

By: Goolsby

H.B. No. 85

A BILL TO BE ENTITLED

AN ACT

relating to amendments to the Texas Timeshare Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 221.002, Property Code, is amended to read as follows:

Sec. 221.002. DEFINITIONS. As used in this chapter:

(1) "Accommodation" means any apartment, condominium or cooperative unit, ~~or~~ hotel or motel room, cabin, lodge, or other private or commercial structure that:

(A) is affixed to real property;

(B) is designed for occupancy or use by one or more individuals; and

(C) is part of [in a building or commercial structure that is situated on] a timeshare plan [property and subject to a timeshare regime].

(2) "Advertisement [Advertising]" means any written, oral, or electronic communication that is directed to or targeted at individuals in this state and contains a promotion, [direct or indirect solicitation or] inducement, or offer to sell a timeshare interest, including a promotion, inducement, or offer to sell:

(A) contained in a brochure, pamphlet, or radio or television transcript;

(B) communicated by [to purchase and includes a solicitation or inducement made by print or] electronic media or

1 telephone; or

2 (C) solicited~~[7]~~ through direct ~~[the]~~ mail~~[, or~~
3 ~~by personal contact]~~.

4 (3) "Amenities" means all common areas and includes
5 recreational and maintenance facilities of the timeshare plan
6 ~~[property]~~.

7 (4) "Assessment" means an amount assessed against or
8 collected from a purchaser by an association or its managing entity
9 in a fiscal year, regardless of the frequency with which the amount
10 is assessed or collected, to cover expenditures, charges, reserves,
11 or liabilities related to the operation of a timeshare plan or
12 timeshare properties managed by the same managing entity.

13 (5) "Association" means a council or association
14 composed of all persons who have purchased a timeshare interest.

15 (6) "Commission" means the Texas Real Estate
16 Commission.

17 (7) "Component site" means a specific geographic
18 location where accommodations that are part of a multisite
19 timeshare plan are located. Separate phases of a single timeshare
20 property in a specific geographic location and under common
21 management are a single component site.

22 (8) ~~[(5) "Council of purchasers" means a council or~~
23 ~~association composed of all persons who have purchased a timeshare~~
24 ~~estate.~~

25 ~~[(6)]~~ "Developer" means:

26 (A) any person, excluding a sales agent, who
27 creates a timeshare plan or is in the business of selling timeshare

1 interests or employs a sales agent to sell timeshare interests; or
2 (B) any person who succeeds in the developer's
3 interest by sale, lease, assignment, mortgage, or other transfer if
4 the person:

5 (i) offers at least 12 timeshare interests
6 in a particular timeshare plan; and

7 (ii) is in the business of selling
8 timeshare interests or employs a sales agent to sell timeshare
9 interests [~~regime~~].

10 (9) [~~(7)~~] "Dispose" or "disposition" means a
11 voluntary transfer of any legal or equitable timeshare interest but
12 does not include the transfer or release of a real estate lien or of
13 a security interest.

14 (10) [~~(8)~~] "Escrow agent" means a [~~an independent~~]
15 bonded escrow company, a financial [~~or an~~] institution whose
16 accounts are insured by a governmental agency or instrumentality,
17 or an attorney, accountant, real estate broker, or title insurance
18 agent licensed in this state [~~and~~] who is responsible for the
19 receipt and disbursement of funds in accordance with this chapter.

20 (11) [~~(9)~~] "Exchange company" means any person [~~or~~
21 ~~including a developer,~~] who owns or operates an exchange program.

22 (12) [~~(10)~~] "Exchange disclosure statement" means a
23 written statement that includes the information required by Section
24 221.033 [~~201.033~~].

25 (13) [~~(11)~~] "Exchange program" means any method,
26 arrangement, or procedure for the voluntary exchange of [~~program~~
27 ~~under which the owner of~~] a timeshare interest or other [~~may~~

1 ~~exchange a timeshare period for another timeshare period in the~~
2 ~~same or a different timeshare] property interest among purchasers~~
3 ~~or owners, but does not include an assignment of a right to use and~~
4 ~~occupy an accommodation or facility granted to a purchaser or owner~~
5 ~~of a timeshare interest in a single-site timeshare plan [a one-time~~
6 ~~exchange of timeshare periods in the same timeshare property if~~
7 ~~offered to a purchaser by a developer after that purchaser's~~
8 ~~disposition].~~

9 (14) "Incidental use right" means the right to use
10 accommodations and amenities at one or more timeshare properties
11 that is not guaranteed and is administered by the managing entity of
12 the timeshare properties that makes vacant accommodations at the
13 timeshare properties available to owners of timeshare interests in
14 the timeshare properties.

15 (15) [~~(12)~~] "Managing entity" means the person
16 responsible for operating and maintaining a timeshare property.

17 (16) "Multisite timeshare plan" means a plan in which
18 a timeshare purchaser has:

19 (A) a specific timeshare interest, which is the
20 right to use and occupy accommodations at a specific timeshare
21 property and the right to use and occupy accommodations at one or
22 more other component sites created by or acquired through the
23 reservation system of the timeshare plan; or

24 (B) a nonspecific timeshare interest, which is
25 the right to use and occupy accommodations at more than one
26 component site created by or acquired through the reservation
27 system of the timeshare plan but which does not include a right to

1 use and occupy a particular accommodation.

2 (17) [~~(13)~~] "~~Master deed~~" or "~~master lease~~" or
3 "~~declaration~~" means the deed, lease, or declaration establishing
4 ~~real property as a timeshare regime.~~

5 [~~(14)~~] "Offering" or "offer" means any advertisement,
6 inducement, or solicitation and includes any attempt to encourage a
7 person to purchase a timeshare interest other than as a security for
8 an obligation.

9 (18) [~~(15)~~] "Project instrument" means a timeshare
10 instrument or one or more recordable documents, by whatever name
11 denominated, applying to the whole of a timeshare project and
12 containing restrictions or covenants regulating the use,
13 occupancy, or disposition of units in a project, including a
14 [~~master deed, master lease,~~] declaration for a condominium,
15 association articles of incorporation, association [or] bylaws,
16 and rules for a condominium in which a timeshare plan is created.

17 (19) [~~(16)~~] "Promotion" means any program, [or]
18 activity, contest, or gift, prize, or other item of value used to
19 induce any person to attend a timeshare sales presentation.

20 (20) [~~(17)~~] "~~Promotional disclosure statement~~" means a
21 ~~written statement that includes the information required by Section~~
22 ~~201.031.~~

23 [~~(18)~~] "Purchaser" means any person, other than a
24 developer [~~seller~~], who by means of a voluntary transfer acquires a
25 legal or equitable interest in a timeshare interest other than as a
26 security for an obligation.

27 (21) "Reservation system" means the method,

1 arrangement, or procedure by which a purchaser, in order to reserve
2 the use and occupancy of an accommodation of a multisite timeshare
3 plan for one or more timeshare periods, is required to compete with
4 other purchasers in the same multisite timeshare plan, regardless
5 of whether the reservation system is operated and maintained by the
6 multisite timeshare plan, a managing entity, an exchange company,
7 or any other person. If a purchaser is required to use an exchange
8 program as the purchaser's principal means of obtaining the right
9 to use and occupy the accommodations and facilities of the plan, the
10 arrangement is considered a reservation system. If the exchange
11 company uses a mechanism to exchange timeshare periods among
12 members of the exchange program, the use of the mechanism is not
13 considered a reservation system of the multisite timeshare plan.

14 ~~[(19) "Seller" means any person, including a~~
15 ~~developer, who in the ordinary course of business offers a~~
16 ~~timeshare interest for sale to the public, but does not include a~~
17 ~~person who acquires a timeshare interest for his use and~~
18 ~~subsequently offers it for resale.~~

19 ~~[(20) "Substantially complete" means that the~~
20 ~~timeshare unit, including furnishings and appliances, is complete~~
21 ~~as represented in the timeshare disclosure statement, the~~
22 ~~accommodations are ready for occupancy, and the amenities dedicated~~
23 ~~to the timeshare regime are as represented in the timeshare~~
24 ~~disclosure statement.~~

25 ~~[(21) "Timeshare estate" means any arrangement under~~
26 ~~which the purchaser receives a freehold estate or an estate for~~
27 ~~years in a timeshare property and the right to use an accommodation~~

1 ~~or amenities, or both, in that property for a timeshare period on a~~
2 ~~recurring basis.]~~

3 (22) "Single-site timeshare plan" means a timeshare
4 plan in which a timeshare purchaser's right to use and occupy
5 accommodations is limited to a single timeshare property. A
6 single-site timeshare plan that includes an incidental use right or
7 a program under which the owner of a timeshare interest at a
8 specific timeshare property may exchange a timeshare period for
9 another timeshare period at the same or another timeshare property
10 under common management does not transform the single-site
11 timeshare plan into a multisite timeshare plan.

12 (23) "Timeshare disclosure statement" means a written
13 statement that includes the information required by Section 221.032
14 [~~201.032~~].

15 (24) [~~(23)~~] "Timeshare estate [~~expenses~~]" means an
16 arrangement under which the purchaser receives a right to occupy
17 [~~expenditures, charges, or liabilities for the operation of~~] a
18 timeshare property and an estate interest in the real property [~~or~~
19 ~~timeshare system, including any allocations to maintain reserves~~
20 ~~but excluding any purchase money payable for timeshare interests:~~

21 [~~(A) incurred in connection with a timeshare~~
22 ~~interest by or on behalf of the owner of all timeshare interests in~~
23 ~~a timeshare property, and~~

24 [~~(B) imposed on timeshare interests by the~~
25 ~~managing entity~~].

