

Amend CSHB 7 by adding the following appropriately numbered article to read as follows and renumbering the remaining articles appropriately:

ARTICLE ____ . AMENDMENTS TO TEXAS TIMESHARE ACT

SECTION __. 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 telephone; or

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

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

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

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

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

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

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

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

(A) any person, excluding a sales agent, who creates a timeshare plan or is in the business of selling timeshare interests or employs a sales agent to sell timeshare interests; or

(B) any person who succeeds in the developer's interest by sale, lease, assignment, mortgage, or other transfer if the person:

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

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

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

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

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

(12) [~~(10)~~] "Exchange disclosure statement" means a

written statement that includes the information required by Section 221.033 [~~201.033~~].

(13) [(11)] "Exchange program" means any method, arrangement, or procedure for the voluntary exchange of [program under which the owner of] a timeshare interest or other [may exchange a timeshare period for another timeshare period in the same or a different timeshare] property interest among purchasers or owners, but does not include an assignment of a right to use and occupy an accommodation or facility granted to a purchaser or owner of a timeshare interest in a single-site timeshare plan [a one-time exchange of timeshare periods in the same timeshare property if offered to a purchaser by a developer after that purchaser's disposition].

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

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

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

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

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

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

[(14)] "Offering" or "offer" means any advertisement,

inducement, or solicitation and includes any attempt to encourage a person to purchase a timeshare interest other than as a security for an obligation.

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

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

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

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

(21) "Reservation system" means the method, arrangement, or procedure by which a purchaser, in order to reserve the use and occupancy of an accommodation of a multisite timeshare plan for one or more timeshare periods, is required to compete with other purchasers in the same multisite timeshare plan, regardless of whether the reservation system is operated and maintained by the multisite timeshare plan, a managing entity, an exchange company, or any other person. If a purchaser is required to use an exchange program as the purchaser's principal means of obtaining the right to use and occupy the accommodations and facilities of the plan, the arrangement is considered a reservation system. If the exchange company uses a mechanism to exchange timeshare periods among members of the exchange program, the use of the mechanism is not considered a reservation system of the multisite timeshare plan.

~~[(19)] "Seller" means any person, including a developer, who in the ordinary course of business offers a~~

~~timeshare interest for sale to the public, but does not include a person who acquires a timeshare interest for his use and subsequently offers it for resale.~~

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

~~[(21) "Timeshare estate" means any arrangement under which the purchaser receives a freehold estate or an estate for years in a timeshare property and the right to use an accommodation or amenities, or both, in that property for a timeshare period on a recurring basis.]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(30) [~~"Timeshare unit" means any accommodation that is divided into timeshare periods.~~

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

timeshare property.

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

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

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

~~[(A) managed by the same managing entity; and~~

~~[(B) subject to a written arrangement or agreement whereby an owner of a timeshare interest in any one of the timeshare properties may use a timeshare unit and the amenities of any of the other timeshare properties as provided in the project instruments.]~~

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

(d) A timeshare property subject to this chapter is not subject to Chapter 209 unless an individual timeshare owner continuously occupies a single timeshare property as the owner's primary residence 12 months of the year.

SECTION _____. Section 221.011, Property Code, as amended by Chapter 1276 (House Bill 3507), Acts of the 78th Legislature, Regular Session, 2003, and Sections 221.012, 221.013, and 221.014, Property Code, are amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

interest may be recorded.

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

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

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

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

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

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

(c) A developer or any person [~~anyone~~] acting on the developer's [~~his~~] behalf may not offer or dispose of [~~or encumber~~] a timeshare interest during any period within which there is in effect an order by the commission or by any court of competent jurisdiction revoking or suspending the registration of the timeshare plan [~~property~~] of which such timeshare interest is a part.

(d) At the developer's request, the commission may authorize the developer to conduct presales before a timeshare plan is registered if the registration application is administratively complete, as determined by the commission or as established by commission rule. The authorization for presales permits the developer to offer and dispose of timeshare interests during the

period the application is in process. To obtain a presales authorization, the developer must:

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

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

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

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

(1) provide to each purchaser and prospective purchaser a copy of the proposed timeshare disclosure statement that the developer submitted to the commission with the initial registration application; and

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

(f) The developer must:

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

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

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

Sec. 221.022. APPLICATION FOR REGISTRATION. (a) An application for registration filed under this section must include

a timeshare disclosure statement and any required exchange disclosure statement required by Section 221.033, recorded [201.033, certified] copies of all timeshare instruments, and other information as may be required by the commission. If the timeshare property is a newly developed property, recorded copies of the timeshare instruments must be provided promptly after recorded copies are available from the entity with which the instruments are recorded. If existing or proposed accommodations are in a condominium, an applicant who complies with this section is not required to prepare or deliver a condominium information statement or a resale certificate as described by Chapter 82.

