~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 30, 2019

**H. 3754**

Introduced by Reps. Sandifer, Thayer, Clemmons and Rutherford

S. Printed 4/30/19--S. [SEC 5/1/19 1:28 PM]

Read the first time February 26, 2019.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3754) to amend Section 27‑32‑10, Code of Laws of South Carolina, 1976, relating to definitions in regard to vacation time sharing plans, so as to define, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, page 1, beginning on line 35, by striking SECTION 1 in its entirety and inserting therein the following:

/ SECTION 1. Section 27‑32‑10 of the 1976 Code is amended by adding an appropriately numbered item to read:

“( ) ‘Time-Share declaration’ means the document or documents which provide the legal framework for the establishment of the method of interval ownership and which is or are recorded at the office of the Clerk of Court, Register of Mesne Conveyance, or the Register of Deeds as may be determined by the county in which the vacation time‑sharing property is located.” /

Amend the bill further, as and if amended, page 3, beginning on line 1, by striking SECTION 3 in its entirety and inserting therein the following:

/ SECTION 3. Chapter 32, Title 27 of the 1976 Code is amended by adding:

“Article 5

Extension or Termination of Vacation Time‑Sharing Plans

Section 27‑32‑500. This article may be cited as the ‘Vacation Time‑Sharing Plan Extension and Termination Act’.

Section 27‑32‑505. The General Assembly declares that the purposes of this article are to recognize that:

(A) Vacation time‑sharing plans are created as authorized by statute with most of the older vacation time‑sharing properties based on a horizontal property regime structure, and many of these older vacation time‑sharing properties are approaching the termination dates set forth in their governing documents, some of which governing documents address termination or extension of the vacation time‑sharing property and some of which do not address termination or extension.

(B) In order to provide the owners of vacation time‑sharing interests with the right to terminate vacation time‑sharing plans or to extend the terms of vacation time‑sharing plans and preserve the continued use, enjoyment, and tax values of these time‑sharing properties, the General Assembly further declares that the public policy of this State requires the creation of a statutory method to enable the owners of these vacation time‑sharing properties to either terminate their vacation time‑sharing plans or extend the terms of their vacation time‑sharing plans, notwithstanding contrary provisions in their governing documents which may create uncertainty for purchasers, prospective purchasers, owners, and lenders, and which may discourage the ongoing maintenance, refurbishment, and improvement of these vacation time‑sharing properties.

Section 27‑32‑510. (A) Unless the time-share declaration provides a lower percentage, the vote or written consent, or both, of sixty percent of all eligible voting interests in a vacation time‑sharing plan may extend the term of the vacation time‑sharing plan at any time. If the term of a vacation time‑sharing plan is extended pursuant to this section, all rights, privileges, duties, and obligations created under applicable law or the time-share declaration continue in full force to the same extent as if the extended termination date of the vacation time‑sharing plan were the original termination date of the vacation time‑sharing plan.

(B) Unless the timeshare declaration specifically provides for a lower quorum, the quorum for a vacation time‑sharing association meeting to consider extension of the term of the vacation time‑sharing plan is fifty percent of all eligible voting interests in the vacation time‑sharing plan.

(C) A vacation time‑sharing association meeting held to consider extension of the term of the vacation time‑sharing plan may be held at any time before the termination of the vacation time‑sharing plan.

(D) The board of directors of the vacation time‑sharing association may determine that a voting interest that is delinquent in the payment of more than two years of assessments is ineligible to consent to or vote on an extension of the vacation time‑sharing plan unless the delinquency is paid in full before the consent or vote. A voting interest determined to be ineligible by the board of directors must be subtracted from the total percentage or number of all voting interests required to consent to or vote to approve the extension of the vacation time‑sharing plan and must not be considered for any purpose, including the percentage or number of voting interests necessary to constitute a quorum.

(E) A proxy for a vote to extend a vacation time‑sharing plan pursuant to this section is valid for up to three years and is revocable unless the proxy states it is irrevocable.

Section 27‑32‑520. (A) Unless the time-share declaration provides a lower percentage, the vote or written consent, or both, of sixty percent of all eligible voting interests in a vacation time‑sharing plan may terminate the term of the vacation time‑sharing plan at any time. If a vacation time‑sharing plan is terminated pursuant to this section, the termination has immediate effect as if the effective date of the termination were the original date of termination.

(B) If the vacation time‑sharing property is managed by a vacation time‑sharing association that is separate from any underlying owners’ association, the termination of a vacation time‑sharing plan does not change the corporate status of the vacation time‑sharing association. The vacation time‑sharing association continues to exist only for the purposes of concluding its affairs, prosecuting and defending actions by or against it, collecting and discharging obligations, disposing of and conveying its property, collecting and dividing its assets, and otherwise complying with this section.