26 (25) [~~(24)~~] "Timeshare interest" means a timeshare
27 estate or timeshare use.

1 (26) [~~(25)~~] "Timeshare instrument" means a master
2 deed, master lease, declaration, or any other instrument used in
3 the creation of a timeshare plan [~~regime~~].

4 ~~[(26) "Timeshare liability" means the liability for~~
5 ~~timeshare expenses allocated to each timeshare interest.]~~

6 (27) "Timeshare period" means the period within which
7 the purchaser of a timeshare interest is entitled to the exclusive
8 possession, occupancy, and use of an accommodation [~~a timeshare~~
9 ~~unit and to the general use of all amenities~~].

10 (28) "Timeshare plan" means any arrangement, plan,
11 scheme, or similar method, excluding an exchange program but
12 including a membership agreement, sale, lease, deed, license, or
13 right-to-use agreement, by which a purchaser, in exchange for
14 consideration, receives an ownership right in or the right to use
15 accommodations for a period of time less than a year during a given
16 year, but not necessarily consecutive years.

17 (29) [~~(28)~~] "Timeshare property" means:

18 (A) one or more [~~all real property that is~~
19 ~~subject to a timeshare declaration, including all~~] accommodations
20 and any related amenities subject to the same timeshare instrument;
21 and

22 (B) any other property or property rights
23 appurtenant to the accommodations and amenities.

24 ~~[(29) "Timeshare regime" means the real property use~~
25 ~~that is created by the filing and recordation of a master deed,~~
26 ~~master lease, or declaration.]~~

27 (30) [~~"Timeshare unit" means any accommodation that is~~

1 ~~divided into timeshare periods.~~

2 ~~[(31)]~~ "Timeshare use" means any arrangement [~~other~~
3 ~~than a hotel or motel operation, whether by lease, rental~~
4 ~~agreement, license, use agreement or other means,~~] under which the
5 purchaser receives a right to occupy [~~use an accommodation or~~
6 ~~amenities or both for~~] a timeshare property [~~period on a recurring~~
7 ~~basis~~], but under which the purchaser does not receive an [~~a~~
8 ~~freehold~~] estate interest [~~or an estate for years~~] in the [~~a~~]
9 timeshare property.

10 ~~[(32)]~~ "Timeshare fees" means ~~an amount assessed~~
11 ~~against or collected from an owner by a managing entity in a fiscal~~
12 ~~year, without regard to the frequency with which the amount is~~
13 ~~assessed or collected.~~

14 ~~[(33)]~~ "Owner" means ~~a person who holds a legal or~~
15 ~~equitable interest in a timeshare interest in timeshare property~~
16 ~~subject to the requirements of this Act.~~

17 ~~[(34)]~~ "Timeshare system" means ~~two or more timeshare~~
18 ~~properties located in separate geographic areas that are:~~

- 19 ~~[(A)]~~ ~~managed by the same managing entity, and~~
20 ~~[(B)]~~ ~~subject to a written arrangement or~~
21 ~~agreement whereby an owner of a timeshare interest in any one of the~~
22 ~~timeshare properties may use a timeshare unit and the amenities of~~
23 ~~any of the other timeshare properties as provided in the project~~
24 ~~instruments.]~~

25 SECTION 2. Section 221.003, Property Code, is amended by
26 adding Subsection (d) to read as follows:

27 (d) A timeshare property subject to this chapter is not

1 subject to Chapter 209 unless an individual timeshare owner
2 continuously occupies a single timeshare property as the owner's
3 primary residence 12 months of the year.

4 SECTION 3. Section 221.011, Property Code, as amended by
5 House Bill 3507, 78th Legislature, Regular Session, 2003, and
6 Sections 221.012, 221.013, and 221.014, Property Code, are amended
7 to read as follows:

8 Sec. 221.011. DECLARATION. (a) The developer of a
9 timeshare plan any part of which is located in this state must
10 record the timeshare instrument in this state. When a person [~~who~~
11 ~~is a developer, the sole owner, or the co-owner of a building or~~
12 ~~proposed building or buildings]~~ expressly declares an intent to
13 subject the property to a timeshare plan through the recordation of
14 a timeshare instrument [~~master deed, master lease, or declaration~~]
15 that sets forth the information provided in Subsections (b) and
16 (c), [~~and that sets forth the intent to submit that property to a~~
17 ~~timeshare regime,~~] that property shall be established thenceforth
18 as a timeshare plan [~~regime~~].

19 (b) The declaration made in a timeshare instrument recorded
20 under this section must include:

21 (1) a legal description of the timeshare property,
22 including a ground plan indicating the location of each existing or
23 proposed building included in [~~to be constructed on~~] the timeshare
24 plan [~~property~~];

25 (2) a description of each existing or proposed
26 accommodation [~~timeshare unit~~], including the location and square
27 footage of each unit and an interior floor plan of each existing or

1 proposed building;

2 (3) a description of any ~~[the]~~ amenities furnished or
3 to be furnished to the purchaser;

4 (4) a statement of the fractional or percentage part
5 that each timeshare interest bears to the entire timeshare plan
6 ~~[regime]~~;

7 (5) if applicable, a statement that the timeshare
8 property is part of a multisite timeshare plan ~~[system]~~; and

9 (6) any additional provisions that are consistent with
10 this section.

11 (c) Any timeshare interest created under this section is
12 subject to ~~[an interest in real property within the meaning of]~~
13 Section 1101.002(5), Occupations Code, but Sections 1101.351(a)(1)
14 and (c), Occupations Code, do not apply to the acts of an exchange
15 company in exchanging timeshare periods ~~[under a timeshare~~
16 ~~program]~~.

17 ~~[(d) Any timeshare interest located wholly without this~~
18 ~~state may be sold or otherwise disposed of within this state if the~~
19 ~~timeshare property is in full compliance with the legal~~
20 ~~requirements of and may be validly sold or otherwise disposed of as~~
21 ~~a timeshare property in the jurisdiction in which the timeshare~~
22 ~~property is located and if all information required in this section~~
23 ~~is included in the disclosure statement.]~~

24 Sec. 221.012. CONVEYANCE AND ENCUMBRANCE. Once the
25 property is established as a timeshare plan ~~[regime]~~, each
26 timeshare interest may be individually conveyed or encumbered and
27 shall be entirely independent of all other timeshare interests in

1 the same timeshare property. Any title or interest in a timeshare
2 interest may be recorded.

3 Sec. 221.013. COMMON OWNERSHIP. (a) Any timeshare
4 interest may be jointly or commonly owned by more than one person.

5 (b) A timeshare estate may be jointly or commonly owned in
6 the same manner as any other real property interest in this state.

7 Sec. 221.014. PARTITION. An action for partition of a
8 timeshare interest may not be maintained during the term of a
9 timeshare plan [~~unless expressly permitted by the declaration~~].

10 SECTION 4. Subchapter C, Chapter 221, Property Code, is
11 amended by amending Sections 221.021, 221.022, 221.023, 221.024,
12 and 221.025 and adding Section 221.026 to read as follows:

13 Sec. 221.021. REGISTRATION REQUIRED. (a) Except as
14 provided by Subsection (b) or (d), a [A] person may not offer or
15 dispose of a timeshare interest unless the timeshare plan
16 [property] is registered with the commission.

17 (b) Before a registration application for a timeshare plan
18 is submitted or completed, a [A] developer or any person acting on
19 the developer's [his] behalf may accept a reservation and a deposit
20 from a [the] prospective purchaser if the deposit is placed in a
21 segregated [an] escrow account with an independent escrow agent and
22 if the deposit is fully refundable at any time at the request of the
23 purchaser. The deposit may not be forfeited unless the purchaser
24 affirmatively creates a binding obligation by a subsequent written
25 instrument.

26 (c) A developer or any person [~~anyone~~] acting on the
27 developer's [his] behalf may not offer or dispose of [~~or encumber~~] a

1 timeshare interest during any period within which there is in
2 effect an order by the commission or by any court of competent
3 jurisdiction revoking or suspending the registration of the
4 timeshare plan [~~property~~] of which such timeshare interest is a
5 part.

6 (d) At the developer's request, the commission may
7 authorize the developer to conduct presales before a timeshare plan
8 is registered if the registration application is administratively
9 complete, as determined by the commission or as established by
10 commission rule. The authorization for presales permits the
11 developer to offer and dispose of timeshare interests during the
12 period the application is in process. To obtain a presales
13 authorization, the developer must:

14 (1) submit a written request to the commission for an
15 authorization to conduct presales;

16 (2) submit an administratively complete application
17 for registration, including appropriate fees and exhibits required
18 by the commission; and

19 (3) provide evidence acceptable to the commission that
20 all funds received by the developer will be placed with an escrow
21 agent with instructions requiring the funds to be retained until a
22 registration application is complete as determined by the
23 commission.

24 (e) During the presales authorization period, the developer
25 must:

26 (1) provide to each purchaser and prospective
27 purchaser a copy of the proposed timeshare disclosure statement

1 that the developer submitted to the commission with the initial
2 registration application; and

3 (2) offer each purchaser the opportunity to cancel the
4 purchase contract as provided by Section 221.041.

