

## **61B-37 TIME-SHARE PLANS**

### **61B-37.001 Definitions.**

For purposes of Sections 721.075, 721.11 and 721.111, Florida Statutes, and these rules, the following definitions apply:

(1) “Additional material” means any material except material whose primary effect is to create a new prize and gift promotional offer, substantially different from a previously filed offer, or to extend the expiration date of a previously filed offer more than three years beyond its original approval date.

(2) “Aggregate represented value” or “represented value” means a numerical value or percentage greater than zero for which supporting documentation has been furnished to the division prior to any offering of the incidental benefit.

(3) “Days” shall be calculated in the manner specified in Chapter 61B-39, F.A.C.

(4) “Filed with the division” means that written materials, including facsimile and electronic filing, if appropriate, have been received by the division in the Tallahassee, Florida office and the date of receipt shall constitute the date of filing.

(5) “Item” means a timeshare interest, a gift or prize premium, a product or service, or all of the above, as the context requires.

(6) “Lodging Certificates” means any promotion, arrangement, plan, scheme or other device, whether evidenced by contract, certificate, license, membership agreement, security, use agreement or otherwise, whereby a prospective timeshare purchaser is offered complimentary or discounted accommodations or facilities at any hotel, motel, campground, timeshare resort or other similar establishment regardless of where located, except that lodging certificates shall not mean the offering of the complimentary or discounted use of accommodations or facilities at a timeshare project by a developer, seller or promotional entity in connection with the offer for sale of a timeshare interest at such resort.

(7) “Promotional Entity” means the developer or seller of a time-share period, or any officer, agent or employer of such developer or seller, or any business entity of whatever nature which has entered into a contractual relationship with such developer or seller, which person or entity is responsible to such developer or seller for overseeing, administering or operating a prize and gift promotional offer.

(8) “26 prizes” means that the sum total of all individual prizes offered plus the quantity of individual prizes offered plus all of the distinguishing features thereof, including types, categories, sizes, and parts, shall not exceed twenty-six.

(9) “Vacation Certificates” means lodging certificates which include complimentary or discounted transportation, meals or other material benefits in addition to the mere use of accommodations and common motel, hotel, or campground facilities.

(10) “Verifiable Retail Value” means either the price charged by a national or regional retailer for an identical or substantially similar item or an amount equal to no more than twice the cost of the item to the promotional entity. The verifiable retail value of coupon or discount books shall be the maximum amount of savings to the prospective purchaser assuming that all of the coupons or discounts are actually used.

*Specific Authority 721.26(6) FS. Law Implemented 721.075, 721.11, 721.111 FS. History—New 1-1-85, Formerly 7D-37.01, 7D-37.001, Amended 8-24-94, 2-15-00, 12-18-01, 4-16-03.*

**61B-37.002 Advertising Material.**

(1) In evaluating whether oral statements or advertising material, including prize and gift promotional offers, violate the terms of Section 721.11(4), Florida Statutes, the Division shall consider both explicit representations and reasonable inferences created by such materials or statements. To determine whether representations are misleading, the Division shall review the advertising materials in their totality.

(2) The developer of the timeshare plan must file all advertising material with the division, including prize and gift promotional offers, prior to use, and shall accompany such filing with DBPR Form TS 6000-12, Filing Statement for Advertising Material, incorporated herein and effective 12-18-01, a copy of which may be obtained at the address reference in subsection 61B-39.002(4), F.A.C. At the request of the developer, the division shall review the advertising material and notify the developer of any deficiencies within 10 days after the filing advising the developer of specific deficiencies in the advertising material that must be corrected. Where additional or corrected material is submitted to modify previously filed advertising material, including advertising submitted in response to a deficiency notice from the division, such material must be filed with the division prior to use of the modified advertising material.

(3) Notwithstanding the provisions of subsection (2), a developer may use a piece of advertising material prior to filing that merely corrects material previously filed with the division if the correction is unrelated to any deficiency letter issued by the division. A piece of advertising material corrects previously filed material when it only cures typographical or printing errors that do not change the meaning of the previously filed material. Such material shall be filed with the division at the time of use.

*Specific Authority 721.11, 721.111, 721.26(6) FS. Law Implemented 721.11(4) FS. History—New 1-1-85, Formerly 7D-37.02, 7D-37.002, Amended 8-24-94, 2-13-97, 2-15-00, 12-18-01.*

**61B-37.004 Prize and Gift Promotional Offers.**

(1) Contents of Filing. In addition to the general filing requirements of Sections 721.11 and 721.111(4), Florida Statutes, and other applicable Chapter 61B-37, F.A.C., rules, each filing with the division of a prize and gift promotional offer shall comply with the following specific requirements:

(a) In instances where a manufacturer's suggested retail price must be disclosed, this figure shall be evidenced by a letter from the manufacturer of the item stating its suggested retail price or by the manufacturer's printed price list. Where disclosure of a verifiable retail value is required, this value may be evidenced by providing the division with a page from a national or a regional retail catalog depicting the item, or a comparable item, properly used as a reference of retail value or by providing the division with copies of the actual purchase and invoice agreements governing the purchase of the item.

(b) In disclosing the terms and conditions and other information concerning the use of lodging or vacation certificates, and in providing reasonable assurances that the obligations thereunder will be met, the developer shall include the following information:

1. The name and address of the business entity or entities creating and distributing the lodging or vacation certificates;

2. A copy of the lodging or vacation certificate;

3. The name and location of the resort, hotel, motel, time-share project or other entity providing benefits under the vacation or lodging certificate.

4. A letter to the division from the developer verifying that a bona fide agreement exists, between the certificate supplier and the developer.

(2) Filing fees. Each developer shall provide the division with a separate filing and filing fee for each prize and gift promotional offer as specified in Section 721.111(4), (6), Florida Statutes. Notwithstanding the above, a developer may, without paying an additional filing fee, file a prize and gift promotional offer which merely corrects an offer previously filed with the division. A prize and gift promotional offer corrects a previously filed offer when it only cures typographical or printing errors that do not change the meaning of the previously filed offer.

(3) Advertising disclosures.

(a) In describing the prize, gift or other item that a prospective purchaser will receive, advertising material shall describe, where applicable, the item's dimensions, material and construction, volume, warranties, guarantees, brand name, and method of operation.

(b) In describing vacation or lodging certificates, the advertising material shall fairly disclose, where applicable:

1. The location and a fair accurate description of the lodging facility. If proximity to any area attraction is mentioned, the distance of the attraction from the lodging facility shall be fairly described.

2. The number of days and nights lodging offered;

3. The number of persons included without additional charges;

4. Whether a sales presentation is required to validate the certificate;

5. The expiration date of the certificate;

6. The existence and amount of any charges to the recipient.

7. Whether the recipients must use a credit card to make their reservations.

(c) In disclosing the rules, terms, requirements, and preconditions governing the use of a vacation or lodging certificate, the certificate shall contain a section labeled "Terms and Conditions," or language of similar import, which shall include the following:

1. Any eligibility requirements such as age, employment, residency, or marital status;

2. Any expiration date; and

3. Any additional charges.

(4) Unavailability of accommodations under the vacation or lodging certificates. Where, through no fault of the developer of the time-share plan, any entity which is to provide lodging or other services under the vacation or lodging certificate fails to do so, the developer must offer recipients of such certificates the choice of receiving either a refund of any monies paid therefor or pursuant thereto, or of receiving comparable lodging and services subject to the same terms and conditions as specified in the vacation or lodging certificate. After the provider of the lodging or other services fails to honor the terms of the vacation or lodging certificate, the developer shall immediately cease distribution of any vacation or lodging certificates offering lodging or services at the unavailable facility.

*Specific Authority 721.26(6) FS. Law Implemented 721.11, 721.111 FS. History—New 1-1-85, Formerly 7D-37.04, 7D-37.004, Amended 8-24-94, 2-15-00.*

## **61B-39 FILING REQUIREMENTS FOR PUBLIC OFFERING STATEMENTS**

**61B-39.001 Definitions.**

For purposes of Sections 721.07, 721.55, and 721.551, Florida Statutes, and these rules, the following definitions apply:

(1) "Alternative media" means any visually or audibly perceptible and legible display format which may require the use of a device or a machine to be viewed, including CD-ROM, microfilm, electronically transferred data, computer disk, computer or electronic memory, cassette tape, compact disk or video tape.

(2) "Any change to an approved filing" for purposes of Section 721.07(3)(a)1., Florida Statutes, means any actual or physical fact or circumstance which would render any part of the approved registered POS false or misleading, whether or not such fact or circumstance was within the developer's control.

(3) "Approved Amendment" for purposes of Section 721.07(3)(a)2., Florida Statutes, is an amendment, approved by the division, to that portion of the registered POS that constitutes the purchaser POS required to be delivered to an individual purchaser pursuant to Section 721.07(6) or 721.551, Florida Statutes, and these rules.

(4) "Approved by the division" for purposes of Chapter 61B-39, F.A.C., means that the division has approved the filing or amendment pursuant to Section 721.07, Florida Statutes.

(5) "Business days" for purposes of these rules means every day that is not a Saturday, Sunday, or holiday for employees of the State of Florida.

(6) "Days" shall be calculated in the following manner: The day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

(7) "Filed with the division" means that written materials have been received by the division in the Tallahassee, Florida, office and the date of receipt shall constitute the date of filing.

(8) "Initial purchase price" means the price of the timeshare period not including title insurance, maintenance fees, exchange company management fees, costs of recordation, documentary stamp fees, or other similar costs.

(9) "Notify," for purposes of Sections 721.06(1)(g) and 721.065(2)(c), Florida Statutes, shall mean that a written notice of cancellation is delivered, by any means which may include certified mail return receipt requested, to the entity designated to receive the notice of cancellation in the statement required by Sections 721.06(1)(g) or 721.065(2)(c), Florida Statutes.

(10) "Other required parties" means the timeshare purchasers, managing entity, the board of directors of the owners' association, or similar person or entity.

(11) "POS" means the public offering statement, as defined in Chapter 721, Florida Statutes. The terms "public offering statement" and "POS" shall refer to both a registered POS and a purchaser POS, unless these rules or the context requires otherwise.

(12) "Receipt" or "received" for purposes of Sections 721.07(2), 721.07(3), and 721.55, Florida Statutes, means that an original hard copy has been physically received by the division in the format required by these rules. No other form of submission shall be considered received for purposes of these rules. A date-stamp shall be evidence of

receipt.

