

By: Goolsby

H.B. No. 1045

Substitute the following for H.B. No. 1045:

By: Homer

C.S.H.B. No. 1045

A BILL TO BE ENTITLED

AN ACT

relating to amendments to the Texas Timeshare Act.

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

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

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

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

(A) is affixed to real property;

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

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

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

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

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

1 telephone; or

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

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

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

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

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

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

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

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

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

1 interests or employs a sales agent to sell timeshare interests; or

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

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

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

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

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

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

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

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

1 ~~exchange a timeshare period for another timeshare period in the~~  
2 ~~same or a different timeshare] property interest among purchasers~~  
3 ~~or owners[, but does not include a one-time exchange of timeshare~~  
4 ~~periods in the same timeshare property if offered to a purchaser by~~  
5 ~~a developer after that purchaser's disposition].~~

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

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

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

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

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

26 (17) [~~(13)~~] "~~Master deed" or "master lease" or~~  
27 "~~declaration~~" means the deed, lease, or declaration establishing

1 ~~real property as a timeshare regime.~~

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

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

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

17           (20) ~~[(17)] "Promotional disclosure statement" means a~~  
18 ~~written statement that includes the information required by Section~~  
19 ~~201.031.~~

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

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

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

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

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

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

27 (22) "Single-site timeshare plan" means a timeshare

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

9           (23) "Timeshare disclosure statement" means a written  
10 statement that includes the information required by Section 221.032  
11 [~~201.032~~].

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

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

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

23           (25) [~~(24)~~] "Timeshare interest" means a timeshare  
24 estate or timeshare use.

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

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

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

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

14           (29) [(28)] "Timeshare property" means:

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

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

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

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

26           ~~[(31)] "Timeshare use" means any arrangement [other~~  
27 ~~than a hotel or motel operation, whether by lease, rental~~



1 ~~agreement, license, use agreement or other means,~~ under which the  
2 purchaser receives a right to occupy [~~use an accommodation or~~  
3 ~~amenities or both for~~] a timeshare property [~~period on a recurring~~  
4 ~~basis~~], but under which the purchaser does not receive an [~~a~~  
5 ~~freehold~~] estate interest [~~or an estate for years~~] in the [~~a~~]  
6 timeshare property.

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

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

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

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

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

22 SECTION 2. Section 221.003, Property Code, is amended by  
23 adding Subsections (d) and (e) to read as follows:

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

1       (e) If a person with a specific program that might otherwise  
2 be subject to this chapter received from the commission, before  
3 January 31, 2005, a written determination that the program is  
4 exempt from this chapter as the chapter existed when the  
5 determination was made, the program remains exempt from this  
6 chapter if:

7           (1) the program does not vary materially from the  
8 terms on which the exemption was granted; or

9           (2) the program varies materially from the terms on  
10 which the exemption was granted, but the person receives from the  
11 commission a new written determination that the program is exempt  
12 from this chapter.

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

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

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

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

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

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

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

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

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

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

24 [~~(d) Any timeshare interest located wholly without this~~  
25 ~~state may be sold or otherwise disposed of within this state if the~~  
26 ~~timeshare property is in full compliance with the legal~~  
27 ~~requirements of and may be validly sold or otherwise disposed of as~~

1 ~~a timeshare property in the jurisdiction in which the timeshare~~  
2 ~~property is located and if all information required in this section~~  
3 ~~is included in the disclosure statement.]~~

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

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

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

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

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

20       Sec. 221.021. REGISTRATION REQUIRED.       (a) Except as  
21 provided by Subsection (b) or (d) of this section or another  
22 provision of this chapter, a [A] person may not offer or dispose of  
23 a timeshare interest unless the timeshare plan [~~property~~] is  
24 registered with the commission.

25       (b) Before a registration application for a timeshare plan  
26 is submitted or completed, a [A] developer or any person acting on  
27 the developer's [~~his~~] behalf may accept a reservation and a deposit

1 from a [~~the~~] prospective purchaser if the deposit is placed in a  
2 segregated [~~an~~] escrow account with an independent escrow agent and  
3 if the deposit is fully refundable at any time at the request of the  
4 purchaser. The deposit may not be forfeited unless the purchaser  
5 affirmatively creates a binding obligation by a subsequent written  
6 instrument.

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

14 (d) At the developer's request, the commission may  
15 authorize the developer to conduct presales before a timeshare plan  
16 is registered if the registration application is administratively  
17 complete, as determined by the commission or as established by  
18 commission rule. The authorization for presales permits the  
19 developer to offer and dispose of timeshare interests during the  
20 period the application is in process. To obtain a presales  
21 authorization, the developer must:

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

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

27 (3) provide evidence acceptable to the commission that

1 all funds received by the developer will be placed with an escrow  
2 agent with instructions requiring the funds to be retained until a  
3 registration application is complete as determined by the  
4 commission.

