

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 1358

INTRODUCER: Senator Gruters

SUBJECT: Valuation of Timeshare Real Property

DATE: March 29, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Pre-meeting
2.	_____	_____	FT	_____
3.	_____	_____	AP	_____

I. Summary:

SB 1358 revises the method of determining the value timeshare property by the county property appraiser. In current law, there are two statutory methods for determining the valuation of timeshare property. The county property appraiser must first look at the resale market. If the property appraiser finds an inadequate number of resales to determine a valuation, the county property appraiser must determine the valuation by deducting “usual and reasonable fees and costs of the sale” from the original purchase price.

The bill requires the county property appraiser to defer to the taxpayer for the determination of whether the number of resales is adequate. Under the bill, if the taxpayer in a tax appeal of timeshare real property asserts that there is an adequate number of resales to provide a basis for arriving at value conclusions, the number of resales is deemed to be adequate when a reasonable number of resales is provided by the taxpayer as supported by the Uniform Standards of Professional Appraisal Practice.

The bill may reduce local government revenue by at least \$169.9 million beginning in Fiscal Year 2022-2023. See Section V., Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Timeshares

A timeshare interest is a form of ownership of real and personal property.¹ In a timeshare, multiple parties hold the right to use a condominium unit or a cooperative unit. Each owner of a

¹ See s. 721.05(36), F.S.

timeshare interest is allotted a period of time (typically one week) during which the owner has the exclusive right to use the property.

The Florida Vacation Plan and Timesharing Act, ch. 721, F.S., establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers and prospective purchasers.² Chapter 721, F.S., applies to all timeshare plans consisting of more than seven timeshare periods over a period of at least three years in which the accommodations and facilities are located within this state or offered within this state.³ Part I of ch. 721, F.S., relates to vacation plans and timesharing, and Part II of chapter 721, F.S., relates to multisite vacation and timeshare plans that are also known as vacation clubs.

A timeshare unit is an accommodation of a timeshare plan which is divided into timeshare periods or a condominium unit in which timeshare estates have been created.⁴

A “timeshare estate” is a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof.⁵ The term also includes an interest in a condominium unit, a cooperative unit, or a trust. Whether the term includes both direct and indirect interests in trusts is not specified. An example of an indirect interest in a trust is the interest of a trust beneficiary’s spouse or other dependent.

The “managing entity” for a timeshare property is the person who operates or maintains the timeshare plan pursuant to s. 721.13(1), F.S., which defines the managing entity as either the developer, a separate manager or management firm, or an owners' association.⁶

Tax Assessments

Section 192.037, F.S., governs the ad valorem taxation⁷ of fee timeshare real property.⁸ The managing entity responsible for operating and maintaining fee timeshare real property is considered the taxpayer as an agent of the timeshare period titleholder.⁹

The managing entity responsible for operating and maintaining the timesharing plan and each person having a fee interest in a timeshare unit or timeshare period may contest or appeal ad valorem tax assessment in the same manner as other property owners under ch. 194, F.S., which relates to the administrative and judicial review of property taxes assessed by the property appraiser.¹⁰

² Section 721.02(2) and (3), F.S.

³ Section 721.03, F.S.

⁴ See ss. 721.05(41) and 718.103(26), F.S.

⁵ Section 721.05(34), F.S.

⁶ See s. 721.02(22), F.S., defining the term “managing entity.”

⁷ Section 192.001(1), F.S., defines the term “ad valorem tax” to mean a tax based upon the assessed value of property.

⁸ Section 192.001(14), F.S., defines the term “fee timeshare real property” to mean “the land and buildings and other improvements to land that are subject to timeshare interests which are sold as a fee interest in real property.”

⁹ Section 192.001(15), F.S., defines the term “timeshare period titleholder” to mean “the purchaser of a timeshare period sold as a fee interest in real property, whether organized under ch. 718, F.S., relating to condominium associations, or ch. 721, F.S., relating to timeshares and vacation plans.

¹⁰ Section 192.037(4), F.S.