(13) "Single-site" or "single-site timeshare plan" means a timeshare plan, as defined in Section 721.05, Florida Statutes, that is not subject to the requirements of Sections 721.55 or 721.551, Florida Statutes.

(14) "Specified deficiencies" means deficiencies which have been specified by reference to the statutory section or subsection violated, but the term does not require a reference to the paragraph or language of the statute violated or the means or language by which the statutory deficiency may be corrected.

(15) "Substantially complied" as used in Sections 721.07(5)(gg) and 721.55(5), Florida Statutes, means that:

(a) The information required in Section 721.07 or 721.55(5), Florida Statutes, or these rules if applicable, has been filed with the division;

(b) The information has been filed in the format required in these rules if applicable; and

(c) The purchasers have been furnished a purchaser POS pursuant to Section 721.07(6) or 721.551, Florida Statutes, and these rules.

*Specific Authority 721.26(6) FS. Law Implemented 721.07, 721.55, 721.551 FS. History—New 5-8-94, Amended 6-12-96, 3-23-97, 12-18-01.*

#### **61B-39.002 Public Offering Statement and Purchase Agreement Requirements.**

(1) Each registered public offering statement shall:

(a) Be paginated numerically in consecutive order within each tabbed section;

(b) Wherever possible, be printed on both sides of each page in 10-point size and on 8 1/2" × 11" paper;

(c) Be securely bound along the left margin, fastened between firm removable covers, and submitted in an expandable file folder;

(d) Contain a divider with a labeled tab between each prescribed portion of the POS corresponding to BPR Form 503, Table of Contents to Multisite Public Offering Statement, effective 6-12-96, or DBPR Form 6000-9, Table of Contents to Single-Site/Component Site Public Offering Statement, effective 12-18-01, both incorporated herein by reference a copy of which may be obtained at the address referenced in subsection 61B-39.002(4), F.A.C.; and

(e) Not contain conspicuous type except where required by statute or rule, or as permitted by the division pursuant to Section 721.07(5)(gg), F.S.

(2) All POS disclosures required to be in conspicuous type pursuant to statute or rule shall be made in bold font.

(3) The registered POS shall be submitted to the division in the English language and any reference, in an approval letter of the division, to the documents comprising the registered POS shall be to such documents in the English language. A developer may use non-English versions of the filed documents if: (i) any such document is an accurate translation of the English version that has been approved by the division, and (ii) the developer has identified each translated document in a completed, executed statement using the form prescribed in BPR form 511, Statement of Translation, incorporated herein by reference and effective 3-23-97, a copy of which may be obtained at the address referenced in subsection 61B-39.002(4), F.A.C. Upon request by the division, a developer shall promptly deliver to the division a copy of any translated document that

has been or is being used in an offering.

(4) Where brackets [ ] appear on the forms referenced in these rules, the words or symbols between the brackets are intended to solicit any applicable information relevant to the developer. Copies of the forms referenced in these rules may be obtained by writing:

Division of Florida Condominiums, Timeshares, and Mobile Homes  
Department of Business and Professional Regulation  
Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida 32399-1033

(5) Approval by the division of a POS shall not be promoted to the public as an endorsement by the division of the developer or the timeshare plan or be used to induce the purchase of an interest in a timeshare plan.

(6) Within 30 days after recording any timeshare instrument, the developer shall provide the division with a copy of the recorded instrument.

(7) The division shall notify a developer within the first ten business days of the statutory review period prescribed in Sections 721.07(2)(a) and 721.07(3)(a)1., F.S., if a POS submitted to the division for review is not in the format required by these rules.

(8) The substance of the definition of the term “notify” as defined in Rule 61B-39.001, F.A.C., shall be disclosed in the purchase agreement executed by a purchaser immediately following the space in the contract reserved for the signature of the purchaser, disclosed as a footnote to the disclosure required by Section 721.06(1)(g) or 721.065(2)(c), F.S.

(9) A developer of a multisite timeshare plan may combine the Receipt for Multisite Timeshare Documents for which a form is provided in Rule 61B-39.005, F.A.C., and the Receipt for Single-Site/Component Site Timeshare Documents for which a form is provided in Rule 61B-39.003, F.A.C., into a single Receipt for Timeshare Documents with respect to any one component site, provided that such developer follows the general format provided in the aforementioned forms and the resulting single form is approved by the division.

(10) It shall be a violation of Chapter 721, F.S., for any person to interfere with the delivery of a notice of cancellation by a purchaser.

*Specific Authority 721.07, 721.26(6), 721.55, 721.551 FS. Law Implemented 721.03, 721.03(1)(c)3., 721.06, 721.065, 721.55, 721.551 FS. History—New 6-12-96, Amended 3-23-97, 12-18-01.*

#### **61B-39.003 Filing of Single-Site Timeshare Plans.**

(1) Each developer of a single-site timeshare plan shall file a single-site registered POS with the division pursuant to Section 721.07(5), Florida Statutes, and these rules. The single-site registered POS shall:

(a) Include all of the information and disclosures required in Section 721.07(5), Florida Statutes;

(b) Follow the filing format and forms prescribed in this rule; and

(c) Disclose any additional information prescribed in this rule.

(2) Every single-site registered POS must organize the required information and disclosures in the following manner and format:

(a) The first page shall be the cover page and shall contain the disclosures required in Section 721.07(5)(a), Florida Statutes;

(b) The next consecutive page(s) shall be the table of contents and shall list the POS text and exhibits of the POS by “Exhibit #”, pursuant to Section 721.07(5)(c), Florida Statutes, as prescribed in DBPR Form TS 6000-9, Table of Contents to Single-Site/Component Site Public Offering Statement, referenced in Rule 61B-39.002, F.A.C. If any required exhibit is not applicable to a particular POS, the table of contents shall contain a notation to that effect where such exhibit would otherwise be described in the table of contents. However, such notations shall not cause a POS to deviate from either the order or numbering of presentation as prescribed in this rule;

(c) The next consecutive page(s) shall be the index and shall list the sections of the POS text with corresponding subject matter and page number, pursuant to Section 721.07(5)(c), Florida Statutes, as prescribed in DBPR Form TS 6000-10, Index to Single-Site/Component Site Public Offering Statement Text, incorporated herein by reference and effective 12-18-01, a copy of which may be obtained at the address referenced in subsection 61B-39.002(4), F.A.C. If any required information or disclosure is not applicable to a particular POS, the index shall contain a notation to that effect where such information or disclosure would otherwise be described in the index. However, such notations shall not cause a POS to deviate from either the order or numbering of presentation as prescribed in this rule;

(d) The next consecutive page(s) shall be labeled “I. Definitions and Abbreviations” and shall list and define alphabetically any terms of art or abbreviations to be used. The terms and abbreviations used in the POS text shall be consistent with statutorily defined terms and shall not create ambiguity as to statutorily defined terms;

(e) The next consecutive page(s) shall be labeled “II. Required Disclosures” and shall contain any conspicuous type disclosures required by Chapter 721 or Chapter 718, Florida Statutes, as applicable, and contained in exhibits that will be provided to purchasers in the purchaser POS;

(f) The next consecutive page(s), if applicable, shall be labeled “IIA. Developer Disclosures” and shall contain all of the disclosures that the developer wishes to appear in a font or type size or style different than the font or type that is used in the overall POS text. For developer disclosures, the developer shall not use a font or type that is larger than the font or type used for conspicuous type disclosures.

(g) The next consecutive pages shall be labeled “III. Public Offering Statement Text” and shall contain the subject matter indicated by, and be organized by section according to, the Index to Public Offering Statement Text, and contain the information and disclosures required in Sections 721.07(5)(e)-(gg), 721.55, Florida Statutes, in the following order:

1. Section 1.a. shall contain the information required in Sections 721.07(5)(e)1. and (e)2., Florida Statutes. In addition, Section 1.a. shall contain an itemization of the timeshare periods being offered by a successor or concurrent developer, specified by reference to unit and week numbers.

2. Section 1.b. shall contain the information required in Section 721.07(5)(e)3., Florida Statutes;

3. Section 2. shall contain the applicable disclosures and information required in Sections 721.07(5)(h)1., (h)2.a.-d., (h)3., and (h)4., Florida Statutes;

4. Section 3. shall contain the information required in Section 721.07(5)(f)4., Florida Statutes;
5. Section 4.a. shall contain the information required in Sections 721.07(5)(o), 721.07(5)(w), Florida Statutes;
6. Section 4.b. shall contain the information required in Section 721.07(5)(k), Florida Statutes;
7. Sections 5.a., 5.b., and 5.c. shall contain the information required in Sections 721.07(5)(f)1., (f)2., and (f)3., Florida Statutes, respectively;
  - a. Section 5.b. shall further contain the information required in Section 721.07(5)(r), Florida Statutes, including whether the addition of undisclosed phases will change the purchaser's pro rata interest in the common elements or pro rata share of common expenses, and whether the purchaser has the right of consent to such changes; and
  - b. Section 5.c. shall further contain the information required in Sections 721.07(5)(g)1.- (g)3., 721.07(5)(i), Florida Statutes, as applicable;
8. Section 5.a.(1) shall contain the information required in Section 721.07(5)(s), Florida Statutes. If purchasers are not entitled to use specific timeshare periods the following additional information shall be disclosed:
  - a. Beginning and ending dates for the period during which a purchaser must make reservations; and
  - b. In conspicuous type, any contingencies resulting in a purchaser's loss of occupancy rights including whether a purchaser is required to pay estimated, further assessments prior to obtaining the right to make a reservation;
9. Section 5.d. shall contain the information required in Section 721.07(5)(n), Florida Statutes;
10. Section 5.e. shall contain the information required in Section 721.07(5)(aa), Florida Statutes;
11. Section 5.f. shall contain the information required in Sections 721.07(5)(l) and (5)(t), Florida Statutes;
12. Section 5.g. shall contain the information required in Section 721.07(5)(m), Florida Statutes;
13. Section 5.h. shall contain the information required in Section 721.07(5)(p), Florida Statutes;
14. Section 5.i. shall contain the information required in Section 721.07(5)(n), Florida Statutes;
15. Section 5.j. shall contain the information and disclosure, if applicable, required in Section 721.07(5)(r), Florida Statutes;
16. Section 6. shall contain the information required in Section 721.07(5)(u), Florida Statutes;
17. Section 7.a. shall contain the information required in Section 721.07(5)(z), Florida Statutes;
18. Section 7.b. shall contain the information required in Sections 721.07(5)(v), (5)(x), and (5)(y), Florida Statutes;
19. Section 7.c. shall contain the information required in Section 721.07(5)(j), (cc) and (dd), Florida Statutes. If the developer does not own the real property underlying any particular accommodation or facility, the developer shall disclose the extent to which such accommodation or facility will be available to purchasers, including an explanation

of any limitations, risk, or restrictions on availability. This disclosure shall not relieve the developer from complying with the financial assurance or non-disturbance requirements of Chapter 721, Florida Statutes, or these rules, where applicable;

20. Section 7.d. shall contain the information required in Sections 721.07(5)(q)1. and (q)2., Florida Statutes; and

21. Section 8. shall contain the information required in Section 721.07(5)(bb), Florida Statutes;

(h) The next consecutive page(s) shall contain the POS exhibits tabbed and labeled by "Exhibit #", as previously listed pursuant to subsection (2)(b) of this rule or required pursuant to Section 721.07(5), Florida Statutes, including:

1. An exhibit containing the form receipt for timeshare documents to be furnished to purchasers as prescribed in DBPR Form TS 6000-7, Receipt for Timeshare Documents, incorporated herein by reference and effective 12-18-01, a copy of which may be obtained at the address referenced in subsection 61B-39.002(4), F.A.C.; and

2. A description of exhibits that will not be provided to purchasers.

(3) The indexes and POS text may contain additional subsections which subdivide the required information in a more individualized fashion and may reference additional exhibits, numbered consecutively after the exhibits mandated in this rule.