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

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

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

13 (f) After the final timeshare disclosure statement is  
14 approved by the commission, the developer must:

15 (1) give each purchaser and prospective purchaser a  
16 copy of the final timeshare disclosure statement; and

17 (2) if the commission determines that a materially  
18 adverse change exists between the disclosures contained in the  
19 proposed timeshare disclosure statement and the final timeshare  
20 disclosure statement, provide the purchaser a second opportunity to  
21 cancel the purchase contract as provided by Section 221.041.

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

27 Sec. 221.022. APPLICATION FOR REGISTRATION. (a) An

1 application for registration filed under this section must include  
2 a timeshare disclosure statement and any required exchange  
3 disclosure statement required by Section 221.033, recorded  
4 [~~201.033, certified~~] copies of all timeshare instruments, and other  
5 information as may be required by the commission. If the timeshare  
6 property is a newly developed property, recorded copies of the  
7 timeshare instruments must be provided promptly after recorded  
8 copies are available from the entity with which the instruments are  
9 recorded. If existing or proposed accommodations are in a  
10 condominium, an applicant who complies with this section is not  
11 required to prepare or deliver a condominium information statement  
12 or a resale certificate as described by Chapter 82.

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

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

7           (d) A developer of a timeshare plan with any accommodation  
8 located in this state may not file an abbreviated application  
9 unless:

10                 (1) the developer is a:

11                         (A) successor in interest after a merger or  
12 acquisition; or

13                         (B) joint venture in which the previous developer  
14 or its affiliate is a partner or a member; and

15                 (2) the previous developer registered the timeshare  
16 plan in this state preceding the merger, acquisition, or joint  
17 venture.

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

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

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

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

27                 (4) the name, primary office location, mailing



1 address, and telephone number of the managing entity of the  
2 timeshare plan;

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

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

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

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

15 (9) a disclosure of each jurisdiction in which the  
16 developer has applied for registration of the timeshare plan and  
17 whether the timeshare plan, the developer, or the managing entity  
18 used were denied registration or, during the five-year period  
19 before the registration application date, were the subject of a  
20 final adverse disposition in a disciplinary proceeding;

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

24 (11) the appropriate filing fee; and

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

27 (f) A foreign jurisdiction providing evidence of

1 registration as provided by Subsection (e)(6) must have  
2 registration and disclosure requirements that are substantially  
3 similar to or stricter than the requirements of this chapter.

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

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

21 Sec. 221.024. POWERS OF COMMISSION. (a) The commission may  
22 prescribe and publish forms and adopt rules necessary to carry out  
23 the provisions of this chapter and may suspend or revoke the  
24 registration of any developer, place on probation the registration  
25 of a developer that has been suspended or revoked, reprimand a  
26 developer, impose an administrative penalty of not more than  
27 \$10,000, or take any other disciplinary action authorized by this

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

9 (b) The commission may:

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

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

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

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

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

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

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

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

5           (2) by trial de novo.

6       Sec. 221.025. EFFECT OF REGISTRATION ON OTHER LAWS:  
7 EXEMPTION [SALE EXEMPT] FROM CERTAIN LAWS [SECURITIES ACT]. (a) A  
8 developer's compliance with [The filing of a registration under]  
9 this chapter exempts the developer's offer and disposition of [sale  
10 of] timeshare interests subject to this chapter from securities and  
11 dealer registration under The Securities Act (Article 581-1 et  
12 seq., Vernon's Texas Civil Statutes).

13       (b) A timeshare plan created as a condominium regime before  
14 January 1, 1994, that complies with this chapter is exempt from the  
15 requirements of Section 81.112 relating to club membership.

16       (c) A timeshare plan subject to Chapter 82 that complies  
17 with this chapter is exempt from the requirements of Section  
18 82.0675 relating to club membership.

19       (d) A developer's compliance with this chapter as to any  
20 timeshare plan exempts any company, as defined by Chapter 181,  
21 Finance Code (Texas Trust Company Act), that holds title to the  
22 timeshare interests in the timeshare plan from compliance with the  
23 Texas Trust Company Act as to the company's activities relating to  
24 the holding of that title.

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

1 including:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1        (d) An advertisement containing the disclosures required by  
2 Chapter 40, Business & Commerce Code, and Subsection (c) must be  
3 provided in writing or electronically:

4            (1) at least once before a scheduled sales  
5 presentation; and

6            (2) in a reasonable period before the scheduled sales  
7 presentation to ensure that the recipient receives the disclosures  
8 before leaving to attend the sales presentation.