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

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

(d) A developer of a timeshare plan with any accommodation located in this state may not file an abbreviated application unless the developer is a successor in interest after a merger or acquisition and the previous developer registered the timeshare plan in this state preceding the merger or acquisition.

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

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

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

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

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

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

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

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

(8) if the plan is a multisite timeshare plan, a declaration stating whether the plan consists of specific timeshare interests or nonspecific timeshare interests;

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

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

(11) the appropriate filing fee; and

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

(f) A foreign jurisdiction providing evidence of registration as provided by Subsection (e)(6) must have

registration and disclosure requirements that are substantially similar to or stricter than the requirements of this chapter.

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

Sec. 221.023. AMENDMENT OF REGISTRATION. The developer shall ~~[or managing entity shall promptly]~~ file amendments to the registration reporting to the commission any materially ~~[material and]~~ adverse change in any document contained in the registration not later than the 30th day after the date the developer knows or reasonably should know of the change. The developer may continue to offer and dispose of timeshare interests under the existing registration pending review of the amendments by the commission if the materially adverse change is disclosed to prospective purchasers.

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

(b) The commission may:

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

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

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

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

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

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

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

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

(2) by trial de novo.

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

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

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

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

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

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

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

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

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

Sec. 221.031. ADVERTISEMENTS AND PROMOTIONS [~~PROMOTIONAL DISCLOSURE STATEMENT~~]. (a) At any time, the commission may request a developer to file for review by the commission any advertisement used in this state by the developer in connection with offering a timeshare interest. The developer shall provide the advertisement not later than the 15th day after the date the commission makes the request. If the commission determines that the advertisement violates this chapter or Chapter 40, Business & Commerce Code, the commission shall notify the developer in writing, stating the specific grounds for the commission's determination not later than the 15th day after the date the commission makes its determination. The commission may grant the developer provisional approval for the advertisement if the developer agrees to correct the deficiencies identified by the commission. A developer, on its own initiative, may submit any proposed advertisement to the commission for review and approval by the commission.

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

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

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

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

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

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

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

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

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

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

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

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

(b) The timeshare disclosure statement must include:

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

(A) the developer;

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

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

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

(3) a description of any existing or proposed amenities of the timeshare plan and, if the amenities are proposed or incomplete, a schedule for commencement, completion, and availability of the amenities [~~the timeshare interests currently available for disposition and, if applicable, the types and number of units available~~];

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

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

(A) the declaration;
(B) the association articles of incorporation;
(C) the association bylaws;
(D) the association rules; and
(E) any lease or contract, excluding the purchase contract and other loan documents required to be signed by the purchaser at closing;

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

(7) the current annual [~~(6) a complete~~] budget, if available, or the projected annual budget for the timeshare plan or timeshare properties managed by the same managing entity [~~for the operation of the timeshare property for a period of one year after the first disposition of a timeshare interest in the property, and thereafter, the current operating budget~~], which [~~operating budget~~] must include:

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

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

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

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

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

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

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

(9) ~~[(8)]~~ a description of any lien, defect, or encumbrance on or affecting title to the timeshare interest and, if applicable, a copy of each written warranty provided by the developer ~~[service that the developer or person acting on his behalf provides or expense that is paid that reasonably may be expected to become a timeshare liability, and the projected timeshare liability attributable to that service or expense];~~

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

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

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

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

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

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

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

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

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

(17) [~~(18)~~] if applicable, a statement that the assessments [~~timeshare property is part of a timeshare system and that timeshare fees~~] collected from the purchasers [~~owners~~] may be placed in a common account with the assessments [~~timeshare fees~~] collected from the purchasers [~~owners~~] of other timeshare properties managed by the same managing entity [~~participating in the timeshare system~~]; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) A developer who offers a multisite timeshare plan may include any other information in the timeshare disclosure statement on approval by the commission.

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

(g) If a timeshare plan is located wholly outside this state, the commission may permit the developer to submit a timeshare disclosure statement the developer is currently providing purchasers or an equivalent timeshare disclosure statement filed for the timeshare plan in another state if the

current statement or the equivalent statement substantially complies with the requirements of this subchapter. This subsection does not exempt the developer from other requirements of this chapter.