(4) The single-site registered POS shall be accompanied by the following completed and executed forms and documents, where applicable:

(a) DBPR Form TS 6000-6, Single-Site/Component Site Timeshare Filing Statement, incorporated herein by reference and effective 12-18-01;

(b) DBPR Form TS 6000-8, Certificate of Identical Documents, incorporated herein by reference and effective 12-18-01, a copy of which may be obtained at the address referenced in subsection 61B-39.002(4), F.A.C.;

(c) A fully executed escrow agreement demonstrating that the developer has established an escrow account with an independent escrow agent pursuant to Section 721.08, Florida Statutes;

(d) Pursuant to Section 721.07(5)(ee), Florida Statutes, other documents or information that the seller wishes to include in the POS; and

(e) The correct filing fee.

(5) A copy of the single-site purchaser POS, prescribed in Rule 61B-39.004, F.A.C., shall not be required to be filed with the division as a separate document or exhibit, unless requested by the division pursuant to Section 721.07(5)(gg), Florida Statutes.

(6) The developer of a single-site timeshare plan, filed with the division prior to June 14, 1995 or amended after June 14, 1995, shall not be required to amend the single-site POS after the effective date of this rule in order to reorder, rearrange, re-subdivide or renumber information or exhibits or to modify or amend the font or style of required conspicuous type disclosures. Notwithstanding the foregoing, all disclosures required to be in conspicuous type shall remain in conspicuous type.

*Specific Authority 721.26(6) FS. Law Implemented 721.05, 721.06(1)(g), 721.07(5), (6), 721.52(4), (5), 721.53 FS. History—New 5-8-94, Amended 12-11-94, 6-12-96, 12-18-01.*

#### **61B-39.004 Delivery of Single-Site Purchaser Public Offering Statements.**

(1) Pursuant to Section 721.07(6), Florida Statutes, a developer of a single-site timeshare plan shall deliver to every purchaser of the single-site timeshare plan a single-

site purchaser POS, which shall contain all of the following:

(a) A copy of the single-site registered public offering statement text as prescribed in Section 721.07(5), Florida Statutes, and Rule 61B-39.003, F.A.C.;

(b) A copy of the exhibits prescribed in Sections 721.07(5)(ff)1., 2., 4., 5., 8., and 16., Florida Statutes, as applicable. Pursuant to Section 721.07(6)(b) and Section 721.07(5)(ff)19., Florida Statutes, if the single-site is one created as a tenancy-in-common, the purchaser shall receive the document or documents creating the tenancy-in-common, including at a minimum a Declaration of Covenants, Conditions and Restrictions; and

(c) Any other exhibit that the developer has filed with the division pursuant to Section 721.07(5), Florida Statutes, and Rule 61B-39.003, F.A.C., which the developer is not required but elects to include in the purchaser POS pursuant to Section 721.07(6)(d), Florida Statutes.

(2) In addition to the single-site purchaser POS, the developer shall deliver to the purchaser a copy of any document that the purchaser signs, including a copy of the executed purchase agreement, a copy of the executed alternative media disclosure statement prescribed in subsection 61B-39.008(1), F.A.C., and a copy of the executed receipt for timeshare documents prepared in accordance with DBPR Form TS 6000-7, Receipt for Timeshare Documents, incorporated by reference in Rule 61B-39.003, F.A.C.

(3) Any document required to be an exhibit to the single-site purchaser POS pursuant to Section 721.07(6), Florida Statutes, and this rule is not required to include any underlying or supporting exhibits to such document.

(4) A developer shall deliver the single-site purchaser POS as prescribed in this rule in the same order as prescribed in Rule 61B-39.003, F.A.C., but may renumber the exhibits indicated on BPR Form 503, Table of Contents to Single-Site/Component Site Public Offering Statement, incorporated by reference in Rule 61B-39.002, F.A.C., to reflect only those exhibits that are being delivered to purchasers pursuant to Section 721.07(6), Florida Statutes. Accordingly, a developer may remove cross-reference in the purchaser POS text that refers to an exhibit that is not being delivered to the purchaser.

*Specific Authority 721.07(6), 721.26(6) FS. Law Implemented 721.07(6) FS. History—New 6-12-96, Amended 12-18-01.*

#### **61B-39.005 Filing of Multisite Timeshare Plans.**

(1) Each developer of a multisite timeshare plan pursuant to Section 721.07, Florida Statutes, shall file a multisite registered POS pursuant to Section 721.55, Florida Statutes, and these rules. The multisite registered POS shall:

(a) Include all of the information and disclosures required in Section 721.55, Florida Statutes;

(b) Follow the filing format and forms prescribed in this rule; and

(c) Disclose any additional information prescribed in this rule.

(2) Every multisite registered POS must organize the required information and disclosures in the following manner and format:

(a) The first page shall be the cover page and shall contain the disclosures required in Section 721.55(1), Florida Statutes;

(b) The next consecutive page(s) shall be the table of contents and shall list the sections of the POS by Exhibit #, pursuant to Section 721.55(3), Florida Statutes, as

prescribed in BPR Form 503, Table of Contents to Multisite Public Offering Statement, incorporated by reference in Rule 61B-39.002, F.A.C. If any required exhibit is not applicable to a particular filing, the table of contents shall contain a notation to that effect where such exhibit would otherwise be described in the table of contents. However, such notations shall not cause a filing to deviate from either the numbering or order of presentation as prescribed in this rule;

(c) The next consecutive page(s) shall be the index and shall list the sections of the POS text with corresponding subject matter and page number, pursuant to Section 721.55(3), Florida Statutes, as prescribed in DBPR Form TS 6000-4, Index to Multisite Public Offering Statement Text, incorporated herein by reference and effective 12-18-01, a copy of which may be obtained at the address referenced in subsection 61B-39.002(4), F.A.C. If any required information or disclosure is not applicable to a particular filing, the index shall contain a notation to that effect where such information or disclosure would normally be described in the index. However, such notations shall not cause a filing to deviate from either the order or numbering of presentation as prescribed in this rule;

(d) The next consecutive page(s) shall be labeled “I. Definitions and Abbreviations” and shall list and define alphabetically any terms of art or abbreviations to be used in the multisite POS text or exhibits. The terms and abbreviations used in the multisite POS text shall be consistent with statutorily defined terms and shall not create ambiguity as to statutorily defined terms;

(e) The next consecutive page(s) shall be labeled “II. Required Disclosures” and shall contain any conspicuous type disclosures required by Chapter 721, Florida Statutes, or Chapter 718, Florida Statutes, as applicable, and contained in exhibits that will be provided to purchasers in the purchaser POS;

(f) The next consecutive page(s), if applicable, shall be labeled “IIA. Developer Disclosures” and shall contain the disclosures, as approved by the division, that the developer wishes to appear in a font or type size or style different than the font or type that is used in the overall multisite POS text. For developer disclosures, the developer shall not use a font or type that is larger than the font or type used for conspicuous type disclosures.

(g) The next consecutive pages shall be labeled “III. Public Offering Statement Text” and shall contain the subject matter indicated by, and be organized by section according to, the Index to Public Offering Statement Text, and contain the information and disclosures required in Section 721.55(4), Florida Statutes, in the following order:

1. Sections 1., 1.a., 1.b., 1.c., and 1.d. shall contain the information required in Section 721.55(4)(a), Florida Statutes;

2. Sections 2., 2.a., 2.b., and 2.c. shall contain the information required in Section 721.55(4)(b), Florida Statutes;

3. Sections 3., 3.a., 3.b., and 3.c. shall contain the information required in Sections 721.55(4)(c)1., (c)2., and (c)3., Florida Statutes;

4. Section 4. shall contain the information and conspicuous type disclosure required in Section 721.07(4)(d), Florida Statutes;

5. Section 5. shall contain the information required in Section 721.55(4)(e), Florida Statutes;

6. Sections 6., 6.a., 6.b., 6.c., 6.d., and 6.e. shall contain the information and conspicuous type disclosure required in Sections 721.55(4)(f)1.a., (f)1.b., and (f)1.c.,

Florida Statutes;

7. Sections 7., 7.a., 7.b., 7.c., 7.d., and 7.e. shall contain the information and conspicuous type disclosure required in Sections 721.55(4)(f)2.a. and (f)2.b., Florida Statutes;

8. Sections 8., 8.a., 8.b., 8.c., and 8.d. shall contain the information and conspicuous type disclosure required in Sections 721.55(4)(f)3., Florida Statutes;

9. Sections 9.a.(1)-a.(2) shall contain the information required in Section 721.55(4)(g)1., Florida Statutes;

10. Sections 9.b.(1)-b.(3) shall contain the information required in Section 721.55(4)(g)2., Florida Statutes;

11. Sections 10. and 10.a.-10.i. shall contain the information required in Section 721.55(4)(h)1.-7., Florida Statutes;

12. Section 11. shall contain the information and conspicuous type disclosure required in Section 721.55(4)(I), Florida Statutes;

13. Section 12. shall contain the conspicuous type disclosure required in Section 721.55(4)(j), Florida Statutes;

14. Section 13. shall contain the information required in Section 721.55(4)(k), Florida Statutes;

15. Sections 14.a.-14.d. shall contain the information required in Section 721.55(4)(l)1.-1)5., Florida Statutes. In describing each component site, the developer shall be permitted to include pictures, photographs, illustrations, sketches or other pictorial representations of each component site; provided, however, that such representations comply with the requirements of Section 721.553, Florida Statutes, and Section 721.26(5)(a)2., Florida Statutes;

16. Section 15. shall contain the conspicuous type disclosure required in Section 721.55(8)(b), Florida Statutes, if applicable; and

17. Section 16. shall contain, if applicable, the information permitted pursuant to Section 721.55(5), Florida Statutes, unless the division requests that such information be placed in another section of the multisite POS to ensure fair, effective, and meaningful disclosure.