9        (e) The developer is not required to provide the disclosures  
10 required by this section in every advertisement or other written,  
11 oral, or electronic communication provided or made to a recipient  
12 before a scheduled sales presentation[

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

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

20        ~~[(b) For the purposes of this section, the retail value of~~  
21 ~~the item is the price at which a substantial number of sales of the~~  
22 ~~exact item, having the same manufacturer, brand, model number, and~~  
23 ~~type, have been made to members of the general public by at least~~  
24 ~~two principal retail outlets in the State of Texas during the six~~  
25 ~~months immediately preceding the offering of the prize or gift~~  
26 ~~described in the promotion. However, if a substantial number of~~  
27 ~~sales of a particular prize have not been made in the State of Texas~~

1 ~~in the six months immediately preceding the offering of the prize or~~  
2 ~~gift in a promotion or if the developer elects, then the retail~~  
3 ~~value of the prize or gift is the actual unit cost of the prize or~~  
4 ~~the gift, net of any discounts or rebates to the developer, plus 200~~  
5 ~~percent.~~

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

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

17 (b) The timeshare disclosure statement for a single-site  
18 timeshare plan or a multisite timeshare plan that includes a  
19 specific timeshare interest must include:

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

22 (A) the developer; and

23 (B) the single site or specific site offered for  
24 the multisite timeshare plan [~~and the name and specific location of~~  
25 ~~the timeshare property~~];

26 (2) a description of the duration and operation of the  
27 timeshare plan;



1           (3) a description of the existing or proposed  
2 accommodations, including the type and number of timeshare  
3 interests in the accommodations expressed in periods of seven-day  
4 use availability or other time increment applicable to the  
5 timeshare plan. [~~amenities, timeshare property, and any project or~~  
6 ~~development within which the timeshare property is located or of~~  
7 ~~which it is a part; the total number of timeshare units in the~~  
8 ~~timeshare property and whether and under what circumstances that~~  
9 ~~number may be increased or decreased; and, if a timeshare interest~~  
10 ~~includes amenities not yet in existence, the commencement and~~  
11 ~~completion schedule of the proposed amenities]; The description of  
12 each type of accommodation included in the timeshare plan shall be  
13 categorized by the number of bedrooms, the number of bathrooms, and  
14 sleeping capacity, and shall include a statement indicating whether  
15 the accommodation contains a full kitchen, which means a kitchen  
16 that has a minimum of a dishwasher, range, sink, oven, and  
17 refrigerator. If the accommodations are proposed or incomplete, a  
18 schedule for commencement, completion, and availability of the  
19 accommodations shall be provided;~~

20           (4) [~~(3)~~] a description of any existing or proposed  
21 amenities of the timeshare plan and, if the amenities are proposed  
22 or incomplete, a schedule for commencement, completion, and  
23 availability of the amenities [~~the timeshare interests currently~~  
24 ~~available for disposition and, if applicable, the types and number~~  
25 ~~of units available];~~

26           (5) the extent to which financial arrangements have  
27 been provided for the completion of all promised accommodations and

1 amenities that are committed to be built;

2 (6) a description of the method and timing for  
3 performing maintenance of the accommodations;

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

8 (8) a description of the method by which purchasers'  
9 use of the accommodations is scheduled;

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

16 (10) relating to the single-site timeshare plan or the  
17 specific timeshare interest of a multisite timeshare plan, copies  
18 of the following documents, if applicable, including any amendments  
19 to the documents, unless separately provided to the purchaser  
20 simultaneously with the timeshare disclosure statement:

21 (A) the declaration;

22 (B) the association articles of incorporation;

23 (C) the association bylaws;

24 (D) the association rules; and

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

1           (11) [~~5~~] the name and principal address of the  
2 managing entity and a description of the procedures, if any, for  
3 altering the powers and responsibilities of the managing entity and  
4 for removing or replacing it;

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

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

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

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

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

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

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

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

8            (14) any initial fee or special fee due from the  
9 purchaser at closing, together with a description of the purpose  
10 and method of calculating the fee;

11           (15) [~~(8)~~] a description of any lien, defect, or  
12 encumbrance on or affecting title to the timeshare interest and, if  
13 applicable, a copy of each written warranty provided by the  
14 developer [~~service that the developer or person acting on his~~  
15 ~~behalf provides or expense that is paid that reasonably may be~~  
16 ~~expected to become a timeshare liability, and the projected~~  
17 ~~timeshare liability attributable to that service or expense]~~;