5 (f) The developer must:

6 (1) give each purchaser and prospective purchaser a
7 copy of the proposed timeshare disclosure statement submitted to
8 the commission with the registration application; and

9 (2) provide the purchaser an opportunity to cancel the
10 purchase contract as provided by Section 221.041 after the
11 registration is completed if the commission determines that a
12 materially adverse change exists between the disclosures contained
13 in the proposed timeshare disclosure statement and the final
14 timeshare disclosure statement approved by the commission.

15 (g) The requirements of this subchapter remain in effect
16 during the period the developer offers or disposes of timeshare
17 interests of the timeshare plan registered with the commission.
18 The developer must notify the commission in writing when all of the
19 timeshare interests of a timeshare plan have been disposed of.

20 Sec. 221.022. APPLICATION FOR REGISTRATION. (a) An
21 application for registration filed under this section must include
22 a timeshare disclosure statement and any required exchange
23 disclosure statement required by Section 221.033, recorded
24 [~~201.033, certified~~] copies of all timeshare instruments, and other
25 information as may be required by the commission. If the timeshare
26 property is a newly developed property, recorded copies of the
27 timeshare instruments must be provided promptly after recorded

1 copies are available from the entity with which the instruments are
2 recorded. If existing or proposed accommodations are in a
3 condominium, an applicant who complies with this section is not
4 required to prepare or deliver a condominium information statement
5 or a resale certificate as described by Chapter 82.

6 (b) If existing or proposed accommodations [~~timeshare~~
7 ~~units~~] are in a condominium or similar development, the application
8 for registration must contain the project instruments of that
9 development and affirmatively indicate that the creation and
10 disposition of timeshare interests are not prohibited by those
11 instruments. If the project instruments do not expressly authorize
12 the creation and disposition of timeshare interests, the
13 application must contain evidence that existing owners of the
14 condominium development were provided written notice, at least 60
15 days before the application for registration, that timeshare
16 interests would be created and sold. If the project instruments
17 prohibit the creation or disposition of timeshare interests, the
18 application must contain a certification by the authorized
19 representative of all existing owners that the project instruments
20 have been properly amended to permit that creation and disposition.

21 (c) The commission may accept an abbreviated registration
22 application from a developer of a timeshare plan if all
23 accommodations in the plan are located outside this state. The
24 developer must file written notice of the intent to register under
25 this section not later than the 15th day before the date the
26 abbreviated application is submitted.

27 (d) A developer of a timeshare plan with any accommodation

1 located in this state may not file an abbreviated application
2 unless the developer is a successor in interest after a merger or
3 acquisition and the previous developer registered the timeshare
4 plan in this state preceding the merger or acquisition.

5 (e) A developer filing an abbreviated application must
6 provide:

7 (1) the legal name and any assumed names and the
8 principal office location, mailing address, telephone number, and
9 primary contact person of the developer;

10 (2) the name, location, mailing address, telephone
11 number, and primary contact person of the timeshare plan;

12 (3) the name and address of the developer's authorized
13 or registered agent for service of process in this state;

14 (4) the name, primary office location, mailing
15 address, and telephone number of the managing entity of the
16 timeshare plan;

17 (5) the certificate or other evidence of registration
18 from any jurisdiction in which the timeshare plan is approved or
19 accepted;

20 (6) the certificate or other evidence of registration
21 from the appropriate regulatory agency of any other jurisdiction in
22 the United States in which some or all of the accommodations are
23 located;

24 (7) a declaration stating whether the timeshare plan
25 is a single-site timeshare plan or a multisite timeshare plan;

26 (8) if the plan is a multisite timeshare plan, a
27 declaration stating whether the plan consists of specific timeshare

1 interests or nonspecific timeshare interests;

2 (9) a disclosure of each jurisdiction in which the
3 developer has applied for registration of the timeshare plan and
4 whether the timeshare plan, the developer, or the managing entity
5 used were denied registration or were the subject of a disciplinary
6 proceeding;

7 (10) if requested by the commission, copies of any
8 disclosure documents required to be provided to purchasers or filed
9 with any jurisdiction that approved or accepted the timeshare plan;

10 (11) the appropriate filing fee; and

11 (12) any other information reasonably requested by the
12 commission or required by commission rule.

13 (f) A foreign jurisdiction providing evidence of
14 registration as provided by Subsection (e)(6) must have
15 registration and disclosure requirements that are substantially
16 similar to or stricter than the requirements of this chapter.

17 (g) The commission shall investigate all matters relating
18 to the application and may in its discretion require a personal
19 inspection of the proposed timeshare property by any persons
20 designated by it. All direct expenses incurred by the commission in
21 inspecting the property shall be borne by the applicant. The
22 commission may require the applicant to pay an advance deposit
23 sufficient to cover those expenses.

24 Sec. 221.023. AMENDMENT OF REGISTRATION. The developer
25 shall [~~or managing entity shall promptly~~] file amendments to the
26 registration reporting to the commission any materially [~~material~~
27 ~~and~~] adverse change in any document contained in the registration

1 not later than the 30th day after the date the developer knows or
2 reasonably should know of the change. The developer may continue to
3 offer and dispose of timeshare interests under the existing
4 registration pending review of the amendments by the commission if
5 the materially adverse change is disclosed to prospective
6 purchasers.

7 Sec. 221.024. POWERS OF COMMISSION. (a) The commission may
8 prescribe and publish forms and adopt rules necessary to carry out
9 the provisions of this chapter and may suspend or revoke the
10 registration of any developer, place on probation the registration
11 of a developer that has been suspended or revoked, reprimand a
12 developer, impose an administrative penalty of not more than
13 \$10,000, or take any other disciplinary action authorized by this
14 chapter [~~seller~~] if, after notice and hearing, the commission
15 determines that a developer [~~seller~~] has materially violated this
16 chapter, the Deceptive Trade Practices-Consumer Protection Act
17 (Subchapter E, Chapter 17, Business & Commerce Code), or the
18 Contest and Gift Giveaway Act (Chapter 40, Business & Commerce
19 Code). [~~The commission may bring suit in a district court of Travis~~
20 ~~County, Texas, to enjoin a violation of this Act or for any other~~
21 ~~relief as the court may deem appropriate.~~]

22 (b) The commission may:

23 (1) authorize specific employees to conduct hearings
24 and issue final decisions in contested cases; and

25 (2) [shall] establish reasonable fees for forms and
26 documents it provides to the public and for the filing or
27 registration of documents required by this chapter.

1 (c) If the commission initiates a disciplinary proceeding
2 under this chapter, the person is entitled to a hearing before the
3 commission or a hearing officer appointed by the commission. The
4 commission by rule shall adopt procedures to permit an appeal to the
5 commission from a determination made by a hearing officer in a
6 disciplinary action.

7 (d) The commission shall set the time and place of the
8 hearing.

9 (e) A disciplinary procedure under this chapter is governed
10 by the contested case procedures of Chapter 2001, Government Code.

11 (f) The commission may file a suit in a district court of
12 Travis County to prevent a violation of this chapter or for any
13 other appropriate relief.

14 (g) Judicial review of a commission order imposing an
15 administrative penalty is:

16 (1) instituted by filing a petition as provided by
17 Subchapter G, Chapter 2001, Government Code; and

18 (2) by trial de novo.

19 Sec. 221.025. EFFECT OF REGISTRATION: SALE EXEMPT FROM
20 SECURITIES ACT REGISTRATION. A developer's compliance with [The
21 filing of a registration under] this chapter exempts the
22 developer's offer and disposition of [sale of] timeshare interests
23 subject to this chapter from registration under The Securities Act
24 (Article 581-1 et seq., Vernon's Texas Civil Statutes).

25 Sec. 221.026. ISSUANCE AND RENEWAL OF REGISTRATION. (a)
26 The commission by rule shall adopt requirements for the issuance
27 and renewal of a developer's registration under this chapter,

1 including:

2 (1) the form required for application for registration
3 or a renewal of registration; and

4 (2) any supporting documentation required for
5 registration or renewal of registration.

6 (b) The commission shall issue or renew a registration under
7 this chapter for a period not to exceed 24 months.

8 (c) The commission may assess and collect a fee for the
9 issuance or renewal of a registration under this chapter.

10 (d) The commission may assess and collect a late fee if the
11 commission has not received the fee or any supporting documentation
12 required before the 61st day after the date a registration is issued
13 or renewed under this section.

14 (e) Failure to pay a renewal fee or late fee is a violation
15 of this chapter.

16 SECTION 5. Sections 221.031 and 221.032, Property Code, are
17 amended to read as follows:

18 Sec. 221.031. ADVERTISEMENTS AND PROMOTIONS [~~PROMOTIONAL~~
19 ~~DISCLOSURE STATEMENT~~]. (a) At any time, the commission may request
20 a developer to file for review by the commission any advertisement
21 used in this state by the developer in connection with offering a
22 timeshare interest. The developer shall provide the advertisement
23 not later than the 15th day after the date the commission makes the
24 request. If the commission determines that the advertisement
25 violates this chapter or Chapter 40, Business & Commerce Code, the
26 commission shall notify the developer in writing, stating the
27 specific grounds for the commission's determination not later than

1 the 15th day after the date the commission makes its determination.
2 The commission may grant the developer provisional approval for the
3 advertisement if the developer agrees to correct the deficiencies
4 identified by the commission. A developer, on its own initiative,
5 may submit any proposed advertisement to the commission for review
6 and approval by the commission.

7 (b) Any advertisement that contains a promotion in
8 connection with the offering of a timeshare interest must comply
9 with Chapter 40, Business & Commerce Code.

