

By: Fraser

S.B. No. 1105

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, ~~[ex]~~ hotel or motel room, cabin, lodge, or other private commercial structure designed for occupancy or use by one or more individuals and [in a building or commercial structure] that is part of [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; [to purchase and includes a solicitation or inducement made by print or]

(B) communicated by electronic media or telephone; or [r]

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

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

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

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

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

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

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

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

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

1 the person:

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

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

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

11 (10) [~~(8)~~] "Escrow agent" means a [~~an independent~~]
12 bonded escrow company, a financial [~~or an~~] institution whose
13 accounts are insured by a governmental agency or instrumentality,
14 or an attorney, real estate broker, or title insurance agent
15 licensed in this state [~~and~~] who is responsible for the receipt and
16 disbursement of funds in accordance with this chapter.

17 (11) [~~(9)~~] "Exchange company" means any person [~~including a developer,~~]
18 owns or operates an exchange program.

19 (12) [~~(10)~~] "Exchange disclosure statement" means a
20 written statement that includes the information required by Section
21 221.033 [~~201.033~~].

22 (13) [~~(11)~~] "Exchange program" means any method,
23 arrangement, or procedure for the voluntary exchange of [~~program~~
24 ~~under which the owner of~~] a timeshare interest or other [~~may~~
25 ~~exchange a timeshare period for another timeshare period in the~~
26 ~~same or a different timeshare~~] property interest, but does not
27 include an assignment of a right to use and occupy an accommodation

1 or facility granted to a purchaser or owner of a timeshare interest
2 in a single site timeshare plan [~~a one-time exchange of timeshare~~
3 ~~periods in the same timeshare property if offered to a purchaser by~~
4 ~~a developer after that purchaser's disposition~~].

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

11 (15) [~~(12)~~] "Managing entity" means the person
12 responsible for operating and maintaining a timeshare property.

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

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

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

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

1 (17) [~~(14)~~] "Offering" or "offer" means any
2 advertisement, inducement, or solicitation and includes any
3 attempt to encourage a person to purchase a timeshare interest
4 other than as a security for an obligation.

5 (18) [~~(15)~~] "Project instrument" means a timeshare
6 instrument or one or more recordable documents, by whatever name
7 denominated, applying to the whole of a timeshare project and
8 containing restrictions or covenants regulating the use,
9 occupancy, or disposition of units in a project, including a
10 [~~master deed, master lease,~~] declaration for a condominium,
11 association articles of incorporation, association [~~or~~] bylaws,
12 and rules for a condominium in which a timeshare plan is created.

13 (19) [~~(16)~~] "Promotion" means any program, [~~or~~]
14 activity, contest, gift, prize, or any other item of value used to
15 induce any person to attend a timeshare sales presentation.

16 ~~[(17)] "Promotional disclosure statement" means a~~
17 ~~written statement that includes the information required by Section~~
18 ~~201.031.]~~

19 (20) [~~(18)~~] "Purchaser" means any person, other than a
20 developer [~~seller~~], who by means of a voluntary transfer acquires a
21 legal or equitable interest in a timeshare interest other than as a
22 security for an obligation.

23 (21) "Reservation system" means the method,
24 arrangement, or procedure by which a purchaser, in order to reserve
25 the use and occupancy of an accommodation of a multisite timeshare
26 plan for one or more timeshare periods, is required to compete with
27 other purchasers in the same multisite timeshare plan administered

1 by a managing entity, exchange company, or any other person. If a
2 purchaser is required to use an exchange program as the purchaser's
3 principal means of obtaining the right to use and occupy the
4 accommodations and facilities of the plan, the arrangement is
5 considered a reservation system. If the exchange company uses a
6 mechanism to exchange timeshare periods among members of the
7 exchange program, the use of the mechanism is not considered a
8 reservation system of the multisite timeshare plan.

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

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

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

25 (22) "Single-site timeshare plan" means a timeshare
26 plan in which a timeshare purchaser's right to use and occupy
27 accommodations is limited to a single timeshare property. A

1 single-site timeshare plan that includes an incidental use right or
2 a program under which the owner of a timeshare interest at a
3 specific timeshare property may exchange a timeshare period for
4 another timeshare period at the same or another timeshare property
5 under common management does not transform the single-site
6 timeshare plan into a multisite timeshare plan.

