

Modernizing Florida's Timeshare Law

Florida Bill HB 453

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Since its inception in the late 60s, timeshare has continually evolved to meet the changing needs of its owners. From fixed weeks to floating time, fractional ownership to club and point systems, it's safe to say timeshare looks a lot different today than in its early days.

As the product has evolved, Florida's timeshare statute (Chapter 721—originally enacted in 1983) has been revised regularly to account for these new product offerings. Today, many timeshare products are structured as real estate trusts to meet consumer demand for greater flexibility in both the use of the product and the method of ownership. In an effort to reflect this latest product offering, legislation (HB 453) was introduced to modernize the statute.

The proposed amendments aim to clarify current law to include the operations of timeshare plans organized as real estate trusts, which are not currently addressed in the statute. Additionally, the bill proposes to make a number of changes that would provide additional detail and transparency to current disclosures, and provide new tools for associations. More specifically:

- HB 453 adds detail to current multi-site disclosure requirements regarding the term of component sites. The term of each component of a plan must be disclosed rather than only the shortest term.
- It also adds detail to existing substitution provisions limiting the amount a plan can be changed in a given year, while adding a new provision that now gives owners an opportunity to object to a substitution.
- Additionally, it revises requirements for continuity in the operation of a timeshare plan when there is a change in plan management.

Perhaps most importantly, the proposed amendments do not remove any consumer protections currently in place under Florida's timeshare law. Purchasers have a 10-day right to rescind their purchase under Florida law for any reason—nothing in this bill changes that right. The proposed changes regarding non-material disclosure violations reflect language in the statute that already exists in Florida's timeshare law today—the aim is to extend these same standards to additional provisions within the law.

We believe this change is very important for timeshare owners and associations because it will prevent opportunistic law firms from taking advantage of owners by convincing them they can walk away from their contractual obligations based on minor technicalities in the law—thereby protecting other, satisfied owners and their associations who would otherwise bear the financial burden of these actions.

It's important to note the developer must still act in good faith and be in substantial compliance with the law. Further, the developer is not the arbiter of what is nonmaterial. Consumers can challenge a developer's position with Florida's Department of Business and Professional Regulation (DBPR). Serving as the state agency that regulates timeshare, DBPR is the authority that oversees developer compliance and determines whether a developer violates the timeshare act. In every case, DBPR's mission is to protect the interests of timeshare consumers. Consumers also have the option to seek redress through the courts. No new rights regarding contracts are given to developers by this legislation.

One component of the bill, which may impact owners in multi-site plans, seeks to modify a cap on maintenance fee increases. The reason for this amendment is that under extreme circumstances, such as damage to the resort sustained from a hurricane, a single-site HOA may need to raise maintenance fees to cover the costs for restoration. With the cap in place, the HOA may not be able to recoup the funds necessary, which may lead to the HOA defaulting.

While owners may be impacted by a fee increase, the alternative is the resort remains in disrepair and the HOA is unable to operate. Additionally, any increase in maintenance fees would be spread across all owners in the plan, as happens today, regardless of where they own, minimizing the impact on any individual owner.

Not only does this bill not remove any current consumer protections in place, but it adds further protections for owners by providing them an opportunity to object to substitutions within their plans—a right they do not have today. If signed into law, the legislation will for the first time provide a means for owners in older associations to either extend or end their timeshare plan when the plan contains no provisions to do so.

ARDA and ARDA-ROC support the proposed amendments to existing timeshare legislation for these very reasons—as they aim to benefit both the timeshare industry *and* its owners.

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