The managing entity is required to collect and remit the taxes and special assessments due on fee timeshare real property. In allocating taxes, special assessments, and common expenses to individual timeshare period titleholders, the managing entity must clearly label the portion of any amounts due which are attributable to ad valorem taxes and special assessments.¹¹

There are two statutory methods for determining the valuation of timeshare property by a county property appraiser. The county property appraiser must first look at the resale market.¹² If the property appraiser finds an inadequate number of resales to determine a valuation, the county property appraiser must determine the valuation by deducting “usual and reasonable fees and costs of the sale” from the original purchase price.¹³

The term “usual and reasonable fees and costs of the sale” for timeshare real property includes all marketing costs, atypical financing costs, and those costs attributable to the right of a timeshare unit owner or user to participate in an exchange network of resorts.¹⁴ For timeshare real property, the “usual and reasonable fees and costs of the sale” is presumed to be 50 percent of the original purchase price, but that presumption is rebuttable.¹⁵

III. Effect of Proposed Changes:

The bill amends s. 192.037, F.S., to require the property appraiser to defer to the taxpayer for the determination of whether the number of resales is adequate. Under the bill, if the taxpayer in a tax appeal of timeshare real property asserts that there is an adequate number of resales to provide a basis for arriving at value conclusions, the number of resales is deemed to be adequate when a reasonable number of resales is provided by the taxpayer as supported by the Uniform Standards of Professional Appraisal Practice.¹⁶

The bill provides that the method revised by the bill meets the requirement of just valuation of all property, including timeshare real property, as required under s. 4, Art. VII of the State Constitution.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹¹ Section 192.037(5), F.S.

¹² Section 192.037(10), F.S.

¹³ Section 192.037(11), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ The Uniform Standards of Professional Appraisal Practice provide ethical and performance standards for the appraisal profession in the United States. See The Appraisal Foundation, What is UPAP?, available at: https://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/Uniform_Standards_of_Professional_Appraisal_Practice/TAF/USPAP.aspx (last visited Mar. 26, 2021).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Persons having an interest in a timeshare unit or timeshare period may benefit from a reduction in assessed ad valorem taxes.

C. Government Sector Impact:

The Revenue Estimating Conference determined that the bill will reduce local government revenue by at least \$169.9 million beginning in Fiscal Year 2022-2023. The REC noted that fiscal impact may likely be greater because the Uniform Standard of Professional Appraisal Practice appears to provide minimal guidance regarding the adequate number of timeshare property resales.¹⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

Two recent appeals of a property appraiser's valuation of timeshare properties highlight that the timeshare resale market may not be sufficiently robust to use as the basis of an appraisal for ad valorem valuation.¹⁸

¹⁷ Office of Economic and Demographic Research, *2021 Revenue Estimating Conference for HB 1007 and SB 1358* (Mar. 12, 2021).

¹⁸ *Id.*

The appeals involved four timeshare developments. For each development, the county property appraiser determined that the resale market for the timeshare developments was insufficient to produce an adequate number of resales for valuation purposes. Consequently, the property appraiser utilized the original purchase price method of valuation in which the usual and reasonable fees and costs of the sale are deducted from the sale are deducted from the original sales price. The property appraiser prevailed in both appeals.¹⁹ There may be additional, related appeals pending that challenge the property appraiser's valuation of time share properties.²⁰

The resale valuation and the original purchase price valuation may produce significantly different results. In recent court cases, the resale price valuation method resulted in values that were between 75 percent and 40 percent lower than the purchase price method.²¹

VIII. Statutes Affected:

This bill substantially amends section 192.037 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁹ See *Cypress Palms Condominium Association, Inc. v. Scarborough*, Final Judgment, case no. 2012-CA-1293-OC (Fla. 9th Jud. Cir. 2016) (on file with the Senate Committee on Regulated Industries); and *Star Island Vacation Ownership Association, Inc. v. Scarborough*, Final Judgment, case no. 2016-CA-1006-OC (Fla. 9th Jud. Cir. 2019), *aff'd per curiam* 2021 WL 646806 (Fla. 5th DCA) (on file with the Senate Committee on Regulated Industries).

²⁰ See *Star Island Vacation Ownership Association, Inc.*, n. 1.

²¹ *Supra* n. 16.