

## **BILL ANALYSIS**

S.B. 1036  
By: Harris  
Licensing & Administrative Procedures  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

A major rewrite of the Texas Timeshare Act was adopted by the 79th Legislature, Regular Session, 2005. All interested stakeholders came together to adopt model legislation related to the timeshare industry.

Since the passage of that legislation in 2005, other states have adopted this model and implemented it. After passage and during implementation of the act, it was discovered that there was a need for modification to correct drafting errors, provide cleanup, and ensure greater protection to consumers.

S.B. 1036 authorizes the Texas Real Estate Commission to accept an abbreviated application for registration for any out-of-state timeshare accommodations and prohibits a timeshare developer from accepting a purchaser's money out of escrow until the developer can show, to the commission's satisfaction, that the timeshare interest will be conveyed to the purchaser and consumer free and clear of all liens and encumbrances. The bill also requires alternate consumer protection provisions if a timeshare property is mortgaged, including the use of a non-disturbance instrument so the purchaser's or consumer's timeshare interest will be delivered and available as promised.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

S.B. 1036 amends the Property Code to authorize the Texas Real Estate Commission to accept an abbreviated application for registration with the commission under the Texas Timeshare Act from a developer of a timeshare plan for any accommodations in the plan located outside of Texas, rather than if all accommodations in the plan are located outside the state. The bill removes the name and address of the person who prepared the timeshare plan's operating budget from the information that is required to be included in the plan's current or projected budget for inclusion in the timeshare disclosure statement for a single-site timeshare plan or a multisite timeshare plan that includes a specific timeshare interest and in the disclosure by a developer who offers a nonspecific timeshare interest in a