

By: Wentworth

S.B. No. 1360

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 an assignment of a right to use and~~
4 ~~occupy an accommodation or facility granted to a purchaser or owner~~
5 ~~of a timeshare interest in a single-site timeshare plan [a one-time~~
6 ~~exchange of timeshare periods in the same timeshare property if~~
7 ~~offered to a purchaser by a developer after that purchaser's~~
8 ~~disposition].~~

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

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

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

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

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

1 a right to use and occupy a particular accommodation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~divided into timeshare periods.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (3) a description of any [~~the~~] amenities furnished or

1 to be furnished to the purchaser;

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

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

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

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

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

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

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

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

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

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

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

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

25 (c) A developer or any person [~~anyone~~] acting on the
26 developer's [his] behalf may not offer or dispose of [or encumber] a
27 timeshare interest during any period within which there is in

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

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

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

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

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

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

25 (1) provide to each purchaser and prospective
26 purchaser a copy of the proposed timeshare disclosure statement
27 that the developer submitted to the commission with the initial

1 registration application; and

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

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

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

8 (2) if the commission determines that a materially
9 adverse change exists between the disclosures contained in the
10 proposed timeshare disclosure statement and the final timeshare
11 disclosure statement, provide the purchaser a second opportunity to
12 cancel the purchase contract as provided by Section 221.041.

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

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

1 condominium, an applicant who complies with this section is not
2 required to prepare or deliver a condominium information statement
3 or a resale certificate as described by Chapter 82.

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

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

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

1 (1) the developer is a:

2 (A) successor in interest after a merger or
3 acquisition; or

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

6 (2) the previous developer registered the timeshare
7 plan in this state preceding the merger, acquisition, or joint
8 venture.

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

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

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

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

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

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

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

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

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

6 (9) a disclosure of each jurisdiction in which the
7 developer has applied for registration of the timeshare plan and
8 whether the timeshare plan, the developer, or the managing entity
9 used were denied registration or, during the five-year period
10 before the registration application date, were the subject of a
11 final adverse disposition in a disciplinary proceeding;

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

15 (11) the appropriate filing fee; and

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

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

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

1 sufficient to cover those expenses.

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

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

27 (b) The commission may:

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

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

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

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

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

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

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

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

23 (2) by trial de novo.

24 Sec. 221.025. EFFECT OF REGISTRATION ON OTHER LAWS:
25 EXEMPTION [~~SALE EXEMPT~~] FROM CERTAIN LAWS [~~SECURITIES ACT~~]. (a) A
26 developer's compliance with [~~The filing of a registration under~~]
27 this chapter exempts the developer's offer and disposition of [~~sale~~

1 ~~of~~] timeshare interests subject to this chapter from securities and
2 dealer registration under The Securities Act (Article 581-1 et
3 seq., Vernon's Texas Civil Statutes).

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

7 (c) A timeshare plan subject to Chapter 82 that complies
8 with this chapter is exempt from the requirements of Section
9 82.0675 relating to club membership.

10 (d) A developer's compliance with this chapter as to any
11 timeshare plan exempts any company, as defined by Chapter 181,
12 Finance Code (Texas Trust Company Act), that holds title to the
13 timeshare interests in the timeshare plan from compliance with the
14 Texas Trust Company Act as to the company's activities relating to
15 the holding of that title.

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

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

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

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

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

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

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

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

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

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

1 (c) As provided by Subsections (d) and (e), an advertisement
2 that contains a [Before the use of any] promotion in connection with
3 the offering of a timeshare interest must include, in addition to
4 any disclosures required under Chapter 40, Business & Commerce
5 Code, [the person who intends to use the promotion shall include]
6 the following [information in its advertisements to the prospective
7 purchaser]:

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

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

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

15 (4) if applicable, the full name and address of any
16 marketing company involved in the promotion of the timeshare
17 property, excluding the developer or an affiliate or subsidiary of
18 the developer.

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

22 (1) at least once before a scheduled sales
23 presentation; and

24 (2) in a reasonable period before the scheduled sales
25 presentation to ensure that the recipient receives the disclosures
26 before leaving to attend the sales presentation.