18           (16) [~~(9)~~] a description of any bankruptcy that is  
19 pending or that has occurred within the past five (5) years, pending  
20 civil or criminal suit, adjudication, or disciplinary actions  
21 material to the timeshare plan of which the developer has knowledge  
22 [~~the existing or proposed amenities of the timeshare property and,~~  
23 ~~if the amenities are proposed or not yet complete or fully~~  
24 ~~functional, a schedule for the projected commencement, completion,~~  
25 ~~and availability of those amenities]~~;

26           (17) a description of any financing offered by or  
27 available through the developer;

1           (18) any current or anticipated [~~(10) a description~~  
2 ~~and amount of any current or expected dues, assessments,~~] fees[~~,~~]  
3 or charges to be paid by timeshare purchasers for the use of any  
4 accommodations or amenities related to the timeshare plan, and a  
5 statement that the fees or charges are subject to change [~~or for any~~  
6 ~~other purpose~~];

7           (19) [~~(11) a description of any unsatisfied final~~  
8 ~~judgment against the developer, seller, managing entity, or~~  
9 ~~exchange company with which the developer is under contract, but~~  
10 ~~not including any individual sales agent or representative who~~  
11 ~~offers a timeshare interest,~~

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

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

17           (20) [~~(14)~~] the extent to which a timeshare interest  
18 may become subject to a tax lien or other lien arising out of claims  
19 against purchasers of different timeshare interests;

20           (21) [~~(15)~~] a description of those matters required by  
21 Section 221.041 [~~201.041~~];

22           (22) [~~(16)~~] a statement disclosing any right of first  
23 refusal or other restraint on the transfer of all or any portion of  
24 a timeshare interest;

25           (23) [~~(17)~~] a statement disclosing that any deposit  
26 made in connection with the purchase of a timeshare interest must  
27 [~~will~~] be held by [~~in~~] an escrow agent [~~account~~] until expiration of

1 any right to cancel the contract and that any deposit must be ~~[or~~  
2 ~~any later time specified in the contract and will be]~~ returned to  
3 the purchaser if the purchaser ~~[he]~~ elects to exercise the ~~[his]~~  
4 right of cancellation; or, if the commission accepts from the  
5 developer a surety bond, irrevocable letter of credit, or other  
6 form of financial assurance instead of an escrow deposit, a  
7 statement disclosing that the developer has provided a surety bond,  
8 irrevocable letter of credit, or other form of financial assurance  
9 in an amount equal to or in excess of the funds that would otherwise  
10 be held by an escrow agent and that the deposit must be returned if  
11 the purchaser elects to exercise the right of cancellation;

12 (24) ~~[(18)]~~ if applicable, a statement that the  
13 assessments ~~[timeshare property is part of a timeshare system and~~  
14 ~~that timeshare fees]~~ collected from the purchasers ~~[owners]~~ may be  
15 placed in a common account with the assessments ~~[timeshare fees]~~  
16 collected from the purchasers ~~[owners]~~ of other timeshare  
17 properties managed by the same managing entity ~~[participating in~~  
18 ~~the timeshare system]~~;

19 (25) if the timeshare plan provides purchasers with  
20 the opportunity to participate in an exchange program, a  
21 description of the name and address of the exchange company and the  
22 method by which a purchaser accesses the exchange program; and

23 (26) ~~[(19)]~~ any other information the commission  
24 determines is necessary to protect prospective purchasers or to  
25 implement the purpose of this chapter ~~[material circumstances~~  
26 ~~concerning a timeshare interest]~~.

27 (c) A developer who offers a specific timeshare interest in

1 a multisite timeshare plan also must fully disclose the following  
2 information in written, graphic, or tabular form:

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

5 (2) a description of each type of accommodation in  
6 each component site, categorized by the number of bedrooms, the  
7 number of bathrooms, and sleeping capacity, and a statement  
8 indicating whether the accommodation contains a full kitchen, which  
9 means a kitchen that has a minimum of a dishwasher, range, sink,  
10 oven, and refrigerator;

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

13 (4) a description of the reservation system, which  
14 must include:

15 (A) the entity responsible for operating the  
16 reservation system, its relationship to the developer, and the  
17 duration of any agreement for operation of the reservation system;

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

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

24 (5) the name and principal address of the managing  
25 entity for the multisite timeshare plan and a description of the  
26 procedures, if any, for altering the powers and responsibilities of  
27 the managing entity and for removing or replacing it;

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

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

8           (8) the location of each component site of the  
9 multisite timeshare plan, the historical occupancy of each  
10 component site for the prior 12-month period, if the component site  
11 was part of the multisite timeshare plan during such 12-month time  
12 period, as well as any periodic adjustment or amendment to the  
13 reservation system that may be needed in order to respond to actual  
14 purchaser use patterns and changes in purchaser use demand for the  
15 accommodations existing at the time within the multisite timeshare  
16 plan; and