(h) The next consecutive page(s) shall contain the multisite POS exhibits tabbed and labeled by "Exhibit #", as previously listed pursuant to subsection (2)(b) of this rule or required pursuant to Sections 721.55(7)(a)-(7)(k) and 721.55(5), Florida Statutes, including:

1. An exhibit containing the form receipt for timeshare documents to be furnished to purchasers as prescribed in DBPR Form TS 6000-7, Receipt for Timeshare Documents, incorporated by reference in Rule 61B-39.003, F.A.C.;

2. A description of exhibits that will not be provided to purchasers; and

3. An exhibit (consecutively numbered if more than one) for each component site whose accommodations or facilities are either located in this state or with respect to which a timeshare estate or specific timeshare license is offered in this state, pursuant to Section 721.55(7)(l), Florida Statutes. Each such exhibit shall consist of the registered POS for each such component site with contents and format as required for a single-site filed POS pursuant to Section 721.07(5), Florida Statutes, and Rule 61B-39.003, F.A.C.

(3) The indexes and POS text may contain additional subsections which arrange or subdivide the required information in a more individualized fashion and may reference

additional exhibits, numbered consecutively after the exhibits mandated in this rule.

(4) Except for the information required by Section 721.55(4)(1), Florida Statutes, the multisite POS text may contain cross-references to information contained in a single-site POS text, attached as an exhibit to the multisite POS text, in lieu of repeating such information in the multisite POS text.

(5) The multisite registered POS shall be accompanied by the following completed and executed forms and documents, where applicable:

(a) BPR Form 517, Multisite Timeshare Filing Statement, incorporated herein by reference and effective 6-12-96, a copy of which may be obtained at the address referenced in subsection 61B-39.002(4), F.A.C.;

(b) DBPR Form TS 6000-8, Certificate of Identical Documents, incorporated by reference in Rule 61B-39.003, F.A.C.;

(c) A fully executed escrow agreement demonstrating that the developer has established an escrow account with an independent escrow agent pursuant to Section 721.08, Florida Statutes;

(d) Pursuant to Section 721.55(6), Florida Statutes, other documents or information that the seller wishes to include in the POS as approved by the division;

(e) An affidavit or other evidence pursuant to Section 721.56(1), Florida Statutes, from each component site managing entity; and

(f) The correct filing fee.

(6) A copy of the multisite purchaser POS, prescribed in Rule 61B-39.004, F.A.C., shall not be required to be filed with the division as a separate document or exhibit, unless requested by the division pursuant to Section 721.55(5), Florida Statutes.

(7) In accordance with Sections 721.53 and 721.56, Florida Statutes, the reservation system facility of a multisite timeshare plan that must be the subject of a subordination and notice to creditors instrument includes any part of the reservation system without which the reservation system could not operate absent the acquisition of any necessary substitute part. Likewise, a terminated managing entity, that owns any part of the reservation system of a multisite timeshare plan must comply with the trust provisions of Section 721.56, Florida Statutes, when any part of the reservation system owned by the managing entity is a part without which the reservation system could not operate absent the acquisition of any necessary substitute part.

*Specific Authority 721.26(6), 721.55 FS. Law Implemented 721.55 FS. History—New 5-8-94, Amended 12-11-94, 6-12-96, 12-18-01.*

#### **61B-39.006 Delivery of Multisite Purchaser Public Offering Statements.**

(1) Pursuant to Section 721.551(2), Florida Statutes, a developer of a multisite timeshare plan shall deliver to every purchaser of the multisite timeshare plan a multisite purchaser POS, which shall contain all of the following:

(a) A copy of the multisite registered public offering statement text as prescribed in Section 721.55(1)-(6), Florida Statutes, and Rule 61B-39.005, F.A.C.;

(b) If the purchaser will receive a timeshare estate or specific timeshare license in a component site located or sold in this state, the single-site purchaser POS with content and format as required by Section 721.07(6)(a) and (b), Florida Statutes, and Rule 61B-39.004, F.A.C.; and

(c) Any other exhibit that the developer has filed with the division pursuant to Section

721.55, Florida Statutes, and Rule 61B-39.005, F.A.C., which the developer elects to include pursuant to Section 721.551(2)(d), Florida Statutes.

(2) In addition to the purchaser POS, the developer shall deliver to the purchaser a copy of any document which the purchaser signs including a copy of the executed purchase agreement, a copy of the executed alternative media disclosure statement prescribed in subsection 61B-39.008(1), F.A.C., and a copy of the executed receipt for multisite timeshare documents prepared in accordance with DBPR Form TS 6000-7, Receipt for Multisite Timeshare Documents, incorporated by reference in Rule 61B-39.003, F.A.C.

(3) Any document required to be an exhibit to the multisite purchaser POS pursuant to Section 721.551, Florida Statutes, and this rule is not required to include any underlying or supporting exhibits to that document.

(4) A developer shall deliver the multisite purchaser POS as prescribed in this rule in the same order as prescribed in Rule 61B-39.005, F.A.C., but may renumber the exhibit numbers indicated on BPR Form 503, Table of Contents to Multisite Public Offering Statement, incorporated by reference in Rule 61B-39.002, F.A.C., to reflect only those exhibits that are being delivered to purchasers pursuant to Section 721.551, Florida Statutes.

*Specific Authority 721.26(6), 721.551(1) FS. Law Implemented 721.551 FS. History—New 6-12-96, Amended 12-18-01.*

#### **61B-39.007 Public Offering Statement Amendments.**

(1) The developer shall file a proposed amendment with the division within 20 business days after any change to an approved filing, as defined in these rules. An amendment shall be deemed approved or effective upon written approval by the division unless other required parties, as defined in these rules, must also approve the amendment. In the latter case the amendment shall be deemed approved or effective upon both written approval by the division and appropriate approval by all other required parties.

(2) An amendment to the form of purchase agreement or the receipt for timeshare documents or any other document of which a fully executed copy must be given to the purchaser pursuant to Section 721.07(6) or 721.551, Florida Statutes, and these rules, does not need to be given to a purchaser pursuant to Section 721.07(3)(a)2., Florida Statutes, unless such purchaser is being required to re-execute such document(s).

(3) Every proposed amendment filed with the division must clearly delineate amended language by underlining added language and striking through language being deleted.

(4) In addition to the amendment filing fee, each filing of a proposed amendment shall be accompanied by a cover sheet containing the following information:

(a) Name and physical location of the timeshare plan to which the proposed amendment applies;

(b) Developer's name and mailing address;

(c) Division Identification Number;

(d) Identification of the document to which the amendment applies;

(e) Book, page number, and county where the documents creating the timeshare plan are recorded, if applicable; and

(f) A statement summarizing and explaining each proposed amendment including the

page numbers and paragraphs of the POS being amended.

(5) Division approval of a proposed amendment shall not be promoted to the public as a division endorsement of the developer or the timeshare plan or be used to induce the purchase of an interest in the timeshare plan.

(6) Notwithstanding the provisions of these rules, the written statement required by Section 721.07(3)(b), Florida Statutes, shall contain a disclosure in substantially the following language: “Under Florida law, you are entitled to void your purchase contract, within 10 days from receipt of this amendment, if the amendment materially alters or modifies the offering in a manner which is adverse to you.”

(7) Amendments which materially alter or modify the offering in a manner which is adverse to some, but not all, purchasers shall not be construed to confer a right to the 10-day voidability period on the purchasers who are not adversely affected. This rule shall not be construed to relieve any duty of the developer pursuant to Section 721.07(3)(a), Florida Statutes.

(8) An approved amendment to any of the documents required by Rule 61B-39.004, F.A.C., to constitute the portion of the purchaser POS for one component site of a multisite timeshare plan shall be delivered to purchasers of only that particular component site pursuant to Section 721.07(3)(a)2., Florida Statutes, and these rules. However, such amendment shall not be considered an approved amendment to the purchaser POS given to a purchaser at any other component site of the multisite timeshare plan.

*Specific Authority 721.26(6) FS. Law Implemented 721.07(3)(a), 721.06 FS. History—New 5-8-94, Amended 6-12-96, 12-18-01.*

#### **61B-39.008 Filing and Delivery of Purchaser Public Offering Statements Through Alternative Media.**

(1) Developers may provide purchasers with the option of receiving all or any portion of a single-site or multi-site purchaser POS through alternative media in lieu of receiving the written materials in the format prescribed in Rule 61B-39.004 or 61B-39.006, F.A.C., as applicable. The purchaser’s choice of the delivery method shall be set forth in writing on a separate form which shall also disclose the system requirements necessary to view the alternative media, which form shall be signed by the purchaser. The form shall state that the purchaser should not select alternative media unless the alternative media can be viewed prior to the 10 day cancellation period. The alternative media disclosure statement shall be listed on the form receipt for timeshare documents in the manner prescribed in DBPR Form TS 6000-7, Receipt for Timeshare Documents, or DBPR Form TS 6000-7, Receipt for Multisite Timeshare Documents, as both of which are referenced in Rule 61B-39.003, F.A.C. If a portion, but not all, of the purchaser POS is delivered through the use of alternative media, then the developer shall identify in the purchaser POS table of contents and in the receipt for timeshare documents that information which appears in the alternative media and that information which appears in the written materials.

(2) The order and content of a single-site purchaser POS delivered through alternative media shall comply with Rule 61B-39.004, F.A.C., and the order and content of a multisite purchaser POS delivered through alternative media shall comply with Rule 61B-39.006, F.A.C.