7 (23) "Timeshare disclosure statement" means a written
8 statement that includes the information required by Section 221.032
9 [~~201.032~~].

10 (24) [~~(23)~~] "Timeshare estate [~~expenses~~]" means an
11 arrangement under which the purchaser receives a right to occupy
12 [~~expenditures, charges, or liabilities for the operation of~~] a
13 timeshare property and an estate interest in the real property [~~or~~
14 ~~timeshare system, including any allocations to maintain reserves~~
15 ~~but excluding any purchase money payable for timeshare interests:~~

16 [~~(A) incurred in connection with a timeshare~~
17 ~~interest by or on behalf of the owner of all timeshare interests in~~
18 ~~a timeshare property; and~~

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

21 (25) [~~(24)~~] "Timeshare interest" means a timeshare
22 estate or timeshare use.

23 (26) [~~(25)~~] "Timeshare instrument" means a master
24 deed, master lease, declaration, or any other instrument used in
25 the creation of a timeshare plan [~~regime~~].

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

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

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

12 (29) [~~(28)~~] "Timeshare property" means:

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

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

19 (30) [~~(29)~~] ~~"Timeshare regime" means the real property~~
20 ~~use that is created by the filing and recordation of a master deed,~~
21 ~~master lease, or declaration.~~

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

24 [~~(31)~~] "Timeshare use" means any arrangement [~~other~~
25 ~~than a hotel or motel operation, whether by lease, rental~~
26 ~~agreement, license, use agreement or other means,~~] under which the
27 purchaser receives a right to occupy [~~use an accommodation or~~

1 ~~amenities or both for~~ a timeshare property [~~period on a recurring~~
2 ~~basis~~], but under which the purchaser does not receive an [~~a~~
3 ~~freehold~~] estate interest [~~or an estate for years~~] in the [~~a~~]
4 timeshare property.

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

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

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

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

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

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

22 (d) A timeshare property subject to this chapter is not
23 subject to Chapter 209.

24 SECTION 3. Sections 221.011, 221.012, 221.013, and 221.014,
25 Property Code, are amended to read as follows:

26 Sec. 221.011. DECLARATION. (a) The developer of a
27 timeshare plan any part of which is located in this state must

1 record the timeshare instrument in the real property records of the
2 county in which all or part of the property is located. When a
3 person [~~who is a developer, the sole owner, or the co-owner of a~~
4 ~~building or proposed building or buildings~~] expressly declares an
5 intent to subject the property to a timeshare plan through the
6 recordation of a timeshare instrument [~~master deed, master lease,~~
7 ~~or declaration~~] that sets forth the information provided in
8 Subsections (b) and (c), [~~and that sets forth the intent to submit~~
9 ~~that property to a timeshare regime,~~] that property shall be
10 established thenceforth as a timeshare plan [~~regime~~].

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

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

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

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

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

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

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

3 (c) Any timeshare interest created under this section is
4 subject to Section 1101.002(5), Occupations Code [~~an interest in~~
5 ~~land within the meaning of Subdivision (1), Section 2, The Real~~
6 ~~Estate License Act (Article 6573a, Vernon's Texas Civil Statutes)],~~
7 but Section 1101.351(a), Occupations Code [~~Subsection (b), Section~~
8 ~~1, The Real Estate License Act)], does not apply to the acts of an
9 exchange company in exchanging timeshare periods [~~under a timeshare~~
10 ~~program~~].~~

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

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

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

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

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

4 SECTION 4. Sections 221.021, 221.022, 221.023, 221.024, and
5 221.025, Property Code, are amended to read as follows:

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

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

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

25 (d) At the developer's request, the commission may
26 authorize the developer to conduct pre-sales before a timeshare
27 plan is registered if the registration application is

1 administratively complete, as determined by the commissioner or as
2 established by commission rule. The authorization for pre-sales
3 permits the developer to offer and dispose of timeshare interests
4 during the period the application is in process. To obtain a
5 pre-sales authorization, the developer must:

6 (1) submit a written request to the commission for an
7 authorization to conduct pre-sales;

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

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

16 (e) During the pre-sales authorization period, the
17 developer must:

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

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

24 (f) The developer must:

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

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

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

12 Sec. 221.022. APPLICATION FOR REGISTRATION. (a) An
13 application for registration filed under this section must include
14 a timeshare disclosure statement and any required exchange
15 disclosure statement required by Section 221.033 [~~201.033~~],
16 [~~certified~~] copies of all timeshare instruments, and other
17 information as may be required by the commission. If existing or
18 proposed accommodations are in a condominium, an applicant who
19 complies with this section is not required to prepare or deliver a
20 condominium information statement or a resale certificate as
21 described by Chapter 82.