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

20           (d) A developer who offers a nonspecific timeshare interest  
21 in a multisite timeshare plan must disclose the following  
22 information in written, graphic, or tabular form:

23           (1) the name and address of the developer;

24           (2) a description of the type of interest and the usage  
25 rights the purchaser will receive;

26           (3) a description of the duration and operation of the  
27 timeshare plan;



1           (4) a description of the type of insurance coverage  
2 provided for each component site;

3           (5) an explanation of who holds title to the  
4 accommodations of each component site;

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

7           (7) a description of the existing or proposed  
8 accommodations, expressed in periods of seven-day use availability  
9 or any other time increment applicable to the timeshare plan. The  
10 description of each type of accommodation included in the timeshare  
11 plan shall be categorized by the number of bedrooms, the number of  
12 bathrooms, and sleeping capacity, and shall include a statement  
13 indicating whether the accommodation contains a full kitchen, which  
14 means a kitchen that has a minimum of a dishwasher, range, sink,  
15 oven, and refrigerator. If the accommodations are proposed or  
16 incomplete, a schedule for commencement, completion, and  
17 availability of the accommodations shall be provided;

18           (8) a statement that an association exists or is  
19 expected to be created or that such an association does not exist  
20 and is not expected to be created and, if such an association exists  
21 or is reasonably contemplated, a description of its powers and  
22 responsibilities;

23           (9) if applicable, copies of the following documents  
24 applicable to the multisite timeshare plan, including any  
25 amendments to the documents, unless separately provided to the  
26 purchaser simultaneously with the timeshare disclosure statement:

27           (A) the declaration;

1           (B) the association articles of incorporation;

2           (C) the association bylaws;

3           (D) the association rules; and

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

7           (10) a description of the method and timing for  
8 performing maintenance of the accommodations;

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

13           (12) a description of each type of accommodation  
14 included in the timeshare plan, categorized by the number of  
15 bedrooms, the number of bathrooms, and sleeping capacity, and a  
16 statement indicating whether the accommodation contains a full  
17 kitchen, which means a kitchen that has a minimum of a dishwasher,  
18 range, sink, oven, and refrigerator;

19           (13) a description of amenities available for use by  
20 the purchaser at each component site;

21           (14) the location of each component site of the  
22 multisite timeshare plan, the historical occupancy of each  
23 component site for the prior 12-month period, if the component site  
24 was part of the multisite timeshare plan during such 12-month time  
25 period, as well as any periodic adjustment or amendment to the  
26 reservation system that may be needed in order to respond to actual  
27 purchaser use patterns and changes in purchaser use demand for the

1 accommodations existing at the time within the multisite timeshare  
2 plan;

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

8 (16) a description of the reservation system that  
9 shall include all of the following:

10 (A) the entity responsible for operating the  
11 reservation system, its relationship to the developer, and the  
12 duration of any agreement for operation of the reservation system;

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

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

19 (17) the name and principal address of the managing  
20 entity for the multisite timeshare plan and a description of the  
21 procedures, if any, for altering the powers and responsibilities of  
22 the managing entity and for removing or replacing it, and a  
23 description of the relationship between the multisite timeshare  
24 plan managing entity and the managing entity of the component sites  
25 of the multisite timeshare plan, if different from the multisite  
26 timeshare plan managing entity;

27 (18) the current annual budget of the multisite

1 timeshare plan, if available, or the projected annual budget for  
2 the multisite timeshare plan, which must include:

3 (A) a statement of the amount reserved or  
4 budgeted for repairs, replacements, and refurbishment;

5 (B) the projected common expense liability, if  
6 any, by category of expenditure for the multisite timeshare plan;

7 (C) the name and address of the person who  
8 prepared the operating budget; and

9 (D) the assumptions on which the operating budget  
10 is based;

11 (19) the projected assessments and a description of  
12 the method for calculating and apportioning those assessments among  
13 purchasers of the multisite timeshare plan;

14 (20) if applicable, a statement that the assessments  
15 collected from the purchasers may be placed in a common account with  
16 the assessments collected from the purchasers of other timeshare  
17 properties managed by the same managing entity;

18 (21) any current fees or charges to be paid by  
19 timeshare purchasers for the use of any amenities related to the  
20 timeshare plan and a statement that the fees or charges are subject  
21 to change;

22 (22) any initial or special fee due from the purchaser  
23 at closing, together with a description of the purpose of and method  
24 of calculating the fee;

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

27 (24) a description of any lien, defect, or encumbrance

1 on or affecting title to the timeshare interest and, if applicable,  
2 a copy of each written warranty provided by the developer;