(3) Prior to delivery of the purchaser POS through alternative media, the developer must submit to the division a copy of the purchaser POS through the alternative media proposed to be used by the developer together with an executed certificate, using the form prescribed in DBPR Form TS 6000-8, the Certificate of Identical Documents, referenced in Rule 61B-39.003, F.A.C., certifying that the portion of the purchaser POS delivered through the proposed alternative media is an accurate representation of and, where practical, identical to the corresponding portion of the written purchaser POS.

(4) The alternative media format used to display the purchaser POS may also contain materials in addition to the purchaser POS, such as advertising. In the event that alternative media contains material other than the purchaser POS, the location of the purchaser POS in the alternative media must be specifically and prominently identified in the alternative media.

(5) In the event that the developer amends the POS, the alternative media purchaser POS must also be amended to conform to such amendment, and the developer shall be required to file with the division an executed certificate, using the form prescribed in DBPR Form TS 6000-8, Certificate of Identical Documents, referenced in Rule 61B-39.003, F.A.C., certifying that the portions of the purchaser POS set forth in alternative media are identical to the corresponding portions of the written purchaser POS, as amended.

*Specific Authority 721.26(6) FS. Law Implemented 721.07(5), (6), 721.55, 721.551 FS. History—New 6-12-96, Amended 12-18-01.*

## **61B-40 TIMESHARE ACCOUNTING AND FINANCIAL REPORTING REQUIREMENTS SCOPE; BOOKS AND FINANCIAL RECORDS; BUDGETS; GUARANTEES; RESERVES; FINANCIAL REPORTING**

### **61B-40.001 Definitions.**

For purposes of Chapter 721, F.S., and Chapter 61B-40, F.A.C., the following definitions shall apply:

(1) “Books and financial records” as stated in Section 721.13(3)(d), F.S., means any records that identify, measure, record, or communicate financial information whether the records are maintained electronically or otherwise.

(2) “Capital contribution” means cash, property or services contributed to a timeshare plan by its developer or purchasers, which includes amounts contributed to replacement reserves.

(3) “Capital expenditure” means any expenditure of funds for:

(a) The purchase of an asset or capital reserve item whose useful life is greater than one year;

(b) The replacement of an asset or capital reserve item whose useful life is greater than one year; or

(c) The addition, major repair of or improvement to an asset or capital reserve item that extends the useful life of the previously existing asset for a period of greater than one year.

This definition shall not preclude the managing entity from establishing its own capitalization policies.

(4) “Deferred maintenance” means any maintenance or repair that:

(a) Will be performed less frequently than yearly; and

(b) Will maintain the useful life of an asset or capital reserve item.

This definition shall not preclude the managing entity from establishing its own capitalization policies.

(5) “Fiscal period” means a period of time for which financial statements are prepared, such as a month, quarter or year.

(6) “Fiscal year” means a period of 12 consecutive months chosen by a timeshare plan as the accounting period for annual reports.

(7) “Funds” means money and negotiable instruments including, for example, cash, checks, notes, and other investments authorized by law.

(8) “Reserve fund balance” means the cumulative excess or deficit of reserve revenues over reserve expenses for a reserve category at a particular point in time.

(9) “Reserves” means categories of funds, other than operating funds, that are restricted for deferred maintenance and capital expenditures, including the categories roof replacement, building painting, pavement resurfacing, replacement of unit furnishings and equipment and any other component of the facilities whose useful life is less than that of the overall structure, as required by Section 721.07(5)(u)3., F.S. Funds that are not restricted as to use shall not be considered reserves within the meaning of this rule regardless of the label attached to such items.

(10) “Timeshare condominium” means a condominium in which any unit is a “timeshare unit” as defined in Section 721.05, F.S.

*Specific Authority 718.501(1)(f), 721.03(2), 721.26(6) FS. Law Implemented 718.104, 721.03(3), 721.07(5)(u)3., 721.13(3)(d)3., 4. FS. History– New 2-5-96, Amended 12-18-01.*

#### **61B-40.002 Scope.**

These rules apply to all condominium and non-condominium timeshare plans and to all units in any timeshare condominium. Chapter 61B-22, F.A.C., shall not apply to timeshare condominiums.

*Specific Authority 718.501(1)(f), 721.03(2), 721.26(6) FS. Law Implemented 721.03(2) FS. History–New 2-5-96, Amended 12-18-01.*

#### **61B-40.003 Books and Financial Records; Fiscal Year.**

(1) Maintenance of books and financial records. The books and financial records of every timeshare plan shall be maintained in sufficient detail to permit determination of the revenues and expenses attributable to separate component sites, condominiums, associations, categories of funds such as operating, reserve or property tax, and other revenue generating activities within a timeshare plan.

(2) Separate books and financial records required. Every managing entity shall maintain separate books and financial records as follows:

(a) If the common expenses of a component site are not common expenses of the multisite timeshare plan, the managing entity shall maintain books and financial records for such component site separately from the books and financial records of the multisite timeshare plan;

(b) The managing entity of a multicondominium timeshare plan shall maintain separate accounting records for the multicondominium association and for each condominium operated by the association. Multicondominium associations created prior

to July 1, 2000, that do not create separate ownership interests of the common surplus of the association for each unit, as provided in Sections 718.104(4)(h) and 718.110(12), F.S., shall not maintain separate fund balances for the association, and shall allocate all association revenues and expenses to each condominium operated by the association pursuant to the provisions of each condominium's respective declaration;

(c) For timeshare plans engaged in activities that generate nonassessment revenues, the managing entity shall maintain accounting records in sufficient detail to permit the determination of the revenues and expenses of each such revenue generating activity.

(3) Fiscal year. Every timeshare plan shall establish a fiscal year and shall document the fiscal year in the books and records of the timeshare plan. Such fiscal year shall be the same as the budget year.

*Specific Authority 718.501(1)(f), 721.03(2), 721.13(3)(d)3., 721.26(6) FS. Law Implemented 718.111(12)(a)11., 721.13(3)(c)1., (d) FS. History— New 2-5-96, Amended 12-18-01.*

#### **61B-40.004 Budgets.**

(1) Required elements for estimated operating budgets. The proposed and adopted budget for each timeshare plan shall:

(a) Be stated on an annual basis;

(b) Disclose the fiscal year for which the budget will be in effect;

(c) Show the total assessment for each use availability period or ownership interest according to its proportionate share of ownership or as allocated by the timeshare instrument, as applicable;

(d) Include a good faith estimate of all revenues of the timeshare plan. Revenue classifications, such as interest, assessments, and other categories shall be shown separately. If applicable, the following items shall be included in the estimated revenues section of the budget:

1. Estimated non-assessment revenues; and

2. Estimated common surplus as of the beginning of the period for which the budget will be in effect.

(e) Include a good faith estimate of all common expenses or expenditures of the timeshare plan including the categories set forth in Section 721.07(5)(u)3., F.S. The following minimum reserve disclosures for proposed budgets are required:

1. Reserves for capital expenditures and deferred maintenance as required by Section 721.07(5)(u)3., F.S., shall be included in the proposed annual budget, or as a separate reserve budget, stating each such reserve category for capital expenditures and deferred maintenance as a separate line item and with the following minimum disclosures:

a. The total estimated useful life of the asset;

b. The estimated remaining useful life of the asset;

c. The estimated replacement cost or deferred maintenance expense of the asset;

d. The estimated fund balance of the asset as of the beginning of the period for which the budget will be in effect; and

e. The developer's total funding obligation, as if all timeshare periods are sold, for each converter reserve account established pursuant to Section 721.03(3)(e), F.S., if applicable.

2. Categories of expense that are restricted as to use shall be stated in the reserve

portion of the budget. Categories of expense that are not restricted as to use shall be stated in the operating portion of the budget.

(f) Include estimated common deficits as of the beginning of the period for which the budget will be in effect as a separate line item of the budget.

(2) Condominium associations operating both timeshared units and non-timeshared units. The budget for an association operating both whole condominium units and timeshared condominium units shall provide separate schedules, conforming to the requirements for budgets as stated in this rule, of all estimated common expenses related to the underlying condominium units and all of the estimated common expenses related to the timeshare plan, including any applicable reserves for deferred maintenance and capital expenditures.

(3) Non-condominium timeshare plans with units to be used on a non-timeshared basis. The budget for a non-condominium timeshare plan consisting of timeshared units and non-timeshared units shall provide separate schedules, conforming to the requirements for budgets as stated in this rule, of all estimated common expenses related to the non-timeshared units and all of the estimated common expenses related to the timeshared units, including any applicable reserves for deferred maintenance and capital expenditures.

(4) Condominium timeshare plans with limited common elements. If a condominium association maintains limited common elements at the expense of only those purchasers entitled to use the limited common elements pursuant to Section 718.113(1), F.S., the budget shall include a separate schedule, or schedules, conforming to the requirements for budgets as stated in this rule, of all estimated expenses specific to each of the limited common elements, including any applicable reserves for deferred maintenance and capital expenditures. The schedule or schedules may aggregate the maintenance expense of any limited common elements for which the declaration provides that the maintenance expense is to be shared by a group of purchasers.

(5) Non-condominium timeshare plans that allocate common expenses to certain purchasers based on exclusive use rights. If a non-condominium timeshare plan maintains facilities of the timeshare plan at the expense of only those purchasers entitled to use those facilities the budget shall include a separate schedule, or schedules, conforming to the requirements for budgets as stated in this rule, of all estimated expenses specific to each of the facilities, including any applicable reserves for deferred maintenance and capital expenditures. The schedule or schedules may aggregate the maintenance expense of any facilities for which the timeshare instrument provides that the maintenance expense is to be shared by a group of purchasers.

(6) Multicondominium timeshare plans. The managing entity of a multicondominium timeshare plan shall:

(a) Provide a separate schedule of estimated expenses specific to each condominium such as the maintenance, deferred maintenance, repair or replacement of the common elements of that condominium;

(b) Provide a separate schedule of estimated expenses of the association that are not specific to a condominium such as the maintenance, deferred maintenance, repair or replacement of the property serving more than one condominium;

(c) Multicondominium associations, created after June 30, 2000, or multicondominium associations that have created separate ownership interests of the

common surplus of the association for each purchaser as provided in Sections 718.104(4)(h) and 718.110(12), F.S., shall include the estimated common surplus of the association and the condominium as a line item in the revenue section of the respective budgets; and

(d) Multicondominium associations created after June 30, 2000, or multicondominium associations that have created separate ownership interests of the common surplus of the association for each purchaser as provided in Sections 718.104(4)(h) and 718.110(12), F.S., shall include each purchaser's share of the estimated expenses of the association, referred to in subsection (b) of this rule, which shall be shown on the individual condominium budgets. Multicondominium associations created prior to July 1, 2000, that have not created separate ownership interests of the common surplus of the association for each purchaser as provided in Sections 718.104(4)(h) and 718.110(12), F.S., shall disclose each condominium's share of the estimated expenses of the association, as referenced in subsection (b) of this rule.

