**South Carolina General Assembly**

121st Session, 2015-2016

**H. 4259**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Hamilton, Govan, Bedingfield, Putnam, Felder, Bowers, Henderson and Nanney

Document Path: l:\council\bills\agm\18647ab15.docx

Introduced in the House on May 26, 2015

Currently residing in the House Committee on **Judiciary**

Summary: Timeshare Owners Protection Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

5/26/2015 House Introduced and read first time ([House Journal‑page 73](file:///h:\HJ%20Archive\2015\05-26-15.docx))

5/26/2015 House Referred to Committee on **Judiciary** ([House Journal‑page 73](file:///h:\HJ%20Archive\2015\05-26-15.docx))

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**VERSIONS OF THIS BILL**

[5/26/2015](file:///p:\pprever\2015-16\4259_20150526.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “TIMESHARE OWNERS PROTECTION ACT” BY ADDING ARTICLE 5 TO CHAPTER 32, TITLE 27 SO AS TO PROVIDE A CITATION, TO STATE THE PURPOSE OF THE ACT, TO PROVIDE NECESSARY DEFINITIONS, AND TO PROVIDE PROCEDURES THROUGH WHICH TIMESHARE OWNERS MAY SURRENDER INTERESTS IN A TIMESHARE.

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

SECTION 1. Chapter 32 of Title 27 of the 1976 Code is amended by adding:

“Article 5

Timeshare Owners Protection Act

Section 27‑32‑510. This article must be know and may be cited as the ‘Timeshare Owners Protection Act’.

Section 27‑32‑520. The purposes of this article are to recognize that:

(1) free market principles require the free flow of capital and assets for market forces to work properly;

(2) current timeshare law is inconsistent with free market principles because the free flow of assets is one‑sided because timeshare associations enjoy nonjudicial foreclosure rights over timeshare owners who do not pay their annual maintenance fees, but owners of valueless timeshares have no way to transfer their timeshare back to the timeshare association when it does not fulfill its duties of minimal care;

(3) market forces cannot work properly on an asset that is not transferrable; and

(4) the highest and best use of a valueless timeshare is in the hands of the timeshare association, which is in the best position to restore its value.

Section 27‑32‑530. As used in this article:

(1) ‘Managing entity’ means the person who manages the affairs of a vacation timesharing plan.

(2) ‘Timeshare association’ means the association comprised of all owners of timeshare interests in a vacation timesharing plan.

(3) ‘Timeshare interest’ means an ownership interest in a vacation timesharing plan.

(4) ‘Timeshare owner’ means the owner or owners of a timeshare interest.

Section 27‑32‑540. A timeshare owner may surrender a timeshare interest to the timeshare association if:

(1) the timeshare interest is free of a mortgage lien;

(2) the timeshare owner does not have any outstanding debt to the timeshare association;

(3) all owners of the timeshare interest must agree to surrender the timeshare interest, which may not be divided through surrender;

(4) all owners of the timeshare interest have been the record owners of the timeshare interest for at least three consecutive years;

(5) the timeshare owner has advertised the timeshare interest for sale:

(a) for at least twelve consecutive months;

(b) on at least one website that is dedicated to timeshare advertising and can document through an independent third party at least one hundred thousand unique visitors each month or 1.2 million unique visitors each year during the months the timeshare interest is for sale; and

(c) at a sale price that is no more than the timeshare interest’s lowest annual maintenance fee during the months the timeshare interest is advertised for sale; and

(6) the timeshare owner did not sell the timeshare interest as evidenced by:

(a) not having received a bona fide purchase offer for the timeshare interest for a net amount of at least fifty percent of the total maintenance fees charged for the timeshare interest during the most recent calendar year by the timeshare association after twelve consecutive months of the advertising; or

(b) if having received an offer, the buyer failed to close the transaction as attested by a closing agency licensed in the state where it is located.

Section 27‑32‑550. A timeshare owner meeting the requirements of Section 27‑32‑540 may surrender his timeshare interest to the timeshare association after delivering the following to the timeshare association by certified mail or an equivalent private delivery service:

(1) a sworn statement attesting that the requirements of Section 27‑32‑540 have been met; and

(2) thirty days written notice that the timeshare interest will be surrendered to the timeshare association.