(C) After termination of a vacation time‑sharing plan, the board of directors of the vacation time‑sharing association shall serve as the termination trustee, as the entity empowered to implement the termination of the vacation time‑sharing plan, and in this fiduciary capacity may bring an action in partition on behalf of the tenants in common in each former vacation time‑sharing property or sell the former vacation time‑sharing property in a manner and to a person who is approved by a majority of all tenants in common. The termination trustee also has all other powers reasonably necessary to effect the partition or sale of the former vacation time‑sharing property, including the power to maintain the property during the pendency of a partition action or sale.

(D) All reasonable expenses incurred by the termination trustee relating to the performance of its duties pursuant to this section, including the reasonable fees of attorneys and other professionals, must be paid by the tenants in common of the former vacation time‑sharing property subject to partition or sale, proportionate to their respective ownership interests.

(E) The termination trustee shall adopt reasonable procedures to implement the partition or sale of the former vacation time‑sharing property and comply with the requirements of this section.

(F) If the terminated vacation time‑sharing plan is in an underlying subdivision that is not simultaneously terminated, a majority of the tenants in common in each former accommodation present and voting in person or by proxy at a meeting of the tenants in common conducted by the termination trustee, or conducted by the board of directors of the underlying owners’ association, if the underlying owners’ association managed the former vacation time‑sharing property, shall designate a voting representative for the former accommodation and file a voting certificate with the underlying owners’ association. The voting representative may vote on all matters at meetings of the underlying owners’ association, including termination of the underlying subdivision.

(G) Unless the timeshare declaration specifically provides for a lower quorum, the quorum for a vacation time‑sharing association meeting to consider termination of the vacation time‑sharing plan is fifty percent of all eligible voting interests in the vacation time‑sharing plan.

(H) The board of directors of the vacation time‑sharing association may determine that a voting interest that is delinquent in the payment of more than two years of assessments is ineligible to consent to or vote on any termination of the vacation time‑sharing plan unless the delinquency is paid in full before the consent or vote. A voting interest determined to be ineligible by the board of directors must be subtracted from the total percentage or number of all voting interests required to consent to or vote to approve the termination of the vacation time‑sharing plan and must not be considered for any purpose, including the percentage or number of voting interests necessary to constitute a quorum.

(I) A proxy for a vote to terminate a vacation time‑sharing plan pursuant to this section is valid for up to three years and is revocable unless the proxy states it is irrevocable.

Section 27‑32‑530. The provisions of this article apply to all vacation time‑sharing plans in this State in existence on or after the effective date of this article and apply retroactively.” /

Renumber sections to conform.

Amend title to conform.

LUKE A. RANKIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Amended by the House of Representatives on February 21, 2019**

**State Expenditure**

This bill creates the Vacation Time-sharing Plan Extension and Termination Act which adds public policy for the extension and termination of time-sharing plans. In addition, this bill makes changes to the provisions for timeshare closings.

**Department of Labor, Licensing and Regulation.** Timeshares are regulated by the Real Estate Commission, which is under the administration of LLR. LLR indicates that this bill does not create any changes to the administration of the Timeshare Registration Program or related investigation. Therefore, this bill will have no expenditure impact on LLR or the Real Estate Commission.

**Department of Consumer Affairs.** DCA is responsible for enforcing contracts for the resale of a timeshare. DCA indicates that this bill does not alter or add to the agency’s current responsibilities. Therefore, this bill will have no expenditure impact on DCA.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 27‑32‑10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS IN REGARD TO VACATION TIME SHARING PLANS, SO AS TO DEFINE THE TERM “TIMESHARE INSTRUMENT”; TO AMEND SECTION 27‑32‑410 RELATING TO TIMESHARE CLOSINGS, PROCEDURES, AND RELATED PROVISIONS, SO AS TO FURTHER PROVIDE FOR WHEN A TIMESHARE CLOSING IS CONSIDERED TO HAVE OCCURRED, AND OTHER REQUIREMENTS IN REGARD TO THE CLOSING; AND BY ADDING ARTICLE 5 TO CHAPTER 32, TITLE 27, SO AS TO ENACT THE “VACATION TIME‑SHARING PLAN EXTENSIONS AND TERMINATION ACT”, INCLUDING PROVISIONS TO CLARIFY AND SUPPLEMENT THE PROCEDURES AND REQUIREMENTS AS TO HOW OWNERS OF VACATION TIME‑SHARING INTERESTS MAY TERMINATE VACATION TIME‑SHARING PLANS OR EXTEND THE TERMS OF THESE PLANS, WITH THE PROVISIONS OF ARTICLE 5 TO APPLY BOTH PROSPECTIVELY AND RETROACTIVELY.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 27‑32‑10 of the 1976 Code is amended by adding an appropriately numbered item to read:

“( ) ‘Timeshare instrument’ means the document or documents which provide the legal framework for the establishment of the method of interval ownership and which is or are recorded at the office of the Clerk of Court, Register of Mesne Conveyance, or the Register of Deeds as may be determined by the county in which the vacation time‑sharing property is located.”