(7) Phase condominium timeshare plans. By operation of law, the annual budget of a phase condominium created pursuant to Section 718.403, F.S., shall automatically be adjusted when phases are added to a condominium to incorporate the change in proportionate ownership of the common elements by the purchasers and to incorporate any other changes related to the addition of phases in accordance with the declaration of condominium. The adjusted annual budget shall be effective on the date that the amendment to the declaration adding a phase to a phase condominium is recorded in the official records of the county in which the condominium is located. Notwithstanding the requirements of subsection (8) of this rule, the board shall not be required to follow the provisions of Section 718.112(2)(e), F.S., unless, as a result of the budget adjustment, the assessment per use availability period or ownership interest has changed.

(8) Budget amendments for condominium timeshare plans. The association of a condominium timeshare plan may amend a previously approved annual budget. In order to do so the board of administration shall follow the provisions of Section 718.112(2)(e), F.S. For example, the board shall mail a meeting notice and copies of the proposed amended annual budget to the purchasers not less than 14 days prior to the meeting at which the budget amendment will be considered.

(9) Authorized level of assessments. Assessments charged to a purchaser pursuant to an annual budget shall be based on the adopted budget and the purchaser's proportional obligation for sharing common expenses as stated in the timeshare instrument.

(10) Budgets are a part of the official records. A copy of the proposed and adopted budgets shall be maintained as part of the books and financial records of the timeshare plan.

*Specific Authority 718.501(1)(f), 721.03(2), 721.13(3)(d)3., 721.26(6) FS. Law Implemented 718.111(6), 718.112(2)(e), (f), 718.113(1), 718.115(2), 718.403(6)(e), 721.03(3), 721.07(5)(u)3., 721.13(2)(a), 721.15(2), (5) FS. History—New 2-5-96, Amended 12-18-01.*

**61B-40.005 Guarantee of Common Expenses Under Sections 718.116(9) and 721.15(2), Florida Statutes.**

(1) Establishment of the guarantee. If a guarantee is not established in the timeshare documents any agreement establishing a guarantee shall be effective only upon the

approval of a majority of the non-developer timeshare purchasers. Such approval shall be documented in the books and financial records of the timeshare plan.

(2) Guarantee period. The guarantee period shall be indicated by a specific beginning and ending date. The guarantee may provide for different dollar amounts for different fiscal years within a guarantee period.

(a) The ending date shall be the same for all of the purchasers including the purchasers in different phases of phase condominiums; and

(b) The guarantee may provide for more than one fiscal year with different dollar amounts for each such fiscal year.

(3) Authorized level of assessments. The stated dollar amount of the guarantee shall be an exact dollar amount for each use availability period or ownership interest as identified in the timeshare documents. Regardless of the stated dollar amount of the guarantee, assessments charged to a purchaser pursuant to an annual budget shall not exceed the purchaser's obligation based on the adopted budget and the purchaser's proportional obligation as stated in the timeshare documents.

(4) Cash funding requirements during the guarantee. The cash payments required from the guarantor during the guarantee period shall be determined as follows:

(a) If at any time during the guarantee period the funds of the timeshare plan are not sufficient to permit full and timely payment of all common expenses, including the full and timely funding of reserves unless properly waived, the guarantor shall advance sufficient cash to the managing entity at the time such payments are due; and

(b) Capital contributions received from purchasers shall not be used for the payment of common expenses.

(5) Calculation of guarantor's final obligation. The guarantor's total financial obligation at the end of the guarantee period shall be determined on the accrual basis. Such financial obligation shall not be reduced by contributions of real or personal property. The guarantor shall fund the total common expenses incurred during the guarantee period including the full funding of reserves as included on the adopted budget, less the following items:

(a) Depreciation expense on real property;

(b) Depreciation expense on personal property contributed by the guarantor;

(c) For guarantee agreements established on or subsequent to June 14, 1995, and for guarantee agreements established prior to June 14, 1995 in which no method for calculating the guarantee was specified, the total revenues of the timeshare plan regardless of whether the actual level of assessments was less than the maximum guaranteed amount. For guarantee agreements established prior to June 14, 1995, in which a method for calculating the guarantee was specified, the maintenance assessment revenues of the timeshare plan regardless of whether the actual level of assessments was less than the maximum guaranteed amount; and

(d) If a guarantee pursuant to Section 721.15(2), F.S., existed within a multicondominium association created prior to July 1, 2000, the guarantor's financial obligation to the association shall be calculated as provided in subsections (a) through (c) for each condominium in which the guarantee existed. If a guarantee pursuant to Section 721.15(2), F.S., existed within a multicondominium association created after June 30, 2000, or a multicondominium association that created separate ownership interests of the common surplus of the association for each purchaser as provided in Sections

718.104(4)(h) and 718.110(12), F.S., the guarantor's financial obligation to the association shall include the amount calculated pursuant to Section 718.116(9)(c), F.S., except that the calculation shall include total revenues as provided in Section 721.15(2), F.S., rather than the maintenance fee revenues as provided in Section 718.116(9)(c), F.S.

*Specific Authority 718.501(1)(f), 721.03(2), 721.13(3)(d)3., 721.26(6) FS. Law Implemented 718.116(9), 721.15(2) FS. History—New 2-5-96, Amended 12-18-01.*

**61B-40.006 Reserves.**

(1) Reserves required by statute. The proposed annual budget shall include the reserves required by Section 721.07(5)(u), F.S., for capital expenditures and deferred maintenance, including roofing, painting, paving, unit furnishings, and any other building components having a useful life that is less than that of the overall structure.

(2) Calculating reserves required by statute. Reserves for deferred maintenance and capital expenditures required by Section 721.07(5)(u), F.S., shall be calculated using a formula that will provide funds equal to the total estimated deferred maintenance expense or total estimated replacement cost for an asset, over the remaining useful life of the asset. The amount of the current year funding for each reserve category shall be the sum of the following two calculations:

(a) If the fund balance of the reserve category is less than zero, the total estimated amount necessary to bring such negative reserve category balance to zero; and

(b) The total estimated deferred maintenance expense or total estimated replacement cost of the asset less the estimated balance of the reserve category as of the beginning of the period for which the budget will be in effect, the remainder of which shall be divided by the estimated remaining useful life of the asset. The formula may consider factors such as inflation and earnings on invested funds and may be adjusted each year for changes in estimates and deferred maintenance performed during the year.

(3) Estimating reserves when the developer is funding converter reserves. For the purpose of estimating non-converter reserves for condominium timeshare plans, the estimated fund balance of the non-converter reserve account related to any asset for which the developer has established a converter reserve, pursuant to Section 721.03(3)(e), F.S., shall be the sum of:

(a) The developer's total funding obligation for the converter reserve account, calculated as if all timeshare periods are sold; and

(b) The estimated fund balance of the non-converter reserve account, excluding the developer's converter reserve obligation, as of the beginning of the period for which the budget will be in effect.

*Specific Authority 718.501(1)(f), 721.03(2), 721.26(6) FS. Law Implemented 721.03(3)(e), 721.07(5)(u) FS. History—New 2-5-96, Amended 12-18-01.*

**61B-40.0061 Funding Requirements and Restrictions on Use.**

(1) Timely funding. Reserves included in the adopted budget shall be considered common expenses and must be fully funded. Reserves shall be funded in the amounts stated in the adopted budget within 30 calendar days from the date the assessments are collected and not later than 180 days from the date such assessments are due. This rule shall not preclude the managing entity from fully funding the reserves prior to receiving all of the assessments due from purchasers.

(2) Reserve restrictions for timeshare plans. Neither reserve funds nor any interest earned on reserve funds shall be used for the payment of operating expenses unless approved in advance by a majority of the purchasers. Interest earned on reserve funds shall be allocated to the individual reserve category balances by the managing entity. Reserve funds and interest earned on reserve funds may be reallocated between the reserve categories by the board of administration at a duly called meeting of the board, by amending the current budget or through the next annual budgeting process.

*Specific Authority 721.03(2), 721.26(6) FS. Law Implemented 721.03(3), 721.07(5)(u), 721.13(3)(c)2. FS. History–New 2-5-96.*

**61B-40.0062 Waiver of Reserves.**

(1) Annual vote required to waive funding requirements. For condominium timeshare plans any vote to waive or reduce the funding of reserves required by Section 718.112(2)(f)2. or 721.07(5)(u), F.S., shall be effective for only one annual budget. In a multi-condominium association no waiver or reduction of the funding of reserves shall be effective as to a particular condominium unless:

- (a) Conducted at a duly called meeting of the association;
- (b) The same percentage of voting interests of the condominium as is otherwise required for a quorum of the association is present, or represented by proxy; and
- (c) A majority of those voting interests in that condominium that are present, or represented by proxy, vote to waive or reduce the funding of reserves.

(2) Waivers prohibited for non-condominium timeshare plans. For non-condominium timeshare plans, reserves required by Section 721.07(5)(u), F.S., shall be included on the proposed annual budget and shall not be waived or reduced.

*Specific Authority 718.501(1)(f), 721.03(2), 721.26(6) FS. Law Implemented 718.112(2)(f), 721.03(3), 721.07(5)(u) FS. History–New 2-5-96, Amended 12-18-01.*

**61B-40.007 Financial Reporting Requirements.**

(1) Financial statements. The financial statements required by Sections 718.301(4)(c) and 721.13(3)(e), F.S., shall at a minimum include the following:

- (a) Auditor’s Report;
- (b) Balance Sheet;
- (c) Statement of Revenues and Expenses;
- (d) Statement of Changes in Fund Balances;
- (e) Statement of Cash Flows; and
- (f) Notes to Financial Statements.

Items (a) through (f) shall be referred to within this rule as financial statement components.

(2) Disclosure requirements. The financial statements required by Sections

718.301(4)(c) and 721.13(3)(e), F.S., shall contain the following disclosures within the financial statements, notes, or supplementary information:

(a) Reserve disclosures as follows:

1. The beginning balance in each reserve account as of the beginning of the fiscal period audited;

2. The amount of assessments and other additions to each reserve account, including authorized transfers;

3. The amount expended or removed from each reserve account, including authorized transfers;

4. The ending balance in each reserve account as of the end of the fiscal period audited; and

5. The manner by which reserve items were estimated, the date the estimates were last made, and the policies for allocating reserve fund interest income.