22 (b) If existing or proposed accommodations [~~timeshare~~
23 ~~units~~] are in a condominium or similar development, the application
24 for registration must contain the project instruments of that
25 development and affirmatively indicate that the creation and
26 disposition of timeshare interests are not prohibited by those
27 instruments. If the project instruments do not expressly authorize

1 the creation and disposition of timeshare interests, the
2 application must contain evidence that existing owners of the
3 condominium development were provided written notice, at least 60
4 days before the application for registration, that timeshare
5 interests would be created and sold. If the project instruments
6 prohibit the creation or disposition of timeshare interests, the
7 application must contain a certification by the authorized
8 representative of all existing owners that the project instruments
9 have been properly amended to permit that creation and disposition.

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

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

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

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

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

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

3 (4) the address of the developer's authorized or
4 registered agent in this state;

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

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

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

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

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

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

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

1 (12) the appropriate filing fee; and
2 (13) any other information reasonably requested by the
3 commission or required by commission rule.

4 (f) A foreign jurisdiction providing evidence of
5 registration as provided by Subsection (e)(7) must have
6 registration and disclosure requirements that are substantially
7 similar or stricter than the requirements of this chapter.

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

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

24 Sec. 221.024. POWERS OF COMMISSION. (a) The commission may
25 prescribe and publish forms and adopt rules necessary to carry out
26 the provisions of this chapter and may suspend or revoke the
27 registration of any developer, place on probation the registration

1 of a developer that has been suspended or revoked, reprimand a
2 developer, or take any other disciplinary action authorized by this
3 chapter [seller] if, after notice and hearing, the commission
4 determines that a developer [seller] has materially violated this
5 chapter, the Deceptive Trade Practices-Consumer Protection Act
6 (Subchapter E, Chapter 17, Business & Commerce Code), or the
7 Contest and Gift Giveaway Act (Chapter 40, Business & Commerce
8 Code). [~~The commission may bring suit in a district court of Travis~~
9 ~~County, Texas, to enjoin a violation of this Act or for any other~~
10 ~~relief as the court may deem appropriate.~~]

11 (b) The commission may authorize specific employees to
12 conduct hearings and issue final decisions in contested cases
13 [~~shall establish reasonable fees for forms and documents it~~
14 ~~provides to the public and for the filing or registration of~~
15 ~~documents required by this chapter.~~].

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

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

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

26 Sec. 221.025. EFFECT OF REGISTRATION: SALE EXEMPT FROM
27 SECURITIES ACT. A developer's compliance with [~~The filing of a~~

1 ~~registration under~~] this chapter exempts the developer's offer and
2 disposition of [~~the sale of~~] timeshare interests subject to this
3 chapter from [~~registration under~~] The Securities Act (Article 581-1
4 et seq., Vernon's Texas Civil Statutes).

5 SECTION 5. Section 221.031 and 221.032, Property Code, are
6 amended to read as follows:

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

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

26 (c) Any advertisement that contains a [~~Before the use of~~
27 ~~any~~] promotion in connection with the offering of a timeshare

1 interest must include, in addition to any disclosures required
2 under Chapter 40, Business & Commerce Code, [the person who intends
3 to use the promotion shall include] the following [~~information in~~
4 ~~its advertisements to the prospective purchaser]~~:

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

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

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

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

16 [~~(5) the complete rules of the promotion, and~~

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

23 [~~(b) For the purposes of this section, the retail value of~~
24 ~~the item is the price at which a substantial number of sales of the~~
25 ~~exact item, having the same manufacturer, brand, model number, and~~
26 ~~type, have been made to members of the general public by at least~~
27 ~~two principal retail outlets in the State of Texas during the six~~