3 (25) the extent to which a timeshare interest may  
4 become subject to a tax lien or other lien arising out of claims  
5 against purchasers of different timeshare interests;

6 (26) a description of those matters required by  
7 Section 221.041;

8 (27) a description of any financing offered by or  
9 available through the developer;

10 (28) a description of any bankruptcy that is pending  
11 or that has occurred within the past five (5) years, pending civil  
12 or criminal suits, adjudications, or disciplinary actions material  
13 to the timeshare plan of which the developer has knowledge;

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

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

1 deposit must be returned if the purchaser elects to exercise the  
2 right of cancellation;

3 (31) if the timeshare plan provides purchasers with  
4 the opportunity to participate in an exchange program, a  
5 description of the name and address of the exchange company and the  
6 method by which a purchaser accesses the exchange program; and

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

10 (e) A developer may include any other information in a  
11 timeshare disclosure statement required by this section on approval  
12 by the commission.

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

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

24 (a) Before the signing of any agreement to purchase [~~or~~  
25 ~~contract to acquire~~] a timeshare interest in which a prospective  
26 purchaser is also offered participation in any exchange program,  
27 the developer shall also deliver to the prospective purchaser the

1 exchange disclosure statement of any exchange company whose service  
2 is advertised or offered by the developer or other person in  
3 connection with the disposition.

4 SECTION 7. Section 221.034, Property Code, is amended to  
5 read as follows:

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

10 (1) a gratuitous offering or disposition of a  
11 timeshare interest;

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

13 (3) a disposition by a governmental agency;

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

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

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

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

27 (8) an offering or [~~a~~] disposition of a timeshare

1 interest to a purchaser who is not a resident of this state under a  
2 contract executed wholly outside this state, if there has been no  
3 offering to the purchaser within this state; ~~[or]~~

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

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

9 (b) If a developer has a timeshare plan registered under  
10 this chapter and is subject to Section 221.024, the developer may  
11 offer or dispose of an interest in a timeshare plan that is not  
12 registered under this chapter to a person who is the owner of a  
13 timeshare interest in a timeshare plan created by the developer. A  
14 developer under this subsection is exempt from Sections 221.021,  
15 221.022, 221.023, 221.032, 221.041, 221.042, 221.043, 221.061,  
16 221.071(a)(1) and (8), 221.074, and 221.075 if the developer:

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

20 (2) provides the purchaser all timeshare disclosure  
21 documents required by law to be provided in the jurisdiction in  
22 which the timeshare property is located.

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

25 (1) any stockholder communication, including an  
26 annual report or interim financial report, proxy material,  
27 registration statement, securities prospectus, timeshare



1 disclosure statement, or other material required to be delivered to  
2 a prospective purchaser by a state or federal governmental entity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 States mail to the developer [~~seller~~] or to the developer's  
2 [~~seller's~~] agent for service of process, or by providing notice by  
3 overnight common carrier delivery service to the developer or the  
4 developer's agent for service of process.

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

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

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

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

1 ~~THE CONTRACT AT THE TIME THE CONTRACT IS SIGNED, YOU MAY CANCEL THIS~~  
2 ~~CONTRACT WITHOUT PENALTY OR OBLIGATION BEFORE THE SIXTH DAY AFTER~~  
3 ~~THE DATE YOU RECEIVE A COPY OF THE CONTRACT] .~~

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

17           "(3) [~~(C)~~] A PURCHASER SHOULD NOT RELY ON STATEMENTS  
18 OTHER THAN THOSE INCLUDED IN THIS CONTRACT AND THE DISCLOSURE  
19 STATEMENT."

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

27           ~~[(3) "AS A TIMESHARE OWNER YOU HAVE A RIGHT TO REQUEST~~

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

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

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

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

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

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

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

26 (4) a statement disclosing the amount of the periodic  
27 assessments currently assessed against or collected from the

1 purchasers of the timeshare interest, immediately followed by a  
2 statement providing that collected assessments will be used by the  
3 managing entity to pay for expenditures, charges, reserves, or  
4 liabilities relating to the operation of the timeshare plan or  
5 timeshare properties managed by the managing entity;

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

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

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

20 (8) the following statement:

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

27 (d) The information required to be provided by this section

1 may be provided in the purchase contract or in an exhibit to the  
2 purchase contract, or it may be provided in part in both if all of  
3 the information is provided.

4 SECTION 9. Section 221.052, Property Code, is amended to  
5 read as follows:

6 Sec. 221.052. LIABILITY OF DEVELOPER AND EXCHANGE COMPANY.

7 (a) A developer does not incur any liability arising out of the  
8 use, delivery, or publication [~~by the developer~~] to a [~~the~~]  
9 purchaser of written information or audio-visual materials  
10 provided to it by the exchange company in accordance with  
11 Subchapter D, unless [~~. A developer is subject to liability arising~~  
12 ~~out of the use, delivery, or publication to the purchaser of~~  
13 ~~materials provided by the exchange company if~~] the developer knows  
14 or has reason to know that the materials are inaccurate or false.