SECTION 2. Section 27‑32‑410(A) of the 1976 Code is amended to read:

“(A)(1) The timeshare closing is ~~hereby~~ considered to occur after the last of the following events:

(i) the deed and other applicable instruments are submitted for recordation, or

(ii) ~~six months after the execution of an installment sales contract, if applicable, or (iii)~~ the closing date specified in the executed documents. Notwithstanding the above, in the case of an installment sales contract, the timeshare closing is considered to occur or have occurred on the closing date specified in the executed documents or six months after the execution of an installment sales contract in the event no closing date is specified in the executed documents.

(2) Simultaneously with the closing, a seller shall record each timeshare installment sales contract or evidence of each contract, if the installment sales contract promises the purchaser a deed evidencing ownership of a timeshare interest in real property. In the event the installment sales contract is fully performed, the recorded contract or evidence of it, is considered to have merged into the deed conveying the timeshare interest upon recording of the deed.

(3) The documents conveying rights and interests in timeshare real property must not be presented to a timeshare purchaser before the closing of an interest in a vacation time‑sharing plan in this State unless the form of the document is prepared under the supervision of an attorney licensed in this State who is not an employee of the seller of the timeshare interest. An attorney licensed in this State who is not an employee of the seller of the timeshare interest shall supervise the timeshare closing of a sale of an interest in a vacation time‑sharing plan located in this State by:

(i) supervising the examination of title to the interest~~,~~;

(ii ) physically reviewing before closing the executed transaction documents including, but not limited to, the following, as applicable: the deed, installment sales contract, mortgage, and promissory note~~,~~; and

(iii) supervising the recording of all instruments involved in the timeshare closing.”

SECTION 3. Chapter 32, Title 27 of the 1976 Code is amended by adding:

“Article 5

Extension or Termination of Vacation Time‑sharing Plans

Section 27‑32‑500. This article may be cited as the ‘Vacation Time‑sharing Plan Extension and Termination Act’.

Section 27‑32‑505. The General Assembly declares that the purposes of this article are to recognize that:

(A) Vacation time‑sharing plans are created as authorized by statute with most of the older vacation time‑sharing properties based on a horizontal property regime structure, and many of these older vacation time‑sharing properties are approaching the termination dates set forth in their governing documents, some of which governing documents address termination or extension of the vacation time‑sharing property and some of which do not address termination or extension.

(B) In order to provide the owners of vacation time‑sharing interests with the right to terminate vacation time‑sharing plans or to extend the terms of vacation time‑sharing plans and preserve the continued use, enjoyment, and tax values of these time‑sharing properties, the General Assembly further declares that the public policy of this State requires the creation of a statutory method to enable the owners of these vacation time‑sharing properties to either terminate their vacation time‑sharing plans or extend the terms of their vacation time‑sharing plans, notwithstanding contrary provisions in their governing documents which may create uncertainty for purchasers, prospective purchasers, owners, and lenders, and which may discourage the ongoing maintenance, refurbishment, and improvement of these vacation time‑sharing properties.

Section 27‑32‑510. (A) Unless the timeshare instrument provides a lower percentage, the vote or written consent, or both, of sixty percent of all eligible voting interests in a vacation time‑sharing plan may extend the term of the vacation time‑sharing plan at any time. If the term of a vacation time‑sharing plan is extended pursuant to this section, all rights, privileges, duties, and obligations created under applicable law or the timeshare instrument continue in full force to the same extent as if the extended termination date of the vacation time‑sharing plan were the original termination date of the vacation time‑sharing plan.

(B) Unless the timeshare instrument specifically provides for a lower quorum, the quorum for a vacation time‑sharing association meeting to consider extension of the term of the vacation time‑sharing plan is fifty percent of all eligible voting interests in the vacation time‑sharing plan.

(C) A vacation time‑sharing association meeting held to consider extension of the term of the vacation time‑sharing plan may be held at any time before the termination of the vacation time‑sharing plan.

(D) The board of directors of the vacation time‑sharing association may determine that a voting interest that is delinquent in the payment of more than two years of assessments is ineligible to consent to or vote on an extension of the vacation time‑sharing plan unless the delinquency is paid in full before the consent or vote. A voting interest determined to be ineligible by the board of directors must be subtracted from the total percentage or number of all voting interests required to consent to or vote to approve the extension of the vacation time‑sharing plan and must not be considered for any purpose, including the percentage or number of voting interests necessary to constitute a quorum.