1 ~~months immediately preceding the offering of the prize or gift~~
2 ~~described in the promotion. However, if a substantial number of~~
3 ~~sales of a particular prize have not been made in the State of Texas~~
4 ~~in the six months immediately preceding the offering of the prize or~~
5 ~~gift in a promotion or if the developer elects, then the retail~~
6 ~~value of the prize or gift is the actual unit cost of the prize or~~
7 ~~the gift, net of any discounts or rebates to the developer, plus 200~~
8 ~~percent.~~

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

14 Sec. 221.032. TIMESHARE DISCLOSURE STATEMENT. (a) Before
15 the signing of any agreement [~~or contract~~] to acquire a timeshare
16 interest, the developer shall provide a timeshare disclosure
17 statement to the prospective purchaser and shall obtain from the
18 purchaser a written acknowledgement of receipt of the timeshare
19 disclosure statement.

20 (b) The timeshare disclosure statement must include:

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

23 (A) the developer;

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

27 (C) each component site for a multisite timeshare

1 plan, including a description of the component site [~~and the name~~
2 ~~and specific location of the timeshare property~~];

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

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

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

27 (5) the name and principal address of the managing

1 entity and a description of the procedures, if any, for altering the
2 powers and responsibilities of the managing entity and for removing
3 or replacing it;

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

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

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

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

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

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

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

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

6 (8) a description of any lien, defect, or encumbrance
7 on or affecting title to the timeshare interest ~~[service that the~~
8 ~~developer or person acting on his behalf provides or expense that is~~
9 ~~paid that reasonably may be expected to become a timeshare~~
10 ~~liability, and the projected timeshare liability attributable to~~
11 ~~that service or expense];~~

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

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

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

1 interest;

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

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

7 (12) ~~[(14)]~~ the extent to which a timeshare interest
8 may become subject to a tax lien or other lien arising out of claims
9 against purchasers of different timeshare interests;

10 (13) ~~[(15)]~~ a description of those matters required by
11 Section 221.041 ~~[201.041]~~;

12 (14) ~~[(16)]~~ a statement disclosing any right of first
13 refusal or other restraint on the transfer of all or any portion of
14 a timeshare interest;

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

1 purchaser elects to exercise the right of cancellation;

2 (16) [(18)] if applicable, a statement that the
3 assessments [timeshare property is part of a timeshare system and
4 that timeshare fees] collected from the purchasers [owners] may be
5 placed in a common account with the assessments [timeshare fees]
6 collected from the purchasers [owners] of other timeshare
7 properties managed by the same managing entity [participating in
8 the timeshare system]; and

9 (17) [(19)] any other information the commission
10 determines is necessary to protect prospective purchasers or to
11 implement the purpose of this chapter [material circumstances
12 concerning a timeshare interest].

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

15 (d) A developer who offers a multistate timeshare plan must
16 include in a timeshare disclosure statement in written, graphic, or
17 tabular form:

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

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

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

27 (4) each type of accommodation, categorized by the

1 number of bedrooms, bathrooms, and sleeping capacity, and a
2 statement indicating whether the accommodation contains a full
3 kitchen, which means a kitchen that has a minimum of a dishwasher,
4 range, sink, oven, and refrigerator;

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

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

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

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

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

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

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

24 (9) the location and anticipated relative demand of
25 each component site in the plan and any periodic adjustment or
26 amendment to the reservation system that may be necessary to
27 accommodate actual purchaser use patterns or changes in purchaser

1 use demand for the accommodations existing during that period; and
2 (10) any other information the commission determines
3 is necessary to protect prospective purchasers or to implement the
4 purpose of this chapter.

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

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

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

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

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

1 connection with the disposition.

2 SECTION 7. Section 221.034, Property Code, is amended to
3 read as follows:

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

8 (1) a gratuitous offering or disposition of a
9 timeshare interest;

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

11 (3) a disposition by a governmental agency;

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

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

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

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

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

1 offering to the purchaser within this state; ~~[or]~~

2 (9) the offering or redispotion of a timeshare
3 interest by a purchaser who acquired the interest for his personal
4 use;

5 (10) the offering or disposition of a timeshare
6 interest by a developer or a person who has previously acquired a
7 timeshare interest from the same developer, if the developer:

8 (A) provides the purchaser with:

9 (i) a cancellation period of at least five
10 days; and

11 (ii) all the timeshare disclosure
12 information required by the jurisdiction in which the timeshare
13 property is located if the sale occurred in that jurisdiction; and

14 (B) consents to the jurisdiction of the
15 commission if a dispute occurs relating to the offering or
16 disposition; or

17 (11) the offering or disposition is a rental of an
18 accommodation for a period of three years or less.

