respect to time-sharing; amending s.
721.11, Florida Statutes; defining advertising

CODING Words in struck through type are deletions from existing law, words underlined are additions.
(2) All time-share accommodations or facilities which are located outside the state but offered for sale in this state shall be subject only to the provisions of ss. 721.01-721.12, 721.18-721.21, 721.26, and 721.28.

(3) Where a time-share 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 herein. 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.

(4) A time-share 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.

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

Section 3. Section 721.05, Florida Statutes, is amended to read:

721.05 Definitions.—As used in this chapter:

(1) "Accommodations" means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, or any
other method or attempt to encourage any person to acquire
whereby a purchaser is offered the opportunity to participate
in a time-share time-sharing plan.

(20) "Owner of the underlying fee" means any person
having an interest in the real property underlying the
accommodations or facilities of the time-share plan at or
subsequent to the time of creation of the time-share plan, or
any person who purchases 15 or more time-share periods for
resale in the ordinary course of business.

(21) "Owners' association" means the association
made up of all purchasers of a time-share time-sharing plan
who have purchased a time-share estate fee-simple-interest-in
real-property.

(22) "Person" means a natural person, corporation,
government, governmental subdivision or agency, business
trust, estate, trust, partnership, association, joint venture,
or other legal or commercial entity.

(23) "Purchaser" means any person, other than a
developer, who by means of a voluntary transfer acquires a
legal or equitable interest in a time-share plan other than as
security for an obligation any-person-who-is-buying-or-who-has
bought-a-time-share-period-in-a-time-sharing-plan.

(24) "Seller" means any developer or any other
person, or agent or employee thereof, who is offering time-
share periods for sale to the public in the ordinary course of
business, except a person who has acquired a time-share period
for his own occupancy and later offers it for resale.

(25) "Time-share estate" means a right to occupy a
time-share unit, coupled with a freehold estate or an estate
for years-with future interest in a time-share property or a
specified portion thereof.
(26) "Time-share instrument" means one or more documents, by whatever name denominated, creating or governing the operation of time-share plans.

(27) "Time-share license" means a right to occupy a time-share unit, which right is neither coupled with a freehold interest, nor coupled with an estate for years with a future interest, in the time-share property.

(28) "Time-share period" means that period of time when a purchaser of a time-share time-sharing plan is entitled to the possession and use of the accommodations or facilities, or both, of a time-share time-sharing plan.

(29) "Time-share time-sharing 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, in exchange for a consideration, receives ownership rights in or a right to use accommodations or facilities, or both, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than 3 years.

(30) "Time-share property" means one or more time-share units subject to the same time-share instrument, together with any other property or rights to property appurtenant to those units.

(31) "Time share unit" means an accommodation or facility of a time-share time-sharing plan which is divided into time-share periods.

Section 4. Section 721.04, Florida Statutes, is amended to read:

CODING Words in struck through type are deletions from existing law, words underlined are additions.
A bill to be entitled
An act relating to real estate time-share plans; amending s. 721.02(2), Florida Statutes, and adding s. 721.02(3), providing that full and fair disclosure to purchasers and prospective purchasers of time-share plans is one of the purposes of chapter 721, Florida Statutes; amending s. 721.03, Florida Statutes, 1982 Supplement, relating to the scope of the chapter; amending s. 721.05, Florida Statutes, providing definitions; amending s. 721.04, Florida Statutes, relating to certain time-share plans; amending s. 721.06, Florida Statutes, 1982 Supplement, relating to contracts for the purchase of time-share periods; prohibiting attempts to obtain waivers of cancellation rights; providing requirements for contracts; amending s. 721.07, Florida Statutes, providing procedures with respect to public offering statements; amending s. 721.08, Florida Statutes, relating to escrow provisions; amending s. 721.09(2), (3), and (4), Florida Statutes; requiring escrow agents to maintain escrow accounts in a specified manner; providing a penalty for sellers or escrow agents who intentionally fail to comply with certain escrow deposit requirements; amending s. 721.10, Florida Statutes, relating to the cancellation of purchase transactions with respect to time-sharing; amending s. 721.11, Florida Statutes; defining advertising.
(2) All time-share accommodations or facilities which are located outside the state but offered for sale in this state shall be subject only to the provisions of ss. 721.01-721.12, 721.18-721.21, 721.26, and 721.28.