10 (c) Any advertisement that contains a ~~[Before the use of~~
11 ~~any]~~ promotion in connection with the offering of a timeshare
12 interest must include, in addition to any disclosures required
13 under Chapter 40, Business & Commerce Code, [the person who intends
14 to use the promotion shall include] the following [information in
15 its advertisements to the prospective purchaser]:

16 (1) a statement to the effect that the promotion is
17 intended to solicit purchasers of timeshare interests;

18 (2) if applicable, a statement to the effect that any
19 person whose name is obtained during the promotion may be solicited
20 to purchase a timeshare interest;

21 (3) the full name of the developer ~~[and seller]~~ of the
22 timeshare property; and

23 (4) if applicable, the full name and address of any
24 marketing company involved in the promotion of the timeshare
25 property, excluding the developer or an affiliate or subsidiary of
26 the developer [+

27 ~~[(5) the complete rules of the promotion; and~~

1 ~~[(6) the method of awarding, the odds of winning, a~~
2 ~~statement of the retail value of prizes, gifts, or other benefits~~
3 ~~under the promotion as set forth in Subsection (b) of this section,~~
4 ~~the geographic region in which the promotion is being conducted,~~
5 ~~the beginning and ending dates of the promotion, and the date by~~
6 ~~which each prize, gift, or benefit will be awarded or conferred].~~

7 ~~[(b) For the purposes of this section, the retail value of~~
8 ~~the item is the price at which a substantial number of sales of the~~
9 ~~exact item, having the same manufacturer, brand, model number, and~~
10 ~~type, have been made to members of the general public by at least~~
11 ~~two principal retail outlets in the State of Texas during the six~~
12 ~~months immediately preceding the offering of the prize or gift~~
13 ~~described in the promotion. However, if a substantial number of~~
14 ~~sales of a particular prize have not been made in the State of Texas~~
15 ~~in the six months immediately preceding the offering of the prize or~~
16 ~~gift in a promotion or if the developer elects, then the retail~~
17 ~~value of the prize or gift is the actual unit cost of the prize or~~
18 ~~the gift, net of any discounts or rebates to the developer, plus 200~~
19 ~~percent.~~

20 ~~[Provided, however, in the event a prize or gift involves~~
21 ~~lodging, airfare, trips, or recreational activity, the retail value~~
22 ~~shall be the retail sales price of the lodging, airfare, trips, or~~
23 ~~recreational activity to a member of the general public not~~
24 ~~involved in a promotional or other discount transaction.]~~

25 Sec. 221.032. TIMESHARE DISCLOSURE STATEMENT. (a) Before
26 the signing of any agreement [~~or contract~~] to acquire a timeshare
27 interest, the developer shall provide a timeshare disclosure

1 statement to the prospective purchaser and shall obtain from the
2 purchaser a written acknowledgement of receipt of the timeshare
3 disclosure statement.

4 (b) The timeshare disclosure statement must include:

5 (1) the type of timeshare plan offered and the name and
6 address of:

7 (A) the developer;

8 (B) the single site or specific site offered for
9 a single-site or multisite timeshare plan, including a specific
10 timeshare interest; and

11 (C) each component site for a multisite timeshare
12 plan, including a description of the component site [~~and the name~~
13 ~~and specific location of the timeshare property~~];

14 (2) a description of the existing or proposed
15 accommodations, including the type and number of timeshare
16 interests in the accommodations, and, if the accommodations are
17 proposed or incomplete, a schedule for commencement, completion,
18 and availability of the accommodations [~~amenities, timeshare~~
19 ~~property, and any project or development within which the timeshare~~
20 ~~property is located or of which it is a part, the total number of~~
21 ~~timeshare units in the timeshare property and whether and under~~
22 ~~what circumstances that number may be increased or decreased, and,~~
23 ~~if a timeshare interest includes amenities not yet in existence,~~
24 ~~the commencement and completion schedule of the proposed~~
25 ~~amenities~~];

26 (3) a description of any existing or proposed
27 amenities of the timeshare plan and, if the amenities are proposed

1 or incomplete, a schedule for commencement, completion, and
2 availability of the amenities [~~the timeshare interests currently~~
3 ~~available for disposition and, if applicable, the types and number~~
4 ~~of units available~~];

5 (4) a statement that an association [~~a council of~~
6 ~~purchasers~~] exists or is expected to be created or that such an
7 association [~~a council~~] does not exist and is not expected to be
8 created and, if such an association [~~a council~~] exists or is
9 reasonably contemplated, a description of its powers and
10 responsibilities;

11 (5) if applicable, copies of the following documents,
12 including any amendments to the documents:

13 (A) the declaration;

14 (B) the association articles of incorporation;

15 (C) the association bylaws;

16 (D) the association rules; and

17 (E) any lease or contract, excluding the purchase
18 contract and other loan documents required to be signed by the
19 purchaser at closing;

20 (6) the name and principal address of the managing
21 entity and a description of the procedures, if any, for altering the
22 powers and responsibilities of the managing entity and for removing
23 or replacing it;

24 (7) the current annual [~~(6) a complete~~] budget, if
25 available, or the projected annual budget for the timeshare plan or
26 timeshare properties managed by the same managing entity [~~for the~~
27 ~~operation of the timeshare property for a period of one year after~~

1 ~~the first disposition of a timeshare interest in the property, and~~
2 ~~thereafter, the current operating budget], which [operating~~
3 ~~budget] must include:~~

4 (A) a statement of the amount reserved or
5 budgeted for repairs, replacements, and refurbishment ~~[the total~~
6 ~~amount included as a reserve for the maintenance of the timeshare~~
7 ~~property and for the repair or replacement of personal property or~~
8 ~~fixtures];~~

9 (B) the projected common expense liability, if
10 any, by category of expenditure for the timeshare plan or timeshare
11 properties managed by the same managing entity ~~[total amount of any~~
12 ~~other reserve and the purpose of the reserve];~~

13 (C) ~~[the projected timeshare liability expressed~~
14 ~~by categories of expenditure for all timeshare interests,~~

15 ~~[(D) the timeshare liability projected by~~
16 ~~categories of expenditures for each timeshare interest,~~

17 ~~[(E)] the name and address of the person who~~
18 prepared the operating budget; and

19 (D) ~~[(F)]~~ the assumptions on which the operating
20 budget is based;

21 (8) the projected assessments and ~~[(7)]~~ a description
22 of the ~~[nature and estimated amount of any timeshare liability that~~
23 ~~may in the future be assessed and the]~~ method for calculating and
24 apportioning those assessments among purchasers ~~[and formula for~~
25 ~~assessing the timeshare liability];~~

26 (9) ~~[(8)]~~ a description of any lien, defect, or
27 encumbrance on or affecting title to the timeshare interest and, if

1 applicable, a copy of each written warranty provided by the
2 developer [~~service that the developer or person acting on his~~
3 ~~behalf provides or expense that is paid that reasonably may be~~
4 ~~expected to become a timeshare liability, and the projected~~
5 ~~timeshare liability attributable to that service or expense];~~

6 (10) [~~(9)~~] a description of any bankruptcy, pending
7 civil or criminal suit, adjudication, or disciplinary action
8 material to the timeshare interest of which the developer has
9 knowledge [~~the existing or proposed amenities of the timeshare~~
10 ~~property and, if the amenities are proposed or not yet complete or~~
11 ~~fully functional, a schedule for the projected commencement,~~
12 ~~completion, and availability of those amenities];~~

13 (11) any current or anticipated [~~(10) a description~~
14 ~~and amount of any current or expected dues, assessments,~~] fees[~~7~~]
15 or charges to be paid by timeshare purchasers for the use of any
16 [~~accommodations or~~] amenities related to the timeshare plan [~~or for~~
17 ~~any other purpose];~~

18 [~~(11) a description of any unsatisfied final judgment~~
19 ~~against the developer, seller, managing entity, or exchange company~~
20 ~~with which the developer is under contract, but not including any~~
21 ~~individual sales agent or representative who offers a timeshare~~
22 ~~interest,]~~

23 (12) [~~a description and status of any pending lawsuit~~
24 ~~or administrative action of which the developer has actual~~
25 ~~knowledge that may materially affect a timeshare interest,~~

26 [~~(13)~~] a description and amount of insurance coverage
27 provided for the protection of the purchaser;

1 (13) [~~(14)~~] the extent to which a timeshare interest
2 may become subject to a tax lien or other lien arising out of claims
3 against purchasers of different timeshare interests;

4 (14) [~~(15)~~] a description of those matters required by
5 Section 221.041 [~~201.041~~];

6 (15) [~~(16)~~] a statement disclosing any right of first
7 refusal or other restraint on the transfer of all or any portion of
8 a timeshare interest;

9 (16) [~~(17)~~] a statement disclosing that any deposit
10 made in connection with the purchase of a timeshare interest must
11 [~~will~~] be held by [~~in~~] an escrow agent [~~account~~] until expiration of
12 any right to cancel the contract and that any deposit must be [~~or~~
13 ~~any later time specified in the contract and will be~~] returned to
14 the purchaser if the purchaser [~~he~~] elects to exercise the [~~his~~]
15 right of cancellation; or, if the commission accepts from the
16 developer a surety bond, irrevocable letter of credit, or other
17 form of financial assurance instead of an escrow deposit, a
18 statement disclosing that the developer has provided a surety bond,
19 irrevocable letter of credit, or other form of financial assurance
20 in an amount equal to or in excess of the funds that would otherwise
21 be held by an escrow agent and that the deposit must be returned if
22 the purchaser elects to exercise the right of cancellation;

23 (17) [~~(18)~~] if applicable, a statement that the
24 assessments [~~timeshare property is part of a timeshare system and~~
25 ~~that timeshare fees~~] collected from the purchasers [~~owners~~] may be
26 placed in a common account with the assessments [~~timeshare fees~~]
27 collected from the purchasers [~~owners~~] of other timeshare

1 properties managed by the same managing entity [~~participating in~~
2 ~~the timeshare system~~]; and

3 (18) [(19)] any other information the commission
4 determines is necessary to protect prospective purchasers or to
5 implement the purpose of this chapter [~~material circumstances~~
6 ~~concerning a timeshare interest~~].