27 (e) The developer is not required to provide the disclosures

1 required by this section in every advertisement or other written,
2 oral, or electronic communication provided or made to a recipient
3 before a scheduled sales presentation[†

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

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

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

24 ~~[Provided, however, in the event a prize or gift involves~~
25 ~~lodging, airfare, trips, or recreational activity, the retail value~~
26 ~~shall be the retail sales price of the lodging, airfare, trips, or~~
27 ~~recreational activity to a member of the general public not~~

1 ~~involved in a promotional or other discount transaction.]~~

2 Sec. 221.032. TIMESHARE DISCLOSURE STATEMENT. (a) Before
3 the signing of any agreement [~~or contract~~] to acquire a timeshare
4 interest, the developer shall provide a timeshare disclosure
5 statement to the prospective purchaser and shall obtain from the
6 purchaser a written acknowledgement of receipt of the timeshare
7 disclosure statement.

8 (b) The timeshare disclosure statement for a single-site
9 timeshare plan or a multisite timeshare plan that includes a
10 specific timeshare interest must include:

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

13 (A) the developer; and

14 (B) the single site or specific site offered for
15 the multisite timeshare plan [~~and the name and specific location of~~
16 ~~the timeshare property~~];

17 (2) a description of the duration and operation of the
18 timeshare plan;

19 (3) a description of the existing or proposed
20 accommodations, including the type and number of timeshare
21 interests in the accommodations expressed in periods of seven-day
22 use availability or other time increment applicable to the
23 timeshare plan. [~~amenities, timeshare property, and any project or~~
24 ~~development within which the timeshare property is located or of~~
25 ~~which it is a part, the total number of timeshare units in the~~
26 ~~timeshare property and whether and under what circumstances that~~
27 ~~number may be increased or decreased; and, if a timeshare interest~~

1 ~~includes amenities not yet in existence, the commencement and~~
2 ~~completion schedule of the proposed amenities]; The description of~~

3 each type of accommodation included in the timeshare plan shall be

4 categorized by the number of bedrooms, the number of bathrooms, and

5 sleeping capacity, and shall include a statement indicating whether

6 the accommodation contains a full kitchen, which means a kitchen

7 that has a minimum of a dishwasher, range, sink, oven, and

8 refrigerator. If the accommodations are proposed or incomplete, a

9 schedule for commencement, completion, and availability of the

10 accommodations shall be provided;

11 (4) [~~3~~] a description of any existing or proposed

12 amenities of the timeshare plan and, if the amenities are proposed

13 or incomplete, a schedule for commencement, completion, and

14 availability of the amenities [the timeshare interests currently

15 available for disposition and, if applicable, the types and number

16 of units available];

17 (5) the extent to which financial arrangements have

18 been provided for the completion of all promised accommodations and

19 amenities that are committed to be built;

20 (6) a description of the method and timing for

21 performing maintenance of the accommodations;

22 (7) a statement indicating that, on an annual basis,

23 the sum of the nights that purchasers are entitled to use the

24 accommodations does not exceed the number of nights the

25 accommodations are available for use by the purchasers;

26 (8) a description of the method by which purchasers'

27 use of the accommodations is scheduled;

1 (9) [~~(4)~~] a statement that an association [~~a council~~
2 ~~of purchasers~~] exists or is expected to be created or that such an
3 association [~~a council~~] does not exist and is not expected to be
4 created and, if such an association [~~a council~~] exists or is
5 reasonably contemplated, a description of its powers and
6 responsibilities;

7 (10) relating to the single-site timeshare plan or the
8 specific timeshare interest of a multisite timeshare plan, copies
9 of the following documents, if applicable, including any amendments
10 to the documents, unless separately provided to the purchaser
11 simultaneously with the timeshare disclosure statement:

12 (A) the declaration;

13 (B) the association articles of incorporation;

14 (C) the association bylaws;

15 (D) the association rules; and

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

19 (11) [~~(5)~~] the name and principal address of the
20 managing entity and a description of the procedures, if any, for
21 altering the powers and responsibilities of the managing entity and
22 for removing or replacing it;

23 (12) the current annual [~~(6) a complete~~] budget, if
24 available, or the projected annual budget for the timeshare plan or
25 timeshare properties managed by the same managing entity if
26 assessments are deposited in a common account. The budget [~~for the~~
27 ~~operation of the timeshare property for a period of one year after~~

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

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

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

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

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

17 [~~(E)] the name and address of the person who~~

18 prepared the operating budget; and

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

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

26 (14) any initial fee or special fee due from the
27 purchaser at closing, together with a description of the purpose

1 and method of calculating the fee;