(3) Where a time-share 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 herein. 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.

(4) A time-share 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:

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accommodations or facilities of the time-share plan at or
subsequent to the time of creation of the time-share plan, or
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security for an obligation any person who is buying or who has
bought a time-share period in a time-sharing plan.

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person, or agent or employee thereof, who is offering time-
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(29) "Time-share time-sharing 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, in exchange for a consideration, receives ownership rights in or a right to use accommodations or facilities, or both, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than 3 years.

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Section 4. Section 721.04, Florida Statutes, is amended to read:

CODING. Words in struck through type are deletions from existing law, words underlined are additions.
TO: Interested Parties

FROM: E. James Kearney, Director

DATE: February 18, 1983

RE: Problem Areas in Current Time-Share Statute, Chapter 721

1. Promotional Mail-Aways Sweepstakes and Gifts --

   Current statute requires the filing of advertising materials within 10-days of their use, provides those materials should not misrepresent various aspects of the plan, provides certain minimal disclosure statements on the advertising and promotional material and requires the disclosure of some minimal rules of the promotion. Those minimal requirements permit widespread use of misleading advertising until such time as the developer receives notice from the Division to cease and desist the use of the advertising. Further, the current disclosure requirements are insufficient, both so far as the information provided to the general public and further in that they do not require the developer to provide enough information for the Division to verify whether or not the materials used are accurate.

2. Ineffective Recission Period --

   Under the present statutory scheme all recission periods, with the exception of those plans which deal with the tenancy in common (very rare), may be terminated by closing. Since most time-share developers attempt to obtain a closing on the premises before prospective purchasers leave the project, this, in reality, results in no effective "cooling off period".
Most sales practices are geared to obtain an immediate closing with little or no recourse left to the purchaser with the exception of default. Seventy to eighty percent of all complaints received by the Division concern either this lack of effective cooling off period or advertising.

3. Lack of accountability on right to use projects --

Under the current statutory scheme a right to use project may be established by a developer on land on which he has no ownership interest whatsoever. The statute further does not require a joinder by the owner of the property in any of the time-share documents on a right to use project. The result is that in the event of disputes between the developer and the owner wherein the developer defaults the contract purchasers may be left out in the cold, since the owner has in no way agreed to comply with the requirements of the time-share plan. Further, as a result of recent decisions of Federal Bankruptcy Courts in Florida, contract purchasers on right to use projects are not considered to have purchased an "interest in real property" and in the event the developer goes bankrupt the contract may be rejected by the bankruptcy court.

4. Inadequate protection for the purchasers before and after closing --

Under the current statutory framework many developers will obtain the signatures of all purchasers on the documents (including promissory note and mortgage) yet not actually close the transaction until months in the future. These purchasers begin sending in their payments pursuant to the promissory note long before they actually have any recorded interest. Difficulties arise under this framework when the developers get into serious financial difficulty and either go into bankruptcy or, in the alternative, the mortgagee forecloses leaving the contract purchasers no record interest in the property. Further, current escrow provisions are grossly insufficient to provide any real protection.

5. Inadequate provision for protection of purchaser's rights following developer or owners transfer of interest

The current statutory framework provides that upon a transfer of the developer or owners interest in the project or facilities to a third party, that third party agrees not to disturb time-share purchaser's rights of occupancy and use of the accommodations or facilities. That statutory language does not require that management contracts be honored nor does it
protect against the problem caused by developer bankruptcy previously referred to. Expanded language is necessary to insure the intent of the current statute is carried out.

6. Lack of rule making authority --

Without rule making authority both the Division and practitioners in the field are handcuffed where the statutory intent is clear but the language is ambiguous. For instance, it prohibits the Division under certain circumstances from requiring that certain disclosures be placed in documents since the particular disclosure is not mandated by the statute. That rule making authority would permit the Division to more clearly delineate the terms of the statute without seeking substantial statutory rewriting every year.