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

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

SECTION _____. Section 221.034, Property Code, is amended to read as follows:

Sec. 221.034. EXEMPT OFFERINGS AND DISPOSITIONS; COMMUNICATIONS [~~WHEN DISCLOSURE NOT REQUIRED~~]. (a) An offering or disposition is exempt from this chapter if it is [~~A disclosure statement need not be delivered in the case of~~]:

- (1) a gratuitous offering or disposition of a timeshare interest;
- (2) a disposition pursuant to a court order;
- (3) a disposition by a governmental agency;

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

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

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

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

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

(9) the offering or redispotion of a timeshare interest by a purchaser who acquired the interest for the purchaser's [his] personal use; or

(10) the offering or disposition of a rental of an accommodation for a period of three years or less.

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

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

(2) provides the purchaser all timeshare disclosure documents required by law to be provided in the jurisdiction in

which the timeshare property is located.

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

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

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

(A) paid advertising or promotional material relating to plans for acquiring or developing timeshare property; and

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

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

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

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

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

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

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

(1) any communication addressed to and relating to the account of the person; or

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

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

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

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

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

Sec. 221.042. NOTICE; REFUND. (a) If a purchaser elects to cancel a purchase contract under Section 221.041 [~~201.041~~], the purchaser [~~he~~] may do so by hand-delivering notice of cancellation to the developer, [~~seller or~~] by mailing notice by prepaid United States mail to the developer [~~seller~~] or to the developer's

[seller's] agent for service of process, or by providing notice by overnight common carrier delivery service to the developer or the developer's agent for service of process.

(b) Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded on or before the 30th [21st] day after the date on which the developer [seller] receives a timely notice of cancellation or on or before the fifth day after the date the developer receives good funds from the purchaser, whichever is later.

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

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

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

"(B) IF YOU DECIDE TO CANCEL THIS CONTRACT, YOU MAY DO SO BY EITHER HAND-DELIVERING NOTICE OF CANCELLATION TO THE DEVELOPER, [~~SELLER OR~~] BY MAILING NOTICE BY PREPAID UNITED STATES MAIL TO THE DEVELOPER [~~SELLER~~] OR THE DEVELOPER'S [~~SELLER'S~~] AGENT FOR SERVICE OF PROCESS, OR BY PROVIDING NOTICE BY OVERNIGHT COMMON CARRIER DELIVERY SERVICE TO THE DEVELOPER OR THE DEVELOPER'S AGENT FOR SERVICE OF PROCESS. YOUR NOTICE OF CANCELLATION IS EFFECTIVE ON THE DATE SENT OR DELIVERED TO (INSERT NAME OF DEVELOPER [~~SELLER~~]) AT

(INSERT ADDRESS OF DEVELOPER [~~SELLER~~]). FOR YOUR PROTECTION, SHOULD YOU DECIDE TO CANCEL YOU SHOULD EITHER SEND YOUR NOTICE OF CANCELLATION BY CERTIFIED MAIL WITH A RETURN RECEIPT REQUESTED OR OBTAIN A SIGNED AND DATED RECEIPT IF DELIVERING IT IN PERSON OR BY OVERNIGHT COMMON CARRIER.

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

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

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

(b) Immediately following the required statements in Subsection (a) [~~on Exhibit A~~] shall be a space reserved for the signature of the purchaser. [~~The seller shall obtain the purchaser's signature on Exhibit A at the time the contract is signed.~~]

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

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

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

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

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

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

(5) a statement disclosing ~~[warranty]~~ that the
timeshare common properties are not mortgaged, unless the mortgage
contains a nondisturbance clause which fully protects the use and
enjoyment rights of each timeshare owner in the event of
foreclosure; ~~[and]~~

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

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

(8) the following statement:

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

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

SECTION _____. Section 221.052, Property Code, is amended to
read as follows:

Sec. 221.052. LIABILITY OF DEVELOPER. A developer does not incur any liability arising out of the use, delivery, or publication [~~by the developer~~] to a a [~~the~~] purchaser of written information or audio-visual materials provided to it by the exchange company in accordance with Subchapter D, unless [~~—A developer is subject~~]

~~to liability arising out of the use, delivery, or publication to the purchaser of materials provided by the exchange company if] the developer knows or has reason to know that the materials are inaccurate or false.~~

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

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

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

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

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

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

(B) as provided by the purchase contract, subject to this subchapter; and

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

(A) the purchaser; or

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

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

(1) a certificate of occupancy;
(2) a certificate of substantial completion;
(3) evidence of a public safety inspection equivalent to Subdivision (1) or (2) from a governmental agency in the applicable jurisdiction; or

(4) any other evidence acceptable to the commission.