7 (c) The developer may include any other information in the
8 timeshare disclosure statement on approval by the commission.

9 (d) A developer who offers a multisite timeshare plan also
10 must fully disclose the following information in written, graphic,
11 or tabular form:

12 (1) a description of each component site, including
13 the name and address of each component site;

14 (2) the number of accommodations and timeshare
15 periods, expressed in periods of seven-day use availability, that
16 are committed to the plan and available for use by the purchasers;

17 (3) a statement indicating that, on an annual basis,
18 the sum of the nights that purchasers are entitled to use the
19 accommodations does not exceed the number of nights the
20 accommodations are available for use by the purchasers;

21 (4) each type of accommodation, categorized by the
22 number of bedrooms, the number of bathrooms, and sleeping capacity,
23 and a statement indicating whether the accommodation contains a
24 full kitchen, which means a kitchen that has a minimum of a
25 dishwasher, range, sink, oven, and refrigerator;

26 (5) a description of the amenities at each component
27 site available for use by the purchasers;

1 (6) a description of the reservation system, which
2 must include:

3 (A) the entity responsible for operating the
4 reservation system;

5 (B) a summary of the rules governing access to
6 and use of the reservation system; and

7 (C) the existence of and explanation regarding
8 any priority reservation features that affect a purchaser's ability
9 to make reservations for the use of a given accommodation on a
10 first-come, first-served basis;

11 (7) a description of any right to make additions to,
12 substitutions in, or deletions from accommodations, amenities, or
13 component sites, and a description of the basis on which
14 accommodations, amenities, or component sites may be added to,
15 substituted in, or deleted from the multisite timeshare plan;

16 (8) a description of the purchaser's liability for any
17 fees associated with the multisite timeshare plan;

18 (9) the location and anticipated relative demand of
19 each component site in the multisite timeshare plan and any
20 periodic adjustment or amendment to the reservation system that may
21 be necessary to accommodate actual purchaser use patterns or
22 changes in purchaser use demand for the accommodations existing
23 during that period; and

24 (10) any other information the commission determines
25 is necessary to protect prospective purchasers or to implement the
26 purpose of this chapter.

27 (e) A developer who offers a multisite timeshare plan may

1 include any other information in the timeshare disclosure statement
2 on approval by the commission.

3 (f) A developer who offers a nonspecific timeshare interest
4 in a multisite timeshare plan must disclose the information
5 prescribed by Subsection (b) for each component site.

6 (g) If a timeshare plan is located wholly outside this
7 state, the commission may permit the developer to submit a
8 timeshare disclosure statement the developer is currently
9 providing purchasers or an equivalent timeshare disclosure
10 statement filed for the timeshare plan in another state if the
11 current statement or the equivalent statement substantially
12 complies with the requirements of this subchapter. This subsection
13 does not exempt the developer from other requirements of this
14 chapter.

15 SECTION 6. Section 221.033(a), Property Code, is amended to
16 read as follows:

17 (a) Before the signing of any agreement to purchase [~~or~~
18 ~~contract to acquire~~] a timeshare interest in which a prospective
19 purchaser is also offered participation in any exchange program,
20 the developer shall also deliver to the prospective purchaser the
21 exchange disclosure statement of any exchange company whose service
22 is advertised or offered by the developer or other person in
23 connection with the disposition.

24 SECTION 7. Section 221.034, Property Code, is amended to
25 read as follows:

26 Sec. 221.034. EXEMPT OFFERINGS AND DISPOSITIONS;
27 COMMUNICATIONS [~~WHEN DISCLOSURE NOT REQUIRED~~]. (a) An offering or

1 disposition is exempt from this chapter if it is [~~A disclosure~~
2 ~~statement need not be delivered in the case of~~]:

3 (1) a gratuitous offering or disposition of a
4 timeshare interest;

5 (2) a disposition pursuant to a court order;

6 (3) a disposition by a governmental agency;

7 (4) a disposition by foreclosure or deed in lieu of
8 foreclosure;

9 (5) an offering or [~~a~~] disposition by an association
10 of its own timeshare interest acquired through foreclosure, deed in
11 lieu of foreclosure, or gratuitous transfer [~~that may be canceled~~
12 ~~by the purchaser without penalty at any time and for any reason~~];

13 (6) an offering or [~~a~~] disposition of all timeshare
14 interests in a timeshare plan [~~regime~~] to not more than five
15 persons;

16 (7) an offering or [~~a~~] disposition of a timeshare
17 interest in a timeshare property situated wholly outside this state
18 under a contract executed wholly outside this state, if there has
19 been no offering to the purchaser within this state;

20 (8) an offering or [~~a~~] disposition of a timeshare
21 interest to a purchaser who is not a resident of this state under a
22 contract executed wholly outside this state, if there has been no
23 offering to the purchaser within this state; [~~or~~]

24 (9) the offering or redistribution of a timeshare
25 interest by a purchaser who acquired the interest for the
26 purchaser's [~~his~~] personal use; or

27 (10) the offering or disposition of a rental of an

1 accommodation for a period of three years or less.

2 (b) If a developer has a timeshare plan registered under
3 this chapter and is subject to Section 221.024, the developer may
4 offer or dispose of an interest in a timeshare plan that is not
5 registered under this chapter to a person who has previously
6 executed a contract for the purchase of or is the owner of a
7 timeshare interest in a timeshare plan created by the developer. A
8 developer under this subsection is exempt from Sections 221.021,
9 221.022, 221.023, 221.032, 221.041, 221.042, 221.043, 221.061,
10 221.071(a)(1), 221.071(a)(8), 221.074, and 221.075 if the
11 developer:

12 (1) permits the purchaser to cancel the purchase
13 contract before the sixth day after the date the contract is signed;
14 and

15 (2) provides the purchaser all timeshare disclosure
16 documents required by law to be provided in the jurisdiction in
17 which the timeshare property is located.

18 (c) The following communications are not advertisements
19 under this chapter:

20 (1) any stockholder communication, including an
21 annual report or interim financial report, proxy material,
22 registration statement, securities prospectus, timeshare
23 disclosure statement, or other material required to be delivered to
24 a prospective purchaser by a state or federal governmental entity;

25 (2) any oral or written statement disseminated by a
26 developer to broadcast or print media, excluding:

27 (A) paid advertising or promotional material

1 relating to plans for acquiring or developing timeshare property;
2 and

3 (B) the rebroadcast or other dissemination of any
4 oral statements by a developer to a prospective purchaser or the
5 distribution or other dissemination of written statements,
6 including newspaper or magazine articles or press releases, by a
7 developer to prospective purchasers;

8 (3) the offering of a timeshare interest in a national
9 publication or by electronic media that is not directed to or
10 targeted at any individual located in this state;

11 (4) any audio, written, or visual publication or
12 material relating to the availability of any accommodations for
13 transient rental if:

14 (A) a sales presentation is not a term or
15 condition of the availability of the accommodations; and

16 (B) the failure of the transient renter to take a
17 tour of the timeshare property or attend a sales presentation does
18 not result in a reduction in the level of services or an increase in
19 the rental price that would otherwise be available to the renter; or

20 (5) any follow-up communication with a person relating
21 to a promotion if the person previously received an advertisement
22 relating to the promotion that complied with Section 221.031.

23 (d) The following communications are exempt from this
24 chapter if they are delivered to a person who has previously
25 executed a contract for the purchase of or is an owner of a
26 timeshare interest in a timeshare plan:

27 (1) any communication addressed to and relating to the

1 account of the person; or

2 (2) any audio, written, or visual publication or
3 material relating to an exchange company or program if the person is
4 a member of that exchange company or program.

5 SECTION 8. Sections 221.041, 221.042, and 221.043, Property
6 Code, are amended to read as follows:

7 Sec. 221.041. PURCHASER'S RIGHT TO CANCEL. (a) A purchaser
8 may cancel a purchase contract [~~to purchase a timeshare interest~~]
9 before the sixth day after the date the purchaser signs and receives
10 a copy of the purchase contract or receives the required timeshare
11 disclosure statement, whichever is later [~~contract is signed~~].

12 (b) [~~If a purchaser does not receive a copy of the contract~~
13 ~~at the time the contract is signed, the purchaser may cancel the~~
14 ~~contract to purchase the timeshare interest before the sixth day~~
15 ~~after the date the contract is received by the purchaser.~~

16 [~~(c)~~] A purchaser may not waive the [~~his~~] right of
17 cancellation under this section. A contract containing a waiver is
18 voidable by the purchaser.

19 Sec. 221.042. NOTICE; REFUND. (a) If a purchaser elects to
20 cancel a purchase contract under Section 221.041 [~~201.041~~], the
21 purchaser [~~he~~] may do so by hand-delivering notice of cancellation
22 to the developer, [~~seller or~~] by mailing notice by prepaid United
23 States mail to the developer [~~seller~~] or to the developer's
24 [~~seller's~~] agent for service of process, or by providing notice by
25 overnight common carrier delivery service to the developer or the
26 developer's agent for service of process.