While the deficiencies and problems listed above are the most serious contained within the present statute, there are a number of small areas wherein minor statutory changes would eliminate major difficulties currently faced by the Division in enforcing the statute.

EJK/sjc
Mr. Xavier J. Wahner,
Certified Public Accountant
Suite 208
4000 North Federal Highway
Glendale Federal Building
Boca Raton, Florida 33431

Dear Mr. Wahner:

Senator Johnston has asked that we respond to your letter to him of July 28, 1983. This past year, the House Judiciary Committee sponsored amendments to the time-share act relating basically to the offer and sale of time-share periods. These amendments took an extremely substantial amount of the committee's time and resources. Therefore it was decided that, with the exception of any problems of an emergency nature that were brought to our attention, we would address the many problems relating to internal operations and management of time-share plans in the 1984 legislative session. Unfortunately, we were not aware of the ambiguity that you raised, and which has apparently been part of the law since its inception in 1981.

Mr. Richard Coates, of the Division of Florida Land Sales and Condominiums, noted that the Division recently discovered the ambiguity. The Division, which is the agency charged with enforcement of the act, has construed the provision to require that the entity ultimately responsible for the management of the plan be audited. Therefore, in a time-share condominium, the books and records of the condominium association would be those subject to the audit; in right-to-use or license plans, the entity that is responsible for maintenance, repair, collection of assessments, et cetera, would be the entity subject to audit.

We appreciate your bringing this question to our attention and will certainly include some clearer language in our next set of proposed amendments to the time-share act.
MR. CHAIRMAN AND HONORABLE MEMBERS OF THE SUBCOMMITTEE:

We must preface these remarks today by indicating that this statement is not the official position of the Florida Bar or the Florida Bar's Real Property, Probate and Trust Law Section, as neither group has voted upon or approved these recommendations. This statement represents the consensus of individual members of the Timesharing Subcommittee.

On behalf of the Florida Bar Subcommittee on Timesharing, we appreciate the opportunity to appear before the Subcommittee and relate our recommendations regarding the proposed revisions to the Florida Real Estate Timesharing Act.

Overall, our reaction to the proposed revisions is positive. It is important that the Florida consumer and our out-of-State visitors are provided with full and fair disclosure, as well as regulatory safeguards when contemplating the purchase of a time-share estate or license. Generally, these proposed revisions will certainly do the job. However, as attorneys who must instruct our clients in compliance with the Act, and work with the regulations on a regular basis, we do have certain recommendations regarding the "nuts and bolts" of the proposed legislation. We hope you will consider these recommendations as you work toward the Subcommittee's final product.
1. SCOPE (721.03): We recommend that Section 721.03(1) be reworded to make it clear that timesharing plans outside the State of Florida need only comply with sales and disclosure requirements, not requirements controlling every aspect of the accommodations and facilities. It is our concern that the current wording may be perceived in other jurisdictions as an attempt by Florida to exert control over offers of non-Florida timesharing plans to non-Florida offerees, and may lead to a conflict of law problems.

2. SAVINGS CLAUSE (721.04): The proposed revisions submitted to us did not contain a savings clause. We would recommend a savings clause which at a minimum would deem all contracts entered into before the effective date of the revisions to be in compliance with the Act, as well as some sort of grace period in which the industry can bring the remainder of their plans into compliance with the revisions.

3. DEFINITIONS (721.05): In general, the definitions need some revisions to assure conformity throughout the Act. However, we feel it is of particular importance to rework Section 721.05(6), "Completion of Construction" to require completion of the residential building in which accommodations are being conveyed, completion of all amenities and facilities promised to purchasers, and finishing and equipping only those units being conveyed. The present wording would appear to require completion, finishing and equipping of every timeshare unit in the timeshare plan before the first closing could take place.