(b) The method by which assessments and expenses were allocated to the purchasers;

(c) If a guarantee pursuant to Section 718.116(9) or 721.15(2), F.S., existed at any time during the fiscal year, the following shall be disclosed:

1. The period of time guaranteed;

2. The amount of common expenses incurred during the guarantee period;

3. The amount of assessments charged to the non-developer unit owners during the guarantee period;

4. The amount of the developer's payments; and

5. Any financial obligation due to or from the developer resulting from the guarantee;

(d) Assessment revenues attributable to the developer disclosed separately from those attributable to the purchasers; and

(e) A detailed schedule of actual and budgeted revenues and expenses of the operating fund.

(3) Multicondominium associations. For multicondominium associations, the audited financial statements required by Sections 718.301(4)(c) and 721.13(3)(e), F.S., may present the financial statement components on a combined basis as long as the financial statements, notes, or supplementary information disclose the revenues, expenses, and changes in fund balance for each condominium and the association, as applicable. Additionally, the financial statements, notes, or supplementary information shall disclose the following:

(a) The revenues and expenses of the association not directly related to any specific condominium and the method used to allocate such expenses to the purchasers, or such condominiums, as applicable; and

(b) The reserve disclosures required by paragraph (3)(a) of this rule, presented separately for each condominium and for any association reserves not directly related to any specific condominium.

(c) The provisions of this rule shall apply to multicondominium financial reporting for fiscal periods ending on or after December 31, 2002. Earlier application of the provisions of this rule is permitted.

(4) Timeshare license plans. The financial statements of a timeshare license plan shall include all of the activities of the timeshare plan. The financial statements need not include the activities of the developer or any other entity except to the extent required by generally accepted accounting principles or generally accepted auditing standards

including items such as disclosure of related party transactions. However, if the financial statements of the timeshare plan include the activities of the developer or any other entity, the financial statements shall use a separate fund reporting format for the activities of the timeshare plan.

(5) Condominium associations operating both timeshare condominium units and non-timeshare condominium units. The financial statements of a timeshare plan operated by a condominium association that also operates non-timeshared units shall include only the activities of the timeshare plan. Alternatively, the association may prepare audited financial statements including all of the activities of the association as long as the financial statements use a separate fund reporting format for the activities of the timeshare plan.

(6) Effective date for financial reporting requirements. Subject to the scope provisions of Rule 61B-40.002, F.A.C., the provisions of Rule 61B-40.007, F.A.C., shall apply to the financial statements required by Sections 718.301(4) and 721.13(3), F.S., for fiscal periods ending on or after December 31, 1995. For fiscal periods ending before December 31, 1995, a managing entity may elect to apply the provisions of Rule 61B-40.007, F.A.C., in lieu of applying Rule 61B-22.006, F.A.C., but the division shall not enforce the provisions of Rule 61B-40.007, F.A.C., as to the financial statements for such fiscal periods.

*Specific Authority 718.501(1)(f), 721.03(2), 721.26(6) FS. Law Implemented 718.111(13), 718.301(4)(c), 721.03(3), 721.13(3)(e) FS. History— New 2-5-96, Amended 10-21-98, 12-18-01.*

## **61B-41 TIMESHARE PENALTIES**

### **61B-41.001 Definitions.**

For the purposes of this chapter, the following definitions shall apply:

(1) "Bad check" means any worthless check, draft, or order of payment identified under Section 68.065, Florida Statutes.

(2) "Corrective activities" means putting remedial procedures in place to ensure that the violation does not recur; making any injured person whole as to the harm suffered in relation to the violation; or taking any other appropriate measures to redress the harm caused.

(3) "Financial hardship" means that the size of the penalty has a disproportionately adverse impact on the regulated party, purchaser or timeshare plan in relation to the purpose for the discipline being imposed under this rule chapter. Having to special assess to pay the penalty does not constitute financial hardship.

(4) "Prior" or "prior violation" means, within the context of a violation of Chapter 721, any violation of Chapters 718, 719, and 721, or part VIII of Chapter 468, Florida Statutes, and the administrative rules promulgated pursuant to those statutes, that has been cited by the Division and resulted in final agency action being taken against a regulated party. This definition applies regardless of the chronological relationship of the violations and regardless of whether the violations are of the same or different subsections of these statutes.

(5) "Regulated party" carries the same meaning as defined in Section 721.26(5)(a), Florida Statutes, which includes timeshare solicitors licensed under Section 721.20, Florida Statutes.

(6) "Small business" means any regulated party that also meets the definition of a small business as defined in Section 288.703, Florida Statutes.

*Specific Authority 721.26(6) FS. Law Implemented 721.26(5)(e) FS. History—New 2-4-98.*

**61B-41.002 Purpose; General Provisions.**

(1) Purpose. The purpose of this rule chapter is to notify regulated parties of the guidelines and aggravating and mitigating factors that will be utilized by the division to determine penalties for specified violations of Chapter 721, Florida Statutes, and where applicable, in the context of a violation of Chapter 721, Chapters 468, 718 and 719, Florida Statutes, and the administrative rules promulgated pursuant to those chapters. No aggravating factor will be applied to increase a penalty for a single violation above the statutory maximum of \$10,000. The guidelines in Rule 61B-41.003 are based upon a single count violation of each provision listed. Multiple counts of the violated provisions or a combination of the violations will be added together in determining an overall total penalty. The purpose of imposing penalties is to discipline the regulated party for violations of the statutes and to deter the regulated party from future violations; to offer opportunities for rehabilitation when appropriate; and to deter other regulated parties from violating Chapters 718, 719, 721, and part VIII, Chapter 468, Florida Statutes. Nothing in this rule chapter shall limit the authority of the division to informally dispose of administrative actions or complaints by stipulation or settlement agreement, or consent order.

(2) General Provisions.

(a) Violations Not All-Inclusive. Rule 61B-41.003 contains illustrative violations. This rule does not, and is not intended to, encompass all possible violations of statute or division rule that might be committed by regulated parties. The absence of any violation from this rule shall in no way be construed to indicate that the violation is not subject to a penalty. In any instance where the violation is not listed in this rule, the penalty will be determined by consideration of:

1. The penalty guidelines and aggravating and mitigating factors specified in this rule; and
2. The closest analogous violation, if any, that is listed in this rule chapter.

(b) Violations Included. The rule chapter applies to all violations subject to a penalty authorized by law.

(c) Rule Encourages Settlement. Each penalty guideline listed in Rule 61B-41.003 is the amount offered to encourage a regulated party to settle the violation with the division at the investigation stage. In most cases, these amounts have been set well-below the statutory amount of \$10,000 per violation authorized by law and do not constitute the full penalty sought by the division if further investigation and agency action is required. As with any offer of settlement, if the regulated party rejects the division's settlement offer, the division retains the authority to adjust the penalty based upon the factors listed in Rule 61B-41.002(3) arising out of continued prosecution of the case.

(d) Rule Establishes Norm. This rule chapter does not supersede the division's authority to additionally or alternatively suspend or revoke a developer's filing or a timeshare solicitor's license, or to order a regulated party to cease and desist from any unlawful practice, or order other corrective action in which the imposition of administrative penalties is not appropriate. For example, notwithstanding the

specification of relatively smaller penalties for particular violations, the division has the authority to suspend the imposition of a penalty and impose other remedies where aggravating and/or mitigating factors warrant it. In no event will the division reduce a penalty below \$1,000, except where otherwise specified in this rule, unless the regulated party substantiates extraordinary mitigating circumstances.

(e) Description of Violations. Although the violations in Rule 61B-41.003 include specific references to statutes and administrative rules, the violations are described in general language and are not necessarily stated in the same language that would be used to formally allege a violation in a specific case. If any statutory or rule citation in Rule 61B-41.003 is changed, then the use of the previous statutory citation will not invalidate this rule.

(f) Relationship to Other Rules. The provisions of this chapter and any other administrative rule of the division are made applicable to a regulated party by statutory provision. For example, a condominium that is a timeshare plan is subject to Chapters 718 and 721 and the rules promulgated under both of those chapters. Pursuant to Section 721.03(3), Florida Statutes, where there is a conflict, Chapter 721, Florida Statutes, and Chapters 61B-37-61B-41, Florida Administrative Code, shall govern a timeshare condominium. Therefore, the proposed condominium educational and enforcement resolution guidelines in Rules 61B-20.004, 61B-20.005, 61B-20.006, 61B-21.001, 61B-21.002, and 61B-21.003, and the proposed cooperative educational and enforcement resolution guidelines in Rules 61B-77.001, 61B-77.002, 61B-77.003, 61B-78.001, 61B-78.002, and 61B-78.003, shall not apply to timeshare condominiums or timeshare cooperatives.

(g) Other Regulated Parties. The imposition of a penalty upon any regulated party in accordance with this rule chapter shall in no way be interpreted as barring the imposition of a penalty upon any other regulated party in connection with the same conduct.

(3) Aggravating and Mitigating Factors. The division will consider aggravating and mitigating factors in determining the penalties for violations listed in this rule chapter and impose any penalty authorized under Section 721.26(5)(e), Florida Statutes, upon consideration of one or more of the following factors. The factors are not necessarily listed in order of importance and shall be considered either aggravating or mitigating for each separate violation, unless otherwise specified. Each factor will increase or decrease the total amount of the penalty guideline as provided in Rule 61B-41.003 by an amount ranging between \$0 to a \$1,000.

(a) Willfulness and actual knowledge of the violation, which shall be considered solely as an aggravating factor.

(b) Whether the violation was technical or substantive and the degree of harm or potential harm to the prospective purchaser, actual purchaser, or public.

1. The technical nature of a violation shall be viewed solely as a mitigating factor;

2. The substantive nature of a violation shall be viewed solely as an aggravating factor; and

3. The degree of harm or potential harm to the prospective purchaser, actual purchaser, or public shall be viewed solely as an aggravating factor.

(c) Degree to which the violation, if not detected, tends to undermine the timesharing and tourism industries in this state or the division's regulatory authority, which shall be viewed solely as an aggravating factor.

(d) Whether the regulated party should have known the conduct or failure to act was unlawful.

(e) Corrective activities that are initiated after the violation or possibility of violation is formally or informally noted or brought to the attention of the party by the division. The division is not precluded from assessing a penalty for violations for which successful corrective activities were actually and substantially initiated (not just planned) and implemented by the regulated party before the violation was noted by or brought to the attention of the division, and before the regulated party was made aware that the division was investigating the alleged violation, which shall be viewed solely as a mitigating factor.