2 (15) [(8)] a description of any lien, defect, or
3 encumbrance on or affecting title to the timeshare interest and, if
4 applicable, a copy of each written warranty provided by the
5 developer [~~service that the developer or person acting on his~~
6 ~~behalf provides or expense that is paid that reasonably may be~~
7 ~~expected to become a timeshare liability, and the projected~~
8 ~~timeshare liability attributable to that service or expense];~~

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

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

19 (18) any current or anticipated [(10) a description
20 and amount of any current or expected dues, assessments,] fees[7]
21 or charges to be paid by timeshare purchasers for the use of any
22 accommodations or amenities related to the timeshare plan, and a
23 statement that the fees or charges are subject to change [~~or for any~~
24 ~~other purpose];~~

25 (19) [(11) a description of any unsatisfied final
26 judgment against the developer, seller, managing entity, or
27 exchange company with which the developer is under contract, but

1 ~~not including any individual sales agent or representative who~~
2 ~~offers a timeshare interest;~~

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

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

8 (20) ~~[(14)]~~ the extent to which a timeshare interest
9 may become subject to a tax lien or other lien arising out of claims
10 against purchasers of different timeshare interests;

11 (21) ~~[(15)]~~ a description of those matters required by
12 Section 221.041 ~~[201.041]~~;

13 (22) ~~[(16)]~~ a statement disclosing any right of first
14 refusal or other restraint on the transfer of all or any portion of
15 a timeshare interest;

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

1 be held by an escrow agent and that the deposit must be returned if
2 the purchaser elects to exercise the right of cancellation;

3 (24) [(18)] if applicable, a statement that the
4 assessments [timeshare property is part of a timeshare system and
5 that timeshare fees] collected from the purchasers [owners] may be
6 placed in a common account with the assessments [timeshare fees]
7 collected from the purchasers [owners] of other timeshare
8 properties managed by the same managing entity [participating in
9 the timeshare system];

10 (25) if the timeshare plan provides purchasers with
11 the opportunity to participate in an exchange program, a
12 description of the name and address of the exchange company and the
13 method by which a purchaser accesses the exchange program; and

14 (26) [(19)] any other information the commission
15 determines is necessary to protect prospective purchasers or to
16 implement the purpose of this chapter [material circumstances
17 concerning a timeshare interest].

18 (c) A developer who offers a specific timeshare interest in
19 a multisite timeshare plan also must fully disclose the following
20 information in written, graphic, or tabular form:

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

23 (2) a description of each type of accommodation in
24 each component site, categorized by the number of bedrooms, the
25 number of bathrooms, and sleeping capacity, and a statement
26 indicating whether the accommodation contains a full kitchen, which
27 means a kitchen that has a minimum of a dishwasher, range, sink,

1 oven, and refrigerator;

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

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

6 (A) the entity responsible for operating the
7 reservation system, its relationship to the developer, and the
8 duration of any agreement for operation of the reservation system;

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

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

15 (5) the name and principal address of the managing
16 entity for the multisite timeshare plan and a description of the
17 procedures, if any, for altering the powers and responsibilities of
18 the managing entity and for removing or replacing it;

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

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

26 (8) the location of each component site of the
27 multisite timeshare plan, the historical occupancy of each

1 component site for the prior 12-month period, if the component site
2 was part of the multisite timeshare plan during such 12-month time
3 period, as well as any periodic adjustment or amendment to the
4 reservation system that may be needed in order to respond to actual
5 purchaser use patterns and changes in purchaser use demand for the
6 accommodations existing at the time within the multisite timeshare
7 plan; and

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

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

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

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

17 (3) a description of the duration and operation of the
18 timeshare plan;

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

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

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

25 (7) a description of the existing or proposed
26 accommodations, expressed in periods of seven-day use availability
27 or any other time increment applicable to the timeshare plan. The

1 description of each type of accommodation included in the timeshare
2 plan shall be categorized by the number of bedrooms, the number of
3 bathrooms, and sleeping capacity, and shall include a statement
4 indicating whether the accommodation contains a full kitchen, which
5 means a kitchen that has a minimum of a dishwasher, range, sink,
6 oven, and refrigerator. If the accommodations are proposed or
7 incomplete, a schedule for commencement, completion, and
8 availability of the accommodations shall be provided;

9 (8) a statement that an association exists or is
10 expected to be created or that such an association does not exist
11 and is not expected to be created and, if such an association exists
12 or is reasonably contemplated, a description of its powers and
13 responsibilities;