15 (b) No exchange company shall have any liability with  
16 respect to any violation under this chapter arising out of the use  
17 by a developer of information relating to an exchange program other  
18 than that provided to the developer by the exchange company.

19 (c) An exchange company that denies exchange privileges to  
20 an owner whose use of accommodations in the owner's timeshare plan  
21 is denied is not liable to any member of the exchange company or  
22 exchange program or any third party because of the denial of the  
23 owner's exchange privileges.

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

27 Sec. 221.061. ESCROW OR TRUST ACCOUNT REQUIRED. (a) A

1 ~~[The]~~ developer or escrow agent of a timeshare plan ~~[other person~~  
2 ~~acting on its behalf]~~ shall deposit in ~~[establish]~~ an escrow or  
3 trust account in a federally insured depository 100 percent of all  
4 funds received during the purchaser's cancellation period ~~[with an~~  
5 ~~escrow agent for the purpose of protecting deposits made by~~  
6 ~~purchasers in connection with proposed dispositions of timeshare~~  
7 ~~interests]~~.

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

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

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

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

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

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

19 (A) the purchaser; or

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

22 (d) If a developer contracts to sell a timeshare interest  
23 and the construction of the building in which the timeshare  
24 interest is located has not been completed when the cancellation  
25 period expires, the developer shall continue to maintain all funds  
26 received from the purchaser under the purchase agreement in the  
27 escrow or trust account until construction of the building is



1 completed. The documentation required for evidence of completion  
2 of construction includes:

- 3 (1) a certificate of occupancy;  
4 (2) a certificate of substantial completion;  
5 (3) evidence of a public safety inspection equivalent  
6 to Subdivision (1) or (2) from a government agency in the applicable  
7 jurisdiction; or  
8 (4) any other evidence acceptable to the commission.

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

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

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

- 16 (1) the purchaser; or  
17 (2) the developer if the purchaser's funds have been  
18 refunded previously by the developer.

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

- 26 [~~(1) a concise statement by the applicant that the~~  
27 ~~purchaser has materially defaulted in the performance of~~

1 ~~obligations under the terms of a contract to purchase a timeshare~~  
2 ~~interest and that the applicant and the developer have complied~~  
3 ~~with all terms and obligations of that contract;~~

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

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

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

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

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

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

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

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

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

1 filed.

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

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

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

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

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

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

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

27 ~~[(c) Notwithstanding the other provisions of this section,~~

1 ~~the escrow agent may release the escrow deposit to the applicant on~~  
2 ~~presentation to the escrow agent of:~~

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

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

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

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

23 SECTION 11. Section 221.071, Property Code, is amended by  
24 amending Subsection (a) and adding Subsections (c) and (d) to read  
25 as follows:

26 (a) A developer [~~seller~~] or other person commits a false,  
27 misleading, or deceptive act or practice within the meaning of

1 Subsections (a) and (b) of Section 17.46 of the Texas Deceptive  
2 Trade Practices-Consumer Protection Act (Article 17.46 et seq.,  
3 Business & Commerce Code), by engaging in any of the following acts:

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

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

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

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

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

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

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

27 (8) failing to provide the annual [~~timeshare fee and~~

1 ~~expense~~] statement as required by Section 221.074(a) [~~221.074~~]; or

2 (9) exceeding a one-to-one purchaser-to-accommodation  
3 ratio for a timeshare plan during a consecutive 12-month period, as  
4 determined under Subsection (c) [~~furnishing false information in~~  
5 ~~the annual timeshare fee and expense statement as required by~~  
6 ~~Section 221.074~~].

7 (c) A developer complies with the one-to-one  
8 purchaser-to-accommodation ratio referred to in Subsection (a)(9)  
9 if the total number of purchasers eligible to use the  
10 accommodations of the timeshare plan during a consecutive 12-month  
11 period never exceeds the total number of accommodations available  
12 for use in the timeshare plan during that same period. A  
13 purchaser-to-accommodation ratio is computed by dividing the  
14 number of purchasers eligible to use an accommodation in a  
15 timeshare plan on any given day by the number of accommodations  
16 within the plan available for use on that day. For purposes of  
17 computing the purchaser-to-accommodation ratio:

18 (1) each purchaser is counted at least once each  
19 consecutive 12-month period;

20 (2) each accommodation is counted not more than 365  
21 times each consecutive 12-month period, excluding a leap year, in  
22 which each accommodation may be counted 366 times; and

23 (3) a purchaser who is delinquent in paying timeshare  
24 assessments is considered eligible to use timeshare plan  
25 accommodations.