4. PUBLIC OFFERING STATEMENTS (721.07): We believe that many of the proposed revisions should be reexamined to clarify the required disclosures and eliminate duplication. The proposed revisions at 721.07(44) require the Seller to disclose "Such other information as is necessary to fully and fairly disclose all aspects of the Time-Sharing Plan." We would recommend addition of a section or provision similar to F.S. 718.505, in which good faith efforts to comply, along with substantial compliance, renders only material errors or omissions actionable.
5. **ESCROW (721.08)** Although the subcommittee supports the need for tighter escrow requirements, we are concerned that the proposed revisions may create unneeded administrative burdens on developers, escrow agents and the Division. The consensus of the Timesharing Subcommittee is that greater enforcement activity to monitor and pursue escrow infractions will serve best to correct those violations that have occurred or may occur. For example, rather than prohibiting all real estate brokers from serving as escrow agents, consideration might be given to requiring the escrow agent to demonstrate its ability to perform the duties as required by providing assurances to the Division and to the public, such as posting of a bond.

6. **ADVERTISING MATERIALS (721.11)** While we generally agree that tighter regulation of certain promotional devices, such as sweepstakes, giveaways and similar promotional schemes is appropriate, we would like to point out that 721.11(6) appears to grant to the Division nonspecific review and approval discretion. This could subject the statute to constitutional challenges on First Amendment grounds as being overboard or vague. The subcommittee suggests that subparagraph (6) be amended to limit the Division's review and approval to compliance with the provisions of 721.11.

7. **MANAGEMENT (721.13):** It has been our experience that timeshare owners and the directors of their associations are very cost conscious, as well as being concerned about the proper handling and expenditure of association funds and accurate financial reporting. Pursuant to Section 721.13(e), all Associations' books are to be audited each year. However, if there are no discrepancies found, many owners and their representatives would prefer next year to spend the substantial audit fee on other Association needs. We would recommend mandatory audits at three (3) year intervals for owner-controlled associations, unless the owners deem an annual audit necessary. We also recommend the audit be due 120 days from the fiscal year end.
In addition to our major recommendations as outlined, which we do consider most important, our timeshare subcommittee members have suggested many specific language changes to improve the internal consistency of the proposed revisions. We have related many to the Subcommittee staff and to Attorney Tom Bell of the Division of Florida Land Sales and Condominiums. I am sure they will surface at this "workshop" hearing.

We would like to express our gratitude to Chairman Silver for allowing our Bar Subcommittee to become involved in the legislative process, and especially for his visit to our last meeting. Special thanks also go to Attorney Beverly Raveney of the Judiciary Subcommittee for her interest and Attorney Tom Bell of the Division of Florida Land Sales and Condominiums, who has demonstrated not only a thorough understanding of the concepts involved, but a willingness to put in the extra effort to produce a valuable and workable set of proposed revisions to the Florida Real Estate Time-Sharing Act.
Florida House of Representatives
H. Lee Moffitt, Speaker  Steve Pajcic, Speaker pro tempore
Committee on Judiciary

MEMORANDUM

TO:  Persons Interested in Time Share Legislation

FROM: Debby Kaveney, Staff Attorney
       Subcommittee on Consumer, Probate and Family Law

DATE:  February 4, 1983

RE:  Staff Workshop on Time Share Legislation

At the Workshop Meeting on February 1, 1983, Representative Ron Silver, Chairman of the Consumer, Probate and Family Law Subcommittee of the House Judiciary Committee, requested committee staff to incorporate the decisions of the Subcommittee and prepare a proposed committee bill on the subject of time share.

Representative Silver also requested that committee staff organize a meeting, and allow all interested parties to attend, in order that the proposed committee bill incorporating the Subcommittee's decisions will be reflective of the Subcommittee's policies adopted on February 1, 1983. This meeting is not for the purpose of further discussion of the issues as resolved by the Subcommittee at the prior workshop meeting.

In accordance with this directive, there will be a staff meeting on February 15, 1983, beginning at 9 a.m. in Room 212, House Office Building. You are welcome to attend and we will forward to you a copy of the bill at the earliest possible time prior to the meeting, if requested.
I. SUMMARY:

A. Present Situation:

Section 721.06, Florida Statutes, 1982 Supplement, provides that contracts for the purchase of non-condominium time-sharing plans include a provision for a 10-day cancellation period. Upon cancellation, the seller must refund all monies paid by the purchaser. This section also provides that the purchaser of a non-condominium fee ownership time-sharing plan may waive the 10-day cancellation period after it has been disclosed to the purchaser by the seller.