(E) A proxy for a vote to extend a vacation time‑sharing plan pursuant to this section is valid for up to three years and is revocable unless the proxy states it is irrevocable.

(F) An action for damages or any other legal challenge arising out of the extension of a vacation time‑sharing plan pursuant to this section must be commenced within one year after the extension of the vacation time‑sharing plan.

Section 27‑32‑520. (A) Unless the timeshare instrument provides a lower percentage, the vote or written consent, or both, of sixty percent of all eligible voting interests in a vacation time‑sharing plan may terminate the term of the vacation time‑sharing plan at any time. If a vacation time‑sharing plan is terminated pursuant to this section, the termination has immediate effect as if the effective date of the termination were the original date of termination.

(B) If the vacation time‑sharing property is managed by a vacation time‑sharing association that is separate from any underlying owners’ association, the termination of a vacation time‑sharing plan does not change the corporate status of the vacation time‑sharing association. The vacation time‑sharing association continues to exist only for the purposes of concluding its affairs, prosecuting and defending actions by or against it, collecting and discharging obligations, disposing of and conveying its property, collecting and dividing its assets, and otherwise complying with this section.

(C) After termination of a vacation time‑sharing plan, the board of directors of the vacation time‑sharing association shall serve as the termination trustee, as the entity empowered to implement the termination of the vacation time‑sharing plan, and in this fiduciary capacity may bring an action in partition on behalf of the tenants in common in each former vacation time‑sharing property or sell the former vacation time‑sharing property in a manner and to a person who is approved by a majority of all tenants in common. The termination trustee also has all other powers reasonably necessary to effect the partition or sale of the former vacation time‑sharing property, including the power to maintain the property during the pendency of a partition action or sale.

(D) All reasonable expenses incurred by the termination trustee relating to the performance of its duties pursuant to this section, including the reasonable fees of attorneys and other professionals, must be paid by the tenants in common of the former vacation time‑sharing property subject to partition or sale, proportionate to their respective ownership interests.

(E) The termination trustee shall adopt reasonable procedures to implement the partition or sale of the former vacation time‑sharing property and comply with the requirements of this section.

(F) If the terminated vacation time‑sharing plan is in an underlying subdivision that is not simultaneously terminated, a majority of the tenants in common in each former accommodation present and voting in person or by proxy at a meeting of the tenants in common conducted by the termination trustee, or conducted by the board of directors of the underlying owners’ association, if the underlying owners’ association managed the former vacation time‑sharing property, shall designate a voting representative for the former accommodation and file a voting certificate with the underlying owners’ association. The voting representative may vote on all matters at meetings of the underlying owners’ association, including termination of the underlying subdivision.

(G) Unless the timeshare instrument specifically provides for a lower quorum, the quorum for a vacation time‑sharing association meeting to consider termination of the vacation time‑sharing plan is fifty percent of all eligible voting interests in the vacation time‑sharing plan.

(H) The board of directors of the vacation time‑sharing association may determine that a voting interest that is delinquent in the payment of more than two years of assessments is ineligible to consent to or vote on any termination of the vacation time‑sharing plan unless the delinquency is paid in full before the consent or vote. A voting interest determined to be ineligible by the board of directors must be subtracted from the total percentage or number of all voting interests required to consent to or vote to approve the termination of the vacation time‑sharing plan and must not be considered for any purpose, including the percentage or number of voting interests necessary to constitute a quorum.

(I) A proxy for a vote to terminate a vacation time‑sharing plan pursuant to this section is valid for up to three years and is revocable unless the proxy states it is irrevocable.

(J) An action for damages or any other legal challenge arising out of the termination of a vacation time‑sharing plan pursuant to this section must be commenced within one year after the termination of the vacation time‑sharing plan.

Section 27‑32‑530. The provisions of this article apply to all vacation time‑sharing plans in this State in existence on or after the effective date of this article and apply retroactively.”

SECTION 4. Section 27-30-120(6) of the 1976 Code, as added by Act 245 of 2018, is amended to read:

“(6) ‘Homeowners association’ or ‘association’ means an entity developed to manage and maintain a planned community or horizontal property regime for which there is a declaration requiring a person, by virtue of his ownership of a separate property within the planned community or horizontal property regime, to pay assessments for a share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements and other real estate described in that declaration. A ‘homeowners association’ or ‘association’ does not include a vacation timesharing plan organized and subject ~~only~~ to the provisions of Chapter 32.”

SECTION 5. This act takes effect upon approval by the Governor.

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