26 (d) If a developer has substantially complied with this  
27 chapter in good faith, a nonmaterial error or omission is not

1 actionable. Any nonmaterial error or omission is not sufficient to  
2 permit a purchaser to cancel a purchase contract after the period  
3 provided for cancellation expires under this chapter.

4 SECTION 12. Section 221.072, Property Code, is amended to  
5 read as follows:

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

9 (1) property insurance on the timeshare property and  
10 any personal property for use by purchasers, other than personal  
11 property separately owned by a purchaser, insuring against all  
12 risks of direct physical loss commonly insured against, in a total  
13 amount, after application of deductibles, of the full replacement  
14 cost of the accommodations and amenities of the timeshare property;  
15 and

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

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

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

26 (b) It is not a violation of this section for a developer [~~or~~  
27 ~~seller~~] subject to [~~the provisions of~~] this chapter [~~Act~~] to accept

1 reservations and deposits from prospective purchasers in  
2 accordance with Section 221.021(b) or (d) [~~the provisions of~~  
3 ~~Subsection (b) of Section 221.021 of this Act~~].

4 SECTION 14. Section 221.074, Property Code, is amended to  
5 read as follows:

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

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

19 (1) a balance sheet;

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

23 (3) the current [~~operating~~] budget for the timeshare  
24 property, timeshare properties managed by the same managing entity,  
25 or multisite timeshare plan [~~system~~] required by Section  
26 221.032(b)(12) [~~221.032(b)(6)~~]; and

27 (4) [~~an accounting identifying any unfunded reserves~~



1 ~~for capital improvements and maintenance and upkeep of the~~  
2 ~~timeshare property; and~~

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

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

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

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

24 (2) completed not later than five months after the  
25 last day of the fiscal year of the timeshare plan or timeshare  
26 property. [~~The statement shall be delivered in person or by mail to~~  
27 ~~each person on the board of directors of the council of purchasers~~

1 ~~or the owners' association, if one exists.]~~

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

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

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

17 [~~(c) If a request for the statement is received by the~~  
18 ~~managing entity prior to the date by which the statement is~~  
19 ~~available, the statement shall be provided no later than one week~~  
20 ~~after the date the statement becomes available. If a request for~~  
21 ~~the statement is received by the managing entity after the date the~~  
22 ~~statement becomes available, the statement shall be provided no~~  
23 ~~later than two weeks after the date the request is received by the~~  
24 ~~managing entity. For the purposes of this section, the statement~~  
25 ~~shall be deemed provided if it is deposited in the mail, properly~~  
26 ~~addressed, with postage prepaid.~~

27 [~~(f) A managing entity shall provide a separate annual~~

1 ~~timeshare fee and expense statement for each timeshare property~~  
2 ~~unless the property is part of a timeshare system. A managing~~  
3 ~~entity may provide a consolidated statement for all timeshare~~  
4 ~~properties comprising a timeshare system.]~~

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

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

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

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

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

1 B.

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

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

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

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

22 ~~[(2) separate timeshare properties which are not part~~  
23 ~~of a timeshare system, or~~

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

27 Sec. 221.077. AVAILABILITY OF BOOKS AND RECORDS; RECORDS

1 RETENTION. (a) A developer or managing entity, on written request  
2 of an owner, shall make available for examination at its registered  
3 office or principal place of business and at any reasonable time or  
4 times the relevant books and records relating to the collection and  
5 expenditure of assessments [~~timeshare fees~~].

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

14 SECTION 17. This Act applies to timeshare plans created on  
15 or after January 15, 2006, and to any developer who offers or  
16 disposes of an interest in a timeshare plan and a managing entity  
17 that manages a timeshare property under Chapter 221, Property Code,  
18 as amended by this Act, on or after that date.

19 SECTION 18. If a timeshare plan is registered with the Texas  
20 Real Estate Commission before January 15, 2006:

21 (1) the registration expires 24 months after the last  
22 anniversary of the date the timeshare plan was registered;

23 (2) a developer may renew the registration as provided  
24 by Section 221.023, Property Code, as amended by this Act; and

25 (3) the developer may continue to use the timeshare  
26 disclosure statement for the timeshare plan as approved by the  
27 Texas Real Estate Commission prior to January 15, 2006, so long as

1 the registration is amended from time to time to disclose any  
2 materially adverse changes as required by Section 221.023, Property  
3 Code, as amended by this Act.

4 SECTION 19. This Act takes effect January 15, 2006.