Section 721.08, Florida Statutes, requires that 100% of all funds received from purchasers of non-condominium time-sharing plans be placed in an escrow account during the 10-day cancellation period. However, if the purchaser has waived the cancellation period, the seller does not have to comply with this provision.

Effect of Proposed Changes:

This bill specifically prohibits sellers of non-condominium time-sharing plans from seeking or including in time-share documents any kind of waiver of rights or benefits. Also, the provisions which allow a purchaser to waive cancellation rights are deleted.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Purchasers of non-condominium time-sharing plans would no longer be allowed to waive the cancellation period. Because of the mandatory 10-day cancellation period, more contracts may be canceled and purchasers would receive refunds of all monies paid. Sellers of time-sharing plans would lose proceeds from sales to the extent that the cancellation provision is exercised. Deletion of the waiver would also mean that sellers would no longer be able to immediately use purchase funds but must wait until the cancellation period expires.

B. Government:

None.

III. COMMENTS:

According to the Division of Florida Land Sales and Condominiums, approximately 50% of all complaints received on time-sharing plans relate to the waiver provision. Also, only 20% of time-sharing plans are non-condominiums.
Contracts for condominium time-sharing plans include a 15-day voidability period. Waivers are not allowed; however, a purchaser may agree to close the transaction prior to the expiration of the voidability period. At the time of closing, all rights to void the contract are terminated.

IV. AMENDMENTS:

None.
721.02 Purposes.—The purposes of this chapter are to:

1. Give statutory recognition to real property time
   sharing in the state.

2. Establish procedures for the creation, sale, 
   promotion and operation of time-sharing plans.

3. Provide full and fair disclosure to the prospective
   purchasers of time-sharing plans.

4. Require every time-sharing plan offered for
   sale or created and existing in this state to be subjected to
   the provisions of this chapter.
721.05 Definitions.--As used in this chapter:

(1) "Accomodations" means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, or any other private or commercial structure which is situated on real property and designed for occupancy by one or more individuals.

(2) "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.

(3) "Closing" means: a) for plans selling time-share estates conveyance of the legal title to the time share period as evidenced by the delivery of deed to the purchaser or to the clerk of court for recording; b) for plans selling time-share licenses, the final execution by all parties of the last document necessary for vesting in the purchaser the full rights available under the plan.

(4) "Conspicuous Type" means type in bold face capital letters no smaller than the largest type (excluding headings) on the page on which it appears and, in all cases, at least 10 point type. Where conspicuous type is required it shall be separated on all sides from other type and print.

(5) "Common Expenses" means those expenses properly incurred for the maintenance, operation, and repair of all the accommodations or facilities, or both, constituting the time-sharing plan.

(6) "Contract" means any agreement conferring the rights and obligations of the time-sharing plan on the purchaser.

(7) "Developer" means the any person who creating a time-sharing-plan:
(15) "Person" means a natural person, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, joint venture or other legal or commercial entity.

(16) "Purchaser" means any person who is buying or who has bought a time-share period in a time-sharing plan; any person, other than a developer who by means of a voluntary transfer acquires a legal or equitable interest in a time-share other than as security for an obligation.

(17) "Seller" means any developer or any other person, or agent or employee thereof, who is offering time-share periods for sale to the public in the ordinary course of business, except a person who has acquired a time-share period for his own occupancy and later offers it for resale.

(18) "Time-share Estate" means a right to occupy a unit or any of several units during more than seven separated time periods over a period of at least three years, including renewal options, coupled with a freehold estate or an estate for years in a time-share property or a specified portion thereof.

(19) "Time-share Instrument" means one or more documents, by whatever name denominated, creating or regulating time-shares.

(20) "Time-share License" means a right to occupy a unit or any of several units during more than seven separated time periods over a period of at least three years, including renewal options, not coupled with a freehold interest or an estate for years.