14 (9) if applicable, copies of the following documents
15 applicable to the multisite timeshare plan, including any
16 amendments to the documents, unless separately provided to the
17 purchaser simultaneously with the timeshare disclosure statement:

18 (A) the declaration;

19 (B) the association articles of incorporation;

20 (C) the association bylaws;

21 (D) the association rules; and

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

25 (10) a description of the method and timing for
26 performing maintenance of the accommodations;

27 (11) a statement indicating that, on an annual basis,

1 the sum of the nights that purchasers are entitled to use the
2 accommodations does not exceed the number of nights the
3 accommodations are available for use by the purchasers;

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

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

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

21 (15) a description of the right to make any additions,
22 substitutions, or deletions of accommodations, amenities, or
23 component sites, and a description of the basis upon which
24 accommodations, amenities, or component sites may be added to,
25 substituted in, or deleted from the multisite timeshare plan;

26 (16) a description of the reservation system that
27 shall include all of the following:

1 (A) the entity responsible for operating the
2 reservation system, its relationship to the developer, and the
3 duration of any agreement for operation of the reservation system;

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

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

10 (17) the name and principal address of the managing
11 entity for the multisite timeshare plan and a description of the
12 procedures, if any, for altering the powers and responsibilities of
13 the managing entity and for removing or replacing it, and a
14 description of the relationship between the multisite timeshare
15 plan managing entity and the managing entity of the component sites
16 of the multisite timeshare plan, if different from the multisite
17 timeshare plan managing entity;

18 (18) the current annual budget of the multisite
19 timeshare plan, if available, or the projected annual budget for
20 the multisite timeshare plan, which must include:

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

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

25 (C) the name and address of the person who
26 prepared the operating budget; and

27 (D) the assumptions on which the operating budget

1 is based;

2 (19) the projected assessments and a description of
3 the method for calculating and apportioning those assessments among
4 purchasers of the multisite timeshare plan;

5 (20) if applicable, a statement that the assessments
6 collected from the purchasers may be placed in a common account with
7 the assessments collected from the purchasers of other timeshare
8 properties managed by the same managing entity;

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

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

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

18 (24) a description of any lien, defect, or encumbrance
19 on or affecting title to the timeshare interest and, if applicable,
20 a copy of each written warranty provided by the developer;

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

24 (26) a description of those matters required by
25 Section 221.041;

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

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

5 (29) a statement disclosing any right of first refusal
6 or other restraint on the transfer of all or a portion of a
7 timeshare interest;

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

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

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

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

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

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

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

22 SECTION 7. Section 221.034, Property Code, is amended to
23 read as follows:

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

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

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

4 (3) a disposition by a governmental agency;

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

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

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

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

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

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

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

27 (b) If a developer has a timeshare plan registered under

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

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

11 (2) provides the purchaser all timeshare disclosure
12 documents required by law to be provided in the jurisdiction in
13 which the timeshare property is located.

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

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

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

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

26 (B) the rebroadcast or other dissemination of any
27 oral statements by a developer to a prospective purchaser or the

1 distribution or other dissemination of written statements,
2 including newspaper or magazine articles or press releases, by a
3 developer to prospective purchasers;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 purchaser, whichever is later.

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

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

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

22 "(2) [~~(B)~~] IF YOU DECIDE TO CANCEL THIS CONTRACT, YOU
23 MAY DO SO BY EITHER HAND-DELIVERING NOTICE OF CANCELLATION TO THE
24 DEVELOPER, [~~SELLER OR~~] BY MAILING NOTICE BY PREPAID UNITED STATES
25 MAIL TO THE DEVELOPER [~~SELLER~~] OR THE DEVELOPER'S [~~SELLER'S~~] AGENT
26 FOR SERVICE OF PROCESS, OR BY PROVIDING NOTICE BY OVERNIGHT COMMON
27 CARRIER DELIVERY SERVICE TO THE DEVELOPER OR THE DEVELOPER'S AGENT

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

8 "(3) [~~(c)~~] A PURCHASER SHOULD NOT RELY ON STATEMENTS
9 OTHER THAN THOSE INCLUDED IN THIS CONTRACT AND THE DISCLOSURE
10 STATEMENT."