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

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

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

(1) the purchaser; or

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

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

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

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

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

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

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

(d) If the developer defaults in the performance of obligations under the purchase contract, the funds shall be paid to the purchaser.

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

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

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

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

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

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

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

(c) The amount of the financial assurance provided under this section for timeshare property under construction as provided by Section 221.061(d) must be the lesser of:

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

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

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

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

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

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

~~[(3) if funds were placed in the escrow account in connection with the proposed disposition of a timeshare use, a true and correct copy of a properly executed and recorded nondisturbance agreement executed by the developer and all holders of a lien recorded against the timeshare property and providing that subsequent owners or foreclosing holders of a lien shall take title to the timeshare property subject to the rights of prior purchasers under their contracts of sale.~~

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

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

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

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

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

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

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

(5) making false or misleading statements of fact concerning the conditions under which a purchaser of a timeshare interest may exchange the right to occupy a unit for the right to occupy a unit in the same or another timeshare property;

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

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

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

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

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

SECTION _____. Section 221.072, Property Code, is amended to read as follows:

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

(1) property insurance on the timeshare property and

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

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

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

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

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

SECTION _____. Section 221.074, Property Code, is amended to read as follows:

Sec. 221.074. ANNUAL TIMESHARE FEE AND EXPENSE STATEMENT.

(a) Notwithstanding any contrary [~~a~~] provision of the required timeshare [~~promotional~~] disclosure statement, project instrument, timeshare instrument, or bylaws adopted pursuant to a timeshare instrument, the managing entity shall make a written annual accounting of the operation of the timeshare properties managed by the managing entity to each purchaser who requests an accounting not later than five months [~~the 60th day~~] after the last day of each fiscal year [~~the managing entity shall make available to each owner a written annual accounting of the operation of the timeshare property or timeshare system~~]. The statement shall fairly and accurately represent the collection and expenditure of assessments and include:

(1) a balance sheet;

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

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

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

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

(b) On the request of an owner, the [The] managing entity of the timeshare plan shall provide the owner with the name and address of each member of the board of directors of the owners' association, if one exists ~~[make the fee statement available to owners of record of a timeshare interest as of the last day of the fiscal year as reflected in the managing entity's records].~~

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

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

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

(d) Knowingly furnishing false information in the annual

timeshare fee and expense statement is a violation of the Deceptive Trade Practices-Consumer Protection Act (Section 17.41 et seq., Business & Commerce Code).

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

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

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

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

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

(a) On receipt of a written request filed with the commission by a managing entity before the date on which the statement required by Section 221.074 must be made available, the commission for good cause shown may grant the managing entity an extension of no more than 30 days in which to provide the statement.

(d) A managing entity may not assess against or collect from

the purchasers [~~owners~~] of a timeshare property the amount of a penalty incurred under this section.

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

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

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

[~~(c)~~] A managing entity which manages a multisite timeshare plan [~~system~~] may deposit assessments [~~timeshare fees~~] collected from purchasers [~~owners~~] of one timeshare property into a common account with assessments [~~timeshare fees~~] collected from purchasers [~~owners~~] of other timeshare properties participating in the same multisite timeshare plan [~~system~~] only if the practice is disclosed in the timeshare disclosure statement for each timeshare property in the multisite timeshare plan [~~system~~] and the appropriate statement is included in the declaration for each timeshare plan [~~regime~~] as required by Subchapter B.

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

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

[~~(2) separate timeshare properties which are not part~~

~~of a timeshare system; or~~

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

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

(b) A developer or managing entity shall maintain in its records a copy of each purchase contract for an accommodation sold by the developer for a timeshare period unless the contract has been canceled. If a sale of the timeshare estate is pending, the developer shall retain a copy of the contract until a deed of conveyance, agreement for deed, or lease is recorded in the real property records of the county in which the timeshare property is located.

SECTION _____. This article takes effect January 15, 2004, and applies to a developer who offers or disposes of an interest in a timeshare plan and a managing entity that manages a timeshare property under Chapter 221, Property Code, as amended by this article, on or after that date.

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