27 (b) Cancellation is without penalty, and all payments made

1 by the purchaser before cancellation must be refunded on or before
2 the 30th [~~21st~~] day after the date on which the developer [~~seller~~]
3 receives a timely notice of cancellation or on or before the fifth
4 day after the date the developer receives good funds from the
5 purchaser, whichever is later.

6 Sec. 221.043. CONTRACT REQUIREMENTS. (a) Each purchase
7 contract [~~Attached to each contract shall be a separate page~~
8 ~~identified as Exhibit A. Exhibit A shall be provided to each~~
9 ~~purchaser at the time the contract is signed and~~] shall contain the
10 following information. The statements required by this subsection
11 [~~Subdivisions (1)~~] and Subsection (c)(8) [~~(3)~~] shall be provided in
12 a conspicuous manner and in the exact language set forth in this
13 section with the developer's [~~seller's~~] name and address, the date
14 of the last day of the fiscal year, and the address of the managing
15 entity inserted where indicated:

16 [~~(1)~~] "PURCHASER'S RIGHT TO CANCEL.

17 "(A) BY SIGNING THIS CONTRACT YOU ARE INCURRING AN
18 OBLIGATION TO PURCHASE A TIMESHARE INTEREST. YOU MAY, HOWEVER,
19 CANCEL THIS CONTRACT WITHOUT PENALTY OR OBLIGATION BEFORE THE SIXTH
20 DAY AFTER THE DATE YOU SIGN AND RECEIVE A COPY OF THE PURCHASE
21 CONTRACT, OR RECEIVE THE REQUIRED TIMESHARE DISCLOSURE STATEMENT,
22 WHICHEVER IS LATER [~~THE CONTRACT. IF YOU DO NOT RECEIVE A COPY OF~~
23 ~~THE CONTRACT AT THE TIME THE CONTRACT IS SIGNED, YOU MAY CANCEL THIS~~
24 ~~CONTRACT WITHOUT PENALTY OR OBLIGATION BEFORE THE SIXTH DAY AFTER~~
25 ~~THE DATE YOU RECEIVE A COPY OF THE CONTRACT].~~

26 "(B) IF YOU DECIDE TO CANCEL THIS CONTRACT, YOU MAY DO SO BY
27 EITHER HAND-DELIVERING NOTICE OF CANCELLATION TO THE DEVELOPER,

1 ~~[SELLER OR]~~ BY MAILING NOTICE BY PREPAID UNITED STATES MAIL TO THE
2 DEVELOPER ~~[SELLER]~~ OR THE DEVELOPER'S ~~[SELLER'S]~~ AGENT FOR SERVICE
3 OF PROCESS, OR BY PROVIDING NOTICE BY OVERNIGHT COMMON CARRIER
4 DELIVERY SERVICE TO THE DEVELOPER OR THE DEVELOPER'S AGENT FOR
5 SERVICE OF PROCESS. YOUR NOTICE OF CANCELLATION IS EFFECTIVE ON THE
6 DATE SENT OR DELIVERED TO (INSERT NAME OF DEVELOPER ~~[SELLER]~~) AT
7 (INSERT ADDRESS OF DEVELOPER ~~[SELLER]~~). FOR YOUR PROTECTION, SHOULD
8 YOU DECIDE TO CANCEL YOU SHOULD EITHER SEND YOUR NOTICE OF
9 CANCELLATION BY CERTIFIED MAIL WITH A RETURN RECEIPT REQUESTED OR
10 OBTAIN A SIGNED AND DATED RECEIPT IF DELIVERING IT IN PERSON OR BY
11 OVERNIGHT COMMON CARRIER.

12 "(C) A PURCHASER SHOULD NOT RELY ON STATEMENTS OTHER THAN
13 THOSE INCLUDED IN THIS CONTRACT AND THE DISCLOSURE STATEMENT."

14 ~~[(2) A statement disclosing the amount of the timeshare~~
15 ~~fees, on a monthly or annual basis, which are being assessed~~
16 ~~currently against or collected from the owners of a timeshare~~
17 ~~interest. Immediately following the timeshare fee disclosure~~
18 ~~statement shall be a statement that the timeshare fees collected by~~
19 ~~the managing entity may be used to pay for the administrative and~~
20 ~~operating expenses of the property; and~~

21 ~~[(3) "AS A TIMESHARE OWNER YOU HAVE A RIGHT TO REQUEST A~~
22 ~~WRITTEN ANNUAL TIMESHARE FEE AND EXPENSE STATEMENT. THIS STATEMENT~~
23 ~~IS PREPARED ANNUALLY BY THE MANAGING ENTITY AND WILL BE AVAILABLE NO~~
24 ~~LATER THAN THE 90TH DAY FOLLOWING (INSERT THE DATE OF THE LAST DAY~~
25 ~~OF THE FISCAL YEAR). YOU MAY REQUEST THE STATEMENT BY WRITING TO~~
26 ~~(INSERT ADDRESS OF THE MANAGING ENTITY)."]~~

27 (b) Immediately following the required statements in

1 Subsection (a) [~~on Exhibit A~~] shall be a space reserved for the
2 signature of the purchaser. [~~The seller shall obtain the~~
3 ~~purchaser's signature on Exhibit A at the time the contract is~~
4 ~~signed.~~]

5 (c) The purchase contract must also include the following:

6 (1) the name and address of the developer [~~seller~~] and
7 the address of the timeshare property or the address of any
8 available timeshare interest being offered [~~unit~~];

9 (2) an agreement describing the cancellation policy
10 prescribed by Section 221.041 [~~whether the purchaser visited the~~
11 ~~location of the timeshare unit before signing the contract~~];

12 (3) [~~an agreement by the seller that if the purchaser~~
13 ~~timely exercises the right of cancellation under the contract, all~~
14 ~~payments made by the purchaser to the seller in connection with the~~
15 ~~contract shall be returned to such purchaser before the 21st day~~
16 ~~after the seller receives notice of cancellation~~;

17 [~~(4)~~] the name of the person or persons primarily
18 [~~actively~~] involved in the sales presentation on behalf of the
19 developer [~~seller~~];

20 (4) a statement disclosing the amount of the periodic
21 assessments currently assessed against or collected from the
22 purchasers of the timeshare interest, immediately followed by a
23 statement providing that collected assessments will be used by the
24 managing entity to pay for expenditures, charges, reserves, or
25 liabilities relating to the operation of the timeshare plan or
26 timeshare properties managed by the managing entity;

27 (5) a statement disclosing [~~warranty~~] that the

1 timeshare common properties are not mortgaged, unless the mortgage
2 contains a nondisturbance clause which fully protects the use and
3 enjoyment rights of each timeshare owner in the event of
4 foreclosure; ~~and~~

5 (6) in the event such timeshare interests are sold
6 under a lease, right to use, or membership agreement where free and
7 clear title to the accommodation [~~timeshare unit~~] is not passed to
8 the purchaser [~~buyer~~], then the purchase contract must contain a
9 statement [~~warranty~~] that the timeshare is free and clear; or if
10 subject to a mortgage, the mortgage must contain a nondisturbance
11 clause which fully protects the use and enjoyment rights of each
12 timeshare owner in the event of foreclosure;

13 (7) the date the purchaser signs the contract; and

14 (8) the following statement:

15 "AS A TIMESHARE OWNER, YOU HAVE A RIGHT TO REQUEST A WRITTEN
16 ANNUAL TIMESHARE FEE AND EXPENSE STATEMENT. THIS STATEMENT IS
17 PREPARED ANNUALLY BY THE MANAGING ENTITY AND WILL BE AVAILABLE NOT
18 LATER THAN FIVE MONTHS AFTER (INSERT THE DATE OF THE LAST DAY OF THE
19 FISCAL YEAR). YOU MAY REQUEST THE STATEMENT BY WRITING TO (INSERT
20 NAME AND ADDRESS OF THE MANAGING ENTITY)."

21 (d) The information required to be provided by this section
22 may be provided in the purchase contract or in an exhibit to the
23 purchase contract, or it may be provided in part in both if all of
24 the information is provided.

25 SECTION 9. Section 221.052, Property Code, is amended to
26 read as follows:

27 Sec. 221.052. LIABILITY OF DEVELOPER. A developer does not

1 incur any liability arising out of the use, delivery, or
2 publication [~~by the developer~~] to a [the] purchaser of written
3 information or audio-visual materials provided to it by the
4 exchange company in accordance with Subchapter D, unless [~~—A~~
5 ~~developer is subject to liability arising out of the use, delivery,~~
6 ~~or publication to the purchaser of materials provided by the~~
7 ~~exchange company if~~] the developer knows or has reason to know that
8 the materials are inaccurate or false.

9 SECTION 10. Subchapter G, Chapter 221, Property Code, is
10 amended by amending Sections 221.061, 221.062, and 221.063 and
11 adding Section 221.064 to read as follows:

12 Sec. 221.061. ESCROW OR TRUST ACCOUNT REQUIRED. (a) A
13 [~~The~~] developer or escrow agent of a timeshare plan [~~other person~~
14 ~~acting on its behalf~~] shall deposit in [~~establish~~] an escrow or
15 trust account in a federally insured depository 100 percent of all
16 funds received during the purchaser's cancellation period [~~with an~~
17 ~~escrow agent for the purpose of protecting deposits made by~~
18 ~~purchasers in connection with proposed dispositions of timeshare~~
19 ~~interests~~].