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

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

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

1 ~~signed.]~~

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

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

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

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

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

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

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

1 foreclosure; ~~and~~

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

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

11 (8) the following statement:

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

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

22 SECTION 9. Section 221.052, Property Code, is amended to
23 read as follows:

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

25 (a) A developer does not incur any liability arising out of the
26 use, delivery, or publication ~~[by the developer]~~ to a ~~[the]~~
27 purchaser of written information or audio-visual materials

1 provided to it by the exchange company in accordance with
2 Subchapter D, unless [~~. A developer is subject to liability arising~~
3 ~~out of the use, delivery, or publication to the purchaser of~~
4 ~~materials provided by the exchange company if]~~ the developer knows
5 or has reason to know that the materials are inaccurate or false.

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

10 (c) An exchange company that denies exchange privileges to
11 an owner whose use of accommodations in the owner's timeshare plan
12 is denied is not liable to any member of the exchange company or
13 exchange program or any third party because of the denial of the
14 owner's exchange privileges.

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

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

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

27 (c) The escrow agent and the developer shall execute an

1 agreement that includes a statement providing that:

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

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

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

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

10 (A) the purchaser; or

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

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

21 (1) a certificate of occupancy;

22 (2) a certificate of substantial completion;

23 (3) evidence of a public safety inspection equivalent
24 to Subdivision (1) or (2) from a government agency in the applicable
25 jurisdiction; or

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

27 Sec. 221.062. [~~ESCROW AMOUNT. Fifty percent of any deposit~~

1 ~~obtained from a purchaser shall be placed in the escrow account.~~

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

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

7 (1) the purchaser; or

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

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

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

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

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

27 ~~[(4) a statement that the developer has no knowledge~~

1 ~~of a dispute between the purchaser and developer and a statement~~
2 ~~that the purchaser has not, to the applicant's knowledge, made a~~
3 ~~demand for the return of the deposit, and~~

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

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

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

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

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

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

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

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

1 financial assurance posted in another state or jurisdiction.

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

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

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

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

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

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

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

24 ~~[(2) if funds were placed in the escrow account in~~
25 ~~connection with the proposed disposition of a timeshare estate, a~~
26 ~~true and correct copy of the instrument transferring ownership of~~
27 ~~the timeshare estate to the purchaser free and clear of all liens~~

1 ~~and encumbrances, except for any encumbrance created by purchaser~~
2 ~~financing; and~~

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

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

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

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

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

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

27 (3) predicting specific or immediate increases in the

1 value of a timeshare interest without a reasonable basis for such
2 predictions;

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

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

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

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

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

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

25 (c) A developer complies with the one-to-one
26 purchaser-to-accommodation ratio referred to in Subsection (a)(9)
27 if the total number of purchasers eligible to use the

1 accommodations of the timeshare plan during a consecutive 12-month
2 period never exceeds the total number of accommodations available
3 for use in the timeshare plan during that same period. A
4 purchaser-to-accommodation ratio is computed by dividing the
5 number of purchasers eligible to use an accommodation in a
6 timeshare plan on any given day by the number of accommodations
7 within the plan available for use on that day. For purposes of
8 computing the purchaser-to-accommodation ratio:

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

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

14 (3) a purchaser who is delinquent in paying timeshare
15 assessments is considered eligible to use timeshare plan
16 accommodations.

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

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

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

27 (1) property insurance on the timeshare property and

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

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

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

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

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

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

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

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

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

10 (1) a balance sheet;

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

14 (3) the current [~~operating~~] budget for the timeshare
15 property, timeshare properties managed by the same managing entity,
16 or multisite timeshare plan [~~system~~] required by Section
17 221.032(b)(12) [~~221.032(b)(6)~~]; and

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

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

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

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

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

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

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

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

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

1 address of the managing entity inserted where indicated:

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

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

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

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

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

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

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

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

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

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

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

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

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

- 12 [~~(1) separate timeshare systems,~~
- 13 [~~(2) separate timeshare properties which are not part~~
- 14 ~~of a timeshare system; or~~
- 15 [~~(3) a timeshare system with the timeshare fees of a~~
- 16 ~~separate timeshare property which is not a participant in the~~
- 17 ~~timeshare system].~~

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

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

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

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

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

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

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

16 (3) the developer may continue to use the timeshare
17 disclosure statement for the timeshare plan as approved by the
18 Texas Real Estate Commission prior to January 15, 2006, so long as
19 the registration is amended from time to time to disclose any
20 materially adverse changes as required by Section 221.023, Property
21 Code, as amended by this Act.

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