19 (b) The following communications are not advertisements
20 under this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 "(B) IF YOU DECIDE TO CANCEL THIS CONTRACT, YOU MAY DO SO BY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (8) the following statement:

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

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

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

1 Sec. 221.052. LIABILITY OF DEVELOPER. A developer does not
2 incur any liability arising out of the use, delivery, or
3 publication [~~by the developer~~] to a [the] purchaser of written
4 information or audio-visual materials provided to it by the
5 exchange company in accordance with Subchapter D, unless [~~.—A~~
6 ~~developer is subject to liability arising out of the use, delivery,~~
7 ~~or publication to the purchaser of materials provided by the~~
8 ~~exchange company if~~] the developer knows or has reason to know that
9 the materials are inaccurate or false.

10 SECTION 10. Subchapter G, Property Code, is amended by
11 amending Sections 221.061, 221.062, and 221.063 and adding Section
12 221.064 to read as follows:

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

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

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

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

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

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

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

5 (A) the purchaser; or

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

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

16 (1) a certificate of occupancy;

17 (2) a certificate of substantial completion;

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

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

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

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

27 (b) If the purchaser cancels the purchase contract as

1 provided by the contract, the funds shall be paid to:

2 (1) the purchaser; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 SECTION 12. Section 221.072, Property Code, is amended to
21 read as follows:

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

25 (1) property insurance on the timeshare property and
26 any personal property for use by purchasers, other than personal
27 property separately owned by a purchaser, insuring against all

1 risks of direct physical loss commonly insured against, in a total
2 amount, after application of deductibles, of the full replacement
3 cost of the accommodations and amenities of the timeshare property;
4 and

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

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

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

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

20 SECTION 14. Section 221.074, Property Code, is amended to
21 read as follows:

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

23 (a) Notwithstanding any contrary [~~a~~] provision of the required
24 timeshare [~~promotional~~] disclosure statement, project instrument,
25 timeshare instrument, or bylaws adopted pursuant to a timeshare
26 instrument, the managing entity shall make a written annual
27 accounting of the operation of each timeshare property managed by

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

8 (1) a balance sheet;

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

12 (3) the current operating budget for the timeshare
13 property or multisite timeshare plan [~~system~~] required by Section
14 221.032(b)(6);

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

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

22 (5) the name and address of each member of the board of
23 directors of the council of purchasers or the owners' association,
24 if one exists.

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 THE FIVE MONTHS [~~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. (a) A
19 developer or managing entity, on written request of an owner, shall
20 make available for examination at its registered office or
21 principal place of business and at any reasonable time or times the
22 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. Subchapter H, Chapter 221, Property Code, is
6 amended by adding Section 221.078 to read as follows:

7 Sec. 221.078. FINDER FEE FOR REFERRALS. (a) In this
8 section, "finder fee" means a credit or monetary or nonmonetary
9 compensation given to a former purchaser in return for that
10 purchaser providing the developer with the name and address of a
11 prospective purchaser of the timeshare plan in which the former
12 purchaser previously purchased a timeshare interest.

13 (b) Notwithstanding another provision of this chapter, a
14 developer may pay a finder fee for a referral to a purchaser in the
15 developer's timeshare plan subject to this section.

16 (c) A developer may not compensate a purchaser under this
17 section for more than 20 referrals during a 12-month period.

18 (d) Section 1101.351(a), Occupations Code, prohibiting a
19 person who is not a licensed real estate broker or salesperson from
20 acting as a broker or salesperson, does not apply to an act for
21 which a finder fee may be paid under this section. A purchaser who
22 is not a licensed broker or salesperson may not advertise or promote
23 the purchaser's services in obtaining or assisting in obtaining
24 prospective timeshare interest purchasers.

25 (e) The developer shall keep records of finder fees paid as
26 provided by this section at least until the third anniversary of the
27 date the payment was made.

1 SECTION 18. This Act takes effect September 1, 2003, and
2 applies to a developer who offers or disposes of an interest in a
3 timeshare plan and a managing entity who manages a timeshare
4 property under Chapter 221, Property Code, as amended by this Act,
5 on or after that date.