20 (b) An escrow agent owes the purchaser a fiduciary duty.

21 (c) The escrow agent and the developer shall execute an
22 agreement that includes a statement providing that:

23 (1) funds may be disbursed to the developer from the
24 escrow or trust account by the agent only:

25 (A) after the purchaser's cancellation period
26 has expired; and

27 (B) as provided by the purchase contract, subject

1 to this subchapter; and

2 (2) if the purchaser cancels the purchase contract as
3 provided by the contract, the funds must be paid to:

4 (A) the purchaser; or

5 (B) the developer if the purchaser's funds have
6 been refunded previously by the developer.

7 (d) If a developer contracts to sell a timeshare interest
8 and the construction of the building in which the timeshare
9 interest is located has not been completed when the cancellation
10 period expires, the developer shall continue to maintain all funds
11 received from the purchaser under the purchase agreement in the
12 escrow or trust account until construction of the building is
13 completed. The documentation required for evidence of completion
14 of construction includes:

15 (1) a certificate of occupancy;

16 (2) a certificate of substantial completion;

17 (3) evidence of a public safety inspection equivalent
18 to Subdivision (1) or (2) from a governmental agency in the
19 applicable jurisdiction; or

20 (4) any other evidence acceptable to the commission.

21 Sec. 221.062. [~~ESCROW AMOUNT. Fifty percent of any deposit~~
22 ~~obtained from a purchaser shall be placed in the escrow account.~~

23 [~~Sec. 221.063.~~] RELEASE OF ESCROW. (a) The funds or
24 property constituting the escrow or trust deposit may be released
25 from escrow only in accordance with this section.

26 (b) If the purchaser cancels the purchase contract as
27 provided by the contract, the funds shall be paid to:

1 (1) the purchaser; or

2 (2) the developer if the purchaser's funds have been
3 refunded previously by the developer.

4 (c) If the purchaser defaults in the performance of
5 obligations under the terms of the purchase [a] contract [to
6 purchase a timeshare interest], the funds shall be paid to the
7 developer [or other person legally entitled to the escrow deposit
8 shall file an application with the escrow agent requesting release
9 of the applicable amount. The application for release of the escrow
10 deposit must be verified and must include:

11 ~~[(1) a concise statement by the applicant that the~~
12 ~~purchaser has materially defaulted in the performance of~~
13 ~~obligations under the terms of a contract to purchase a timeshare~~
14 ~~interest and that the applicant and the developer have complied~~
15 ~~with all terms and obligations of that contract;~~

16 ~~[(2) a complete explanation of the nature of the~~
17 ~~purchaser's material default under the contract and of the date of~~
18 ~~its occurrence;~~

19 ~~[(3) a statement that pursuant to the terms of the~~
20 ~~purchase contract the applicant is entitled to the escrow deposit;~~

21 ~~[(4) a statement that the developer has no knowledge~~
22 ~~of a dispute between the purchaser and developer and a statement~~
23 ~~that the purchaser has not, to the applicant's knowledge, made a~~
24 ~~demand for the return of the deposit; and~~

25 ~~[(5) a statement that the purchaser has not exercised~~
26 ~~a right of cancellation under Subchapter E].~~

27 (d) If the developer defaults in the performance of

1 obligations under the purchase contract, the funds shall be paid to
2 the purchaser.

3 (e) If the funds of the purchaser have not been disbursed
4 previously as provided by Subsections (a)-(d), the funds may be
5 disbursed to the developer by the escrow or trust agent if
6 acceptable evidence of completion of construction is provided.

7 (f) If there is a dispute relating to the funds in the escrow
8 or trust account, the agent shall maintain the funds in the account
9 until:

10 (1) the agent receives written directions agreed to
11 and signed by all parties; or

12 (2) a civil action relating to the disputed funds is
13 filed.

14 (g) If a civil action is filed under Subsection (f)(2), the
15 escrow or trust account agent shall deposit the funds with the court
16 in which the action is filed.

17 Sec. 221.063. ALTERNATIVE TO ESCROW OR TRUST ACCOUNT:
18 FINANCIAL ASSURANCE. (a) Instead of the deposit of funds in an
19 escrow or trust account as provided by Section 221.061, the
20 commission may accept from the developer a surety bond, irrevocable
21 letter of credit, or other form of financial assurance, including
22 financial assurance posted in another state or jurisdiction.

23 (b) The amount of the financial assurance provided under
24 this section must be an amount equal to or more than the amount of
25 funds that would otherwise be placed in an escrow or trust account
26 under Section 221.061(a).

27 (c) The amount of the financial assurance provided under

1 this section for timeshare property under construction as provided
2 by Section 221.061(d) must be the lesser of:

3 (1) an amount equal to or more than the amount of funds
4 that would otherwise be placed in an escrow or trust account under
5 that subsection; or

6 (2) the amount necessary to assure completion of the
7 building in which the timeshare interest is located.

8 Sec. 221.064. DOCUMENTATION REQUIRED. The escrow or trust
9 account agent or developer shall make documents related to the
10 escrow or trust account or the financial assurance provided
11 available to the commission at the commission's request.

12 ~~[(c) Notwithstanding the other provisions of this section,~~
13 ~~the escrow agent may release the escrow deposit to the applicant on~~
14 ~~presentation to the escrow agent of:~~

15 ~~[(1) an affidavit by the developer that the timeshare~~
16 ~~unit is substantially complete and that no applicable right of~~
17 ~~cancellation of the contract has been exercised by the purchaser;~~

18 ~~[(2) if funds were placed in the escrow account in~~
19 ~~connection with the proposed disposition of a timeshare estate, a~~
20 ~~true and correct copy of the instrument transferring ownership of~~
21 ~~the timeshare estate to the purchaser free and clear of all liens~~
22 ~~and encumbrances, except for any encumbrance created by purchaser~~
23 ~~financing; and~~

24 ~~[(3) if funds were placed in the escrow account in~~
25 ~~connection with the proposed disposition of a timeshare use, a true~~
26 ~~and correct copy of a properly executed and recorded nondisturbance~~
27 ~~agreement executed by the developer and all holders of a lien~~

1 ~~recorded against the timeshare property and providing that~~
2 ~~subsequent owners or foreclosing holders of a lien shall take title~~
3 ~~to the timeshare property subject to the rights of prior purchasers~~
4 ~~under their contracts of sale.~~

5 ~~[(d) A deposit may not be released from escrow until the~~
6 ~~escrow agent has provided the purchaser written notice of intent to~~
7 ~~release the escrow at least 14 days before the release.]~~

8 SECTION 11. Section 221.071, Property Code, is amended by
9 amending Subsection (a) and adding Subsection (c) to read as
10 follows:

11 (a) A developer [~~seller~~] or other person commits a false,
12 misleading, or deceptive act or practice within the meaning of
13 Subsections (a) and (b) of Section 17.46 of the Texas Deceptive
14 Trade Practices-Consumer Protection Act (Article 17.46 et seq.,
15 Business & Commerce Code), by engaging in any of the following acts:

16 (1) failing to disclose information concerning a
17 timeshare interest required by Subchapter D;

18 (2) making false or misleading statements of fact
19 concerning the characteristics of accommodations or amenities
20 available to a consumer;

21 (3) predicting specific or immediate increases in the
22 value of a timeshare interest without a reasonable basis for such
23 predictions;

24 (4) making false or misleading statements of fact
25 concerning the duration that accommodations or amenities will be
26 available to a consumer;

27 (5) making false or misleading statements of fact

1 concerning the conditions under which a purchaser of a timeshare
2 interest may exchange the right to occupy a unit for the right to
3 occupy a unit in the same or another timeshare property;

4 (6) representing that a prize, gift, or other benefit
5 will be awarded in connection with a promotion with the intent not
6 to award that prize, gift, or benefit in the manner represented;

7 (7) failing to provide a copy of the purchase contract
8 to the purchaser at the time the contract is signed by the
9 purchaser [~~, unless the purchaser requests in writing that the~~
10 ~~contract be mailed, and the contract is mailed to the purchaser~~
11 ~~before the end of the next business day]; or~~

12 (8) failing to provide the annual [~~timeshare fee and~~
13 ~~expense~~] statement as required by Section 221.074(a) [~~221.074; or~~

14 [~~(9) furnishing false information in the annual~~
15 ~~timeshare fee and expense statement as required by Section~~
16 ~~221.074)].~~

17 (c) If a developer has substantially complied with this
18 chapter in good faith, a nonmaterial error or omission is not
19 actionable. Any nonmaterial error or omission is not sufficient to
20 permit a purchaser to cancel a purchase contract after the period
21 provided for cancellation expires under this chapter.

22 SECTION 12. Section 221.072, Property Code, is amended to
23 read as follows:

24 Sec. 221.072. INSURANCE. Before the disposition of any
25 timeshare interest, the developer or managing entity shall maintain
26 the following insurance with respect to the timeshare property:

27 (1) property insurance on the timeshare property and

1 any personal property for use by purchasers, other than personal
2 property separately owned by a purchaser, insuring against all
3 risks of direct physical loss commonly insured against, in a total
4 amount, after application of deductibles, of the full replacement
5 cost of the accommodations and amenities of the timeshare property;
6 and

7 (2) liability insurance covering all occurrences
8 commonly insured against for death, bodily injury, and property
9 damage arising out of or in connection with the use, ownership, and
10 maintenance of the timeshare property.