(f) Whether the regulated party brought the violation to the division's attention and initiated corrective activity without division intervention, which shall be viewed solely as a mitigating factor.

(g) Financial gain or hardship to the regulated party subject to the penalty.

1. Financial gain to the regulated party shall be viewed solely as an aggravating factor; and

2. Financial hardship to the regulated party shall be viewed solely as a mitigating factor.

(h) Financial gain or loss to parties or persons affected by the violation.

1. Financial loss to parties or persons affected by the violation shall be viewed solely as an aggravating factor; and

2. Financial gain to parties or persons affected by the violation shall be viewed solely as a mitigating factor.

(i) Degree of cooperation of the regulated party with the division in remedying the violation including any restitution and payment of damages to affected persons or entities.

(j) The disciplinary history of the regulated party in this or any jurisdiction, including such action resulting in settlement, or pending resolution which shall be viewed solely as an aggravating factor.

(k) If the prior violation is a repeat violation of the same statute or administrative rule, the penalty will generally be increased.

(l) Whether multiple violations are involved. For purposes of this rule and application of the penalties, penalties for such separate violations are cumulative and may be consecutive, to the extent provided in Section 721.26(5)(e), Florida Statutes, notwithstanding that the violations are of the same statutory provision.

(m) The number of consumer complaints filed, which shall be viewed solely as an aggravating factor.

(n) Whether the violation also constitutes fraud on purchasers, a tort or any other violation of civil law, which shall be viewed solely as an aggravating factor.

(o) Whether the violation also constitutes a violation of a chapter other than 721 or the administrative rules governing timesharing. For example, a managing entity performing community association management for a timeshare plan must comply with Chapter 721 and part VIII of Chapter 468, Florida Statutes, which shall be viewed solely as an aggravating factor.

(p) Circumstances leading to the initiation of the investigation and the circumstances under which the violation was committed.

(q) Legal status of the regulated party at the time of the offense, and, if applicable, corporate status, licensing status, and any changes in status.

(r) The number of charges or separate violations established, which shall be viewed solely as an aggravating factor.

(s) The length of time since the violation occurred. The duration of the violation. The length of time the regulated party has been involved in the timesharing industry in this or any other jurisdiction. The length of time since a prior violation occurred.

(t) Filing or causing to be filed any materially incorrect affidavit, license application, escrow agreement, financial report, public offering statement, or any other document required to be filed with the division or filed in response to a request or subpoena, which shall be viewed solely as an aggravating factor.

(u) Whether the regulated party is a small business, which shall be viewed solely as a mitigating factor.

(v) Acts of God or nature, which shall be viewed solely as a mitigating factor.

(w) Whether the regulated party is a unit-owner controlled association that directly manages the daily operation of the association without the assistance of a non-unit owner licensed community association manager or managing entity. The provisions of this subsection will be viewed solely as a mitigating factor.

(4) The provisions of this section shall not be construed so as to prohibit or limit any other civil or criminal prosecution that may be brought.

(5) The imposition of a civil penalty does not preclude the division from imposing additional sanctions provided under Chapter 721, Florida Statutes.

(6) In addition to the penalties established in this rule, the division shall seek to recover the costs of investigation, any other costs, penalties, attorney's fees, court costs, service fees, collection costs, and damages allowed by law. Additionally, the division shall seek to recover any costs, penalties, attorney's fees, court costs, service fees, collection costs, and damages imposed by law when a regulated party submits a bad check to the division.

*Specific Authority 721.03(3), 721.26(6) FS. Law Implemented 57.111, 68.065, 86.081, 120.595, 120.69, 721.03(3), 721.20(2)(d), 721.26(5)(e) FS. History—New 2-4-98.*

**61B-41.003 Penalty Guidelines.**

The following penalty guidelines are established for each violation:

STATUTE/RULE	GENERAL DESCRIPTION	PENALTY per violation (Priors)
<b>PART I VACATION PLANS AND TIMESHARING</b>		
§721.056; Rule chs. 61B-37; 61B-39; 61B-40	Developer's supervisory duties	2,500(0), 3,500(1) 5,000(1+)
§721.06; Rules 61B-39.002; 61B-39.003; 61B-39.007	Purchase contracts	\$2,500(0) \$3,500(1) \$5,000(1+)
§721.06(4); §721.065; Rule	One to one ratio Resale purchase contract	\$5,000 \$1,000(0)

61B-39.002		\$2,000(1)
		\$3,500(1+)
§721.07	Public offering statement	\$5,000/POS-rejection/revocation
	Use of unapproved Public Offering Statement	\$5,000(0)
§721.07(6)	Failure to deliver	\$10,000(1+)
§721.07(5)	contents, maintenance	\$10,000
Rules 61B-39.002; 61B-39.003; 61B-39.004; 61B-39.007; 61B-39.008; 61B-40.003; 61B-40.004; 61B-40.006; 61B-40.0061; 61B-40.0062		\$2,500/ POS-rejection/revocation
§721.075;	Incidental benefits	\$1,000(0)
Rule 61B-39.007(6)(e)		\$2,000(1)
		\$3,000(1+)
§721.08;	Escrow accounts;	\$5,000(0)
Rules 61B-39.003(4)(c);	nondisturbance instruments;	\$7,500(1)
61B-39.005(5)(c);	alternate security	\$10,000(1+)
61B-39.007(6)(e)	arrangements	
§721.09	Reservation agreements;	\$1,000(0)
	escrows	\$2,000(1)
		\$5,000(1+)
§721.10	Cancellation; termination	\$5,000
		\$7,500
		\$10,000
§721.11(1), (5);	Advertising materials and	\$3,500(0)
Rule 61B-37.004(3)	disclosures	\$5,000(1)
		\$10,000(1+)
§721.11(4);	Misrepresentations;	\$2,500(0)
Rule 61B-37.002	inducements; referrals	\$5,000(1)
		\$10,000(1+)
§721.111;	Promotional offers	\$3,500(0)
Rule 61B-37.004		\$5,000(1)
		\$10,000(1+)
§721.12	Sellers' record keeping	\$1,000(0)
		\$2,000(1)
		\$5,000(1+)
§721.13; Rules	Management; CAM license;	\$1,000(0)
61B-40.003; 61B-40.004	books & records;	\$2,000(1)
61B-40.005; 61B-40.006;	lockout; quorum	\$5,000(1+)
Rule 61B-40.0061	Reserve funding	\$2,000(0)
		\$3,500(1)
		\$5,000(1+)

§721.13(2)(a); & Rule 61B-40.004	Fiduciary Duty as separate and distinct from other violations	\$10,000
§721.13(3)(e); & Rule 61B-40.007	Annual audit failure to arrange	\$2,500(0) \$3,500(1) \$5,000(1+)
	failure to file	\$2,500(0) \$3,500(1) \$5,000(1+)
§721.13(3)(f)	Inspection of books	\$2,500
§§721.13(3)(i) and 192.037(6)(e)	Receipts and disbursements	\$1,000(0) \$1,500(1) \$2,000(1+)
§721.15; Rules 61B-40.004; 61B-40.005; 61B-40.006; 61B-40.0061; 61B-40.0062	Assessments; guarantees, common expenses; billing	\$1,000 (0) \$2,000 (1) \$5,000 (1+)
	Failure to pay Assessments on Developer owned units	\$10,000
§721.15(8)	Commingling	\$5,000
§721.165;	Insurance	\$10,000
Rule 61B-39.007(6)(f)	disclosure	\$1,000
§721.17	Transfer of interest	\$5,000
§721.18(1)	Exchange programs	\$5,000(0)
	Failure to provide written documents	\$10,000(1+)
§721.18(5)	Unfair deceptive act or practice	\$5,000(0) \$10,000(1+)
§721.20(1)	Broker licensing	\$5,000
§721.20(2); Rule 61B-38.001	Solicitor licensing incomplete application	notice (0) rejection (1)
	unlicensed activity	suspension/ denial/ \$250 (minor/1st offense)
	violation of law, rule, order	denial/suspension/ revocation/\$500 (more than one minor or serious offense)
§721.20(4)	Advance fees	\$10,000
§721.26(7)(a)	Exchange Company	\$5,000(0)
	Deceptive act or practice	\$10,000(1+)

§721.27	Managing entity fees	\$1,000 in addition to statutory late fee
<b>PART II VACATION CLUBS</b>		
§721.53; Rule 61B-39.003	Subordination instruments;	\$10,000
61B-39.005(7)	Security arrangements	\$3,000(0) \$5,000(1) \$10,000(1+)
§721.54	Multisite term	\$5,000
§721.55	Public Offering Statement	\$5,000/POS rejection/revocation \$5,000(0) \$10,000(1+)
	Use of unapproved Public offering statement	
§721.55; Rules 61B-39.002; 61B-39.005; 61B-39.007; 61B-39.008	contents, maintenance	\$5,000
§721.551; Rules 61B-39.002; 61B-39.006; 61B-39.007; 61B-39.008	Failure to deliver public offering statement	\$10,000
§721.552; Rule 61B-39.007(9)	Change in component site accommodations & facilities	\$5,000
§721.552(1)(b), (2)(g)	Fiduciary duty	\$10,000
§721.553;	Portrayal of component sites	\$1,000(0) \$2,000(1) \$5,000(1+)
Rule 61B-37.002	misrepresentations	\$2,500(0) \$3,500(1) \$5,000(1+)
§721.56(1), (2); Rule 61B-39.005(5)(e)	Management	\$5,000/POS-rejection/revocation
§721.56(3);	Escrow accounts	\$3,000(0) \$5,000(1) \$10,000(1+)
Rule 61B-39.007(6)(e)	amendment disclosures	\$1,000
§721.56(5);	Reservation system	\$5,000
Rule 61B-39.005(7)	filing	\$2,500
§721.56(6);	Developer duties	\$10,000
Rule 61B-39.005(7)	filing	\$2,500
§721.57	Multisite disclosures	\$5,000
§721.58(1)	Filing fee	rejection
§721.58(2)	Managing entity fees	\$1,000 in addition

to statutory late  
fees

NOTE: The designation of (0) means no prior violations; (1) means one prior violation;  
and (1+) means more than one prior violation.

*Specific Authority 721.26(6) FS. Law Implemented 721.26(5)(e) FS. History–New 2-4-98.*