(21) "Time-share Period" means that period of time when a purchaser of a time-sharing plan is entitled to the
possession and use of the accommodations or facilities, or both, of a time-sharing plan.

(22) "Time-sharing 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, in exchange for a consideration, receives ownership rights in or a right to use accommodations or facilities, or both, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years.

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A bill to be entitled
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and adding a new subsection (3), providing that
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purchasers of time-sharing plans is one of the
purposes of chapter 721, Florida Statutes,
amending s. 721 03, Florida Statutes, 1982
Supplement, relating to the scope of the
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provisions, creating s. 721.081, Florida
Statutes, providing for the review and
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Statutes, requiring escrow agents to maintain
escrow accounts in a specified manner;
providing a penalty for sellers or escrow
agents who intentionally fail to comply with
certain escrow deposit requirements; amending
s. 721 10, Florida Statutes, relating to the
cancellation of purchase transactions with
respect to time-sharing, amending s. 721.11.
(3) Notwithstanding other provisions of this chapter, either expressed or implied, to the contrary, it is the legislative intent that nothing herein be deemed to alter the existing procedure for the assessment and collection of ad valorem taxes on accommodations or facilities subject to a time-sharing plan.

Section 3. Section 721.05, Florida Statutes, is amended to read:

721 05 Definitions.--As used in this chapter:

(1) "Accommodations" means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, or any other private or commercial structure which is situated on real property and designed for occupancy by one or more individuals.

(2) "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.

(3) "Closing" means:

(a) For plans selling time-share estates, conveyance of the legal title to the time-share period as evidenced by the delivery of deed to the purchaser or to the clerk of the court for recording.

(b) For plans selling time-share licenses, the final execution by all parties of the last document necessary for vesting in the purchaser the full rights available under the plan.

(4) "Conspicuous type" means type in boldface capital letters no smaller than the largest type (excluding headings) on the page on which it appears and, in all cases, at least 10-point type. Where conspicuous type is required, it shall be separated on all sides from other type and print.
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share periods for sale to the public in the ordinary course of
business, except a person who has acquired a time-share period
for his own occupancy and later offers it for resale.

(21) "Time-share estate" means a right to occupy a
time-share unit, coupled with a freehold estate or an estate
for years in a time-share property or a specified portion
thereof.

(22) "Time-share instrument" means one or more
documents, by whatever name denominated, creating or governing
the operation of time-sharing plans.

(23) "Time-share license" means a right to occupy a
time-share unit, not coupled with a freehold interest or an
estate for years.

(24) "Time-share period" means that period of time
when a purchaser of a time-sharing plan is entitled to the
possession and use of the accommodations or facilities, or both, of a time-sharing plan.

(25) "Time-sharing 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, in exchange for a consideration, receives ownership rights in or a right to use accommodations or facilities, or both, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than 3 years.

(26) "Time-share property" means one or more time-share units subject to the same time-share instrument, together with any other property or rights to property appurtenant to those units.

(27) "Time share unit" means an accommodation or facility of a time-sharing plan which is divided into time-share periods.
A bill to be entitled
An act relating to real estate time-sharing plans, amending:
amending s. 721.02(2), Florida Statutes, and adding a new subsection
(3), providing that full and fair disclosure to prospective
purchasers of time-sharing plans is one of the purposes of chapter
721, Florida Statutes; amending s. 721.03, Florida Statutes, 1982
Supplement, relating to the scope of the chapter; amending s. 721.05
Florida Statutes, providing definitions; amending s. 721.06, Florida
Statutes, 1982 Supplement, relating to contracts for the purchase of
time-share periods; prohibiting attempts to obtain waivers of
cancellation rights; providing requirements for contracts; amending
s. 721.07, Florida Statutes, providing procedures with respect to
public offering statements; amending s. 721.08, Florida Statutes,
relating to escrow provisions; creating s. 721.081, Florida Statutes
providing for the review and monitoring or proposed offering
statements; amending s. 721.09(2), (3), and (4), Florida Statutes,
requiring escrow agents to maintain escrow accounts in a specified
manner; providing a penalty for sellers or escrow agents who
intentionally fail to comply with certain escrow deposit
requirements; amending s. 721.10 Florida Statutes, relating to the
cancellation of purchase transactions with respect to time-sharing;
amending s. 721.11, Florida Statutes, prohibiting the use of certain
advertising materials prior to approval; requiring disclosure with
respect to certain advertising; defining the term "promotional
program" and requiring procedures with respect to such programs;
requiring the filing with the Division of Florida Land Sales and
Condominiums of the Department of Business Regulation of certain
promotional materials; amending s. 721.13(3)(e), Florida Statutes,
requiring the completion and delivery of the annual audit within 90
days after the end of the fiscal year; amending s. 721.14, Florida
Statutes, providing for the appointment of a receiver to run the
consisting of more than seven time-share periods over a period of
at least 3 years in which the facilities or accommodations are
located within this state.