11 SECTION 13. Sections 221.073(a) and (b), Property Code, are
12 amended to read as follows:

13 (a) A developer [~~or seller~~] subject to this chapter commits
14 an offense if the developer [~~or seller~~] offers or disposes of a
15 timeshare interest in a timeshare property which has not been
16 registered with the commission.

17 (b) It is not a violation of this section for a developer [~~or~~
18 ~~seller~~] subject to [~~the provisions of~~] this chapter [~~Act~~] to accept
19 reservations and deposits from prospective purchasers in
20 accordance with Section 221.021(b) or (d) [~~the provisions of~~
21 ~~Subsection (b) of Section 221.021 of this Act~~].

22 SECTION 14. Section 221.074, Property Code, is amended to
23 read as follows:

24 Sec. 221.074. ANNUAL TIMESHARE FEE AND EXPENSE STATEMENT.

25 (a) Notwithstanding any contrary [~~a~~] provision of the required
26 timeshare [~~promotional~~] disclosure statement, project instrument,
27 timeshare instrument, or bylaws adopted pursuant to a timeshare

1 instrument, the managing entity shall make a written annual
2 accounting of the operation of the timeshare properties managed by
3 the managing entity to each purchaser who requests an accounting
4 not later than five months [~~the 60th day~~] after the last day of each
5 fiscal year [~~the managing entity shall make available to each owner~~
6 ~~a written annual accounting of the operation of the timeshare~~
7 ~~property or timeshare system~~]. The statement shall fairly and
8 accurately represent the collection and expenditure of assessments
9 and include:

10 (1) a balance sheet;

11 (2) an income and expense statement [~~which complies~~
12 ~~with generally accepted accounting principles and reflects the~~
13 ~~collection and expenditure of timeshare fees~~];

14 (3) the current operating budget for the timeshare
15 property, timeshare properties managed by the same managing entity,
16 or multisite timeshare plan [~~system~~] required by Section
17 221.032(b)(7) [~~221.032(b)(6)~~]; and

18 (4) [~~an accounting identifying any unfunded reserves~~
19 ~~for capital improvements and maintenance and upkeep of the~~
20 ~~timeshare property, and~~

21 [~~(5) the name and address of each member of the board~~
22 ~~of directors of the council of purchasers or the owners'~~
23 ~~association, if one exists, and~~] the name, address, and telephone
24 number of a designated representative of the managing entity.

25 (b) On the request of an owner, the [~~The~~] managing entity of
26 the timeshare plan shall provide the owner with the name and address
27 of each member of the board of directors of the owners' association,

1 if one exists [~~make the fee statement available to owners of record~~
2 ~~of a timeshare interest as of the last day of the fiscal year as~~
3 ~~reflected in the managing entity's records~~].

4 (c) A developer or managing entity shall have an annual
5 independent audit of the financial statements of the timeshare plan
6 or timeshare properties managed by the managing entity performed by
7 a certified public accountant or an accounting firm. The audit must
8 be:

9 (1) conducted in accordance with generally accepted
10 auditing standards as prescribed by the American Institute of
11 Certified Public Accountants, the Governmental Accounting
12 Standards Board, the United States General Accounting Office, or
13 other professionally recognized entities that prescribe auditing
14 standards; and

15 (2) completed not later than five months after the
16 last day of the fiscal year of the timeshare plan or timeshare
17 property [~~The statement shall be delivered in person or by mail to~~
18 ~~each person on the board of directors of the council of purchasers~~
19 ~~or the owners' association, if one exists~~].

20 (d) Knowingly furnishing false information in the annual
21 timeshare fee and expense statement is a violation of the Deceptive
22 Trade Practices-Consumer Protection Act (Section 17.41 et seq.,
23 Business & Commerce Code).

24 (e) The managing entity of any accommodation located in this
25 state shall post prominently in the registration area of the
26 accommodations [~~each timeshare property~~] the following notice,
27 with the date of the last day of the current fiscal year and the

1 address of the managing entity inserted where indicated:

2 "AS A TIMESHARE OWNER YOU HAVE A RIGHT TO REQUEST A WRITTEN
3 ANNUAL TIMESHARE FEE AND EXPENSE STATEMENT. THIS STATEMENT IS
4 PREPARED ANNUALLY BY THE MANAGING ENTITY AND WILL BE AVAILABLE NO
5 LATER THAN FIVE MONTHS [~~THE 90TH DAY~~] FOLLOWING (INSERT THE DATE OF
6 THE LAST DAY OF THE CURRENT FISCAL YEAR). YOU MAY REQUEST THE
7 STATEMENT, BY WRITING TO (INSERT ADDRESS OF THE MANAGING ENTITY)."

8 [~~(e) If a request for the statement is received by the
9 managing entity prior to the date by which the statement is
10 available, the statement shall be provided no later than one week
11 after the date the statement becomes available. If a request for
12 the statement is received by the managing entity after the date the
13 statement becomes available, the statement shall be provided no
14 later than two weeks after the date the request is received by the
15 managing entity. For the purposes of this section, the statement
16 shall be deemed provided if it is deposited in the mail, properly
17 addressed, with postage prepaid.~~]

18 [~~(f) A managing entity shall provide a separate annual
19 timeshare fee and expense statement for each timeshare property
20 unless the property is part of a timeshare system. A managing
21 entity may provide a consolidated statement for all timeshare
22 properties comprising a timeshare system.]~~]

23 SECTION 15. Sections 221.075(a) and (d), Property Code, are
24 amended to read as follows:

25 (a) On receipt of a written request filed with the
26 commission by a managing entity before the date on which the
27 statement required by Section 221.074 must be made available, the

1 commission for good cause shown may grant the managing entity an
2 extension of no more than 30 days in which to provide the statement.

3 (d) A managing entity may not assess against or collect from
4 the purchasers [~~owners~~] of a timeshare property the amount of a
5 penalty incurred under this section.

6 SECTION 16. Sections 221.076 and 221.077, Property Code,
7 are amended to read as follows:

8 Sec. 221.076. MANAGING ENTITIES THAT MANAGE MORE THAN ONE
9 TIMESHARE [~~SYSTEM OR~~] PROPERTY. (a) A managing entity that manages
10 two or more single-site timeshare plans [~~properties which are not~~
11 ~~participants of the same timeshare system~~] may [~~not~~] commingle the
12 assessments [~~timeshare fees~~] collected from purchasers [~~owners~~] of
13 one timeshare plan [~~property~~] with the assessments [~~timeshare fees~~]
14 collected from purchasers [~~owners~~] of any other single-site plan
15 for which it is the managing entity only if the practice is
16 disclosed in the timeshare disclosure statement for each timeshare
17 property and the appropriate statement is included in the
18 declaration for each timeshare property as required by Subchapter
19 B.

20 (b) [~~A managing entity that manages two or more timeshare~~
21 ~~systems may not commingle the timeshare fees collected from owners~~
22 ~~participating in one timeshare system with the timeshare fees~~
23 ~~collected from owners participating in any other timeshare system.~~

24 [~~(c)~~] A managing entity which manages a multisite timeshare
25 plan [~~system~~] may deposit assessments [~~timeshare fees~~] collected
26 from purchasers [~~owners~~] of one timeshare property into a common
27 account with assessments [~~timeshare fees~~] collected from

1 purchasers [~~owners~~] of other timeshare properties participating in
2 the same multisite timeshare plan [~~system~~] only if the practice is
3 disclosed in the timeshare disclosure statement for each timeshare
4 property in the multisite timeshare plan [~~system~~] and the
5 appropriate statement is included in the declaration for each
6 timeshare plan [~~regime~~] as required by Subchapter B.

7 (c) Nothing in this section shall be construed to allow a
8 managing entity to commingle assessments [~~the timeshare fees~~] of a
9 multisite timeshare plan with the assessments of a separate
10 multisite timeshare plan or a timeshare plan that is not a part of
11 the multisite timeshare plan [~~+~~

12 [~~(1) separate timeshare systems,~~

13 [~~(2) separate timeshare properties which are not part~~
14 ~~of a timeshare system; or~~

15 [~~(3) a timeshare system with the timeshare fees of a~~
16 ~~separate timeshare property which is not a participant in the~~
17 ~~timeshare system].~~

18 Sec. 221.077. AVAILABILITY OF BOOKS AND RECORDS; RECORDS
19 RETENTION. (a) A developer or managing entity, on written request
20 of an owner, shall make available for examination at its registered
21 office or principal place of business and at any reasonable time or
22 times the relevant books and records relating to the collection and
23 expenditure of assessments [~~timeshare fees~~].

24 (b) A developer or managing entity shall maintain in its
25 records a copy of each purchase contract for an accommodation sold
26 by the developer for a timeshare period unless the contract has been
27 canceled. If a sale of the timeshare estate is pending, the

1 developer shall retain a copy of the contract until a deed of
2 conveyance, agreement for deed, or lease is recorded in the real
3 property records of the county in which the timeshare property is
4 located.

5 SECTION 17. This Act takes effect January 1, 2004, and
6 applies to a developer who offers or disposes of an interest in a
7 timeshare plan and a managing entity that manages a timeshare
8 property under Chapter 221, Property Code, as amended by this Act,
9 on or after that date.

10 SECTION 18. If a timeshare property is registered with the
11 Texas Real Estate Commission before January 1, 2004, the
12 registration expires 24 months after the last anniversary of the
13 date the property was registered, and a developer may renew the
14 registration as provided by Section 221.026, Property Code, as
15 added by this Act.