Section 27‑32‑560. (A) A timeshare owner meeting the requirements of Section 27‑32‑550 is considered to have transferred the timeshare interest to the timeshare association upon delivering to the timeshare association:

(1) a quit claim deed if the timeshare interest is deeded;

(2) a signed statement relinquishing all rights to the ownership of the timeshare interest and membership in any related club, trust or other organization;

(3) a limited power of attorney naming the timeshare association or the managing entity as attorney‑in‑fact, and directing the attorney‑in‑fact to remove the member from any trust, lease agreement, or other organization setup as part of a vacation timesharing ownership plan so as to divest the owner of any rights or responsibilities related to the vacation timesharing ownership plan; and

(4) the annual maintenance fee, if it is due within thirty days of the notice of surrender provided pursuant to Section 27‑32‑550.

(B) In response to a surrender made pursuant to this article, the timeshare association and its managing entity, if any:

(1) shall accept the surrender of the timeshare interest from the timeshare owner;

(2) shall, within thirty days of receipt, properly transfer the ownership of the surrendered timeshare interest through the appropriate applicable means including recording of the quit claim deed, if proper, using the limited power of attorney to execute documents the timeshare association requires to memorialize and complete the transfer of the timeshare interest from the timeshare owner to the timeshare association or the timeshare association’s assign;

(3) shall remove the timeshare owner from the list of members and any other task required by the vacation timesharing ownership plan for the removal of an owner or member within thirty days; and

(4) may not charge the timeshare owner who has surrendered a timeshare interest any fee or charge associated with the surrender, except when the timeshare owner fails to provide documentation required by this section.

Section 27‑32‑570. A timeshare owner who has surrendered the timeshare interest to the timeshare association pursuant to Section 27‑32‑550 and relinquishes all rights to the ownership and use of the timeshare interest is relieved of all requirements and duties of ownership of the timeshare interest, including financial responsibility for assessments or other obligations of members.

Section 27‑32‑580. (A) The timeshare association and the managing entity and its agent of record, individually, after having received a surrendered timeshare interest pursuant to this article:

(1) shall update records of the timeshare association to remove the timeshare owner from the rolls of the association, club, trust or other organization setup as part of the vacation timesharing ownership plan, including the recording of the quit claim deed, if required, within thirty days after receiving the items required under Section 27‑32‑540(A) from the timeshare owner of record;

(2) shall not engage in communications or authorize others to engage in communications designed to dissuade the timeshare owner from proceeding with surrendering the timeshare interest, except if such communication is in writing, at any time after having received the notice required under Section 27‑32‑550; and

(3) shall not send a bill, engage a collection agency, or in any other way attempt to collect money from a former timeshare owner who has surrendered the timeshare interest pursuant to this article.

(B)(1) When a timeshare owner of record gives the timeshare association or managing entity notice, if any, of a violation of the provisions of this article and the violation is not remedied within thirty days after receiving the notice, the timeshare owner of record may bring an action to:

(a) obtain a declaratory judgment that their actions are in compliance with the provisions of this article and they have surrendered their timeshare interest;

(b) enjoin a timeshare association or managing entity, if any, that is violating the provisions of this article; and

(c) recover the greater of actual damages, if any, or two thousand dollars, and also recover attorney fees and court costs for the action it brought against the timeshare association, managing entity, or their agents that violate the provisions of this article.

(2) These rights exist whether or not the timeshare owner has an adequate remedy at law.

(C)(1) The Real Estate Commission is responsible for the enforcement and implementation of the provisions of this article and the Department of Labor, Licensing and Regulation, at the request of the commission, shall prosecute a violation of the provisions of this article.

(2) The commission also shall promulgate regulations for the implementation of the provisions of this article, subject to the Administrative Procedures Act.

(3) The provisions of this section do not limit the right of an individual surrendering a timeshare interest to bring a private action to enforce the provisions of this article.

Section 27‑32‑590. The timeshare association or its managing entity, if any, must make known the option of surrender with all requirements in writing to all timeshare owners in an annual notice.”

SECTION 2. This act takes effect upon approval by the Governor.

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