(2) All time-share accommodations or facilities which
are located outside the state but offered for sale in this state
shall be subject to all of the provisions of this chapter
except ss. 721.13-721.17, ss. 721.22-721.25, and s. 721.27.

(3) Where a time-share 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 herein. 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.

(4) A time-share plan which is subject to the
provisions of chapter 718 or chapter 719, if fully compliance with
the provisions of this chapter, are exempt from the following:

(a) Section 718.202 and s. 719.202, relating to sales
or reservation deposits prior to closing.

(b) Section 718.502 and s. 719.502, relating to
filing prior to sale or lease.

(c) Section 718.503 and s. 719.503, relating to
disclosure prior to sale.

(d) Section 718.504 and s. 719.504, relating to
prospectus or offering circular.

(5) The treatment of time-share estates for ad valorem
tax purposes and special assessments shall be as prescribed in
chapters 192-200, F.S.

Section 3. Section 721.05, Florida Statutes, is
amended to read:

721.05 Definitions.—As used in this chapter:

(1) "Accommodations" means any apartment, condominium
having a freehold estate or estate for years in the accommodations
or facilities of the time-share plan other than purchasers who
purchase less than 10 time-share periods from the developer.

(19) "Owners' association" means the association
made up of all purchasers of a time-share plan who have purchased a
fee simple interest in real property.

(20) "Person" means a natural person, corporation,
government, governmental subdivision or agency, business trust,
estate, trust, partnership, association, joint venture, or other
legal or commercial entity.

(21) "Purchaser" means any person, other than a
developer, who by means of a voluntary transfer acquires a legal or
equitable interest in a time-share plan other than as security for
an obligation to any person who is buying or has bought a
time-share period in a time-sharing plan.

(22) "Seller" means any developer or any other
person, or agent or employee thereof, who is offering time-share
periods for sale to the public in the ordinary course of business,
extcept a person who has acquired a time-share period for his own
occupancy and later offers it for resale.

(23) "Time-share estate" means a right to occupy a
time-share unit, coupled with a freehold estate or an estate for
years with a future interest in a time-share property or a specified
portion thereof. Where a time-share 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 assigned or encumbered separately from the other.

(24) "Time-share instrument" means one or more
documents, by whatever name denominated, creating or governing the
operation of time-share plans.
(25) "Time-share license" means a right to occupy a
time-share unit which right is neither coupled with a freehold
interest nor with an estate for years with a future interest, in the
time-share property.

(26) "Time-share period" means that period of
time when a purchaser of a time-share plan is entitled to the
possession and use of the accommodations or facilities, or both, of
a time-share plan.

(27) "Time-share 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, in exchange for a consideration,
receives ownership rights in or a right to use accommodations or
facilities, or both, for a specific period of time less than a full
year during any given year, but not necessarily for consecutive
years, and which extends for a period of more than 3 years.

(28) "Time-share property" means one or more
time-share units subject to the same time-share instrument, together
with any other property or rights to property appurtenant to those
units.

(29) "Time-share unit" means an accommodation or
facility of a time-share plan which is divided into time-share
periods.

Section 4. Section 721.04, Florida Statutes, is
amended to read:

721.04 Saving clause.--

(1) All time-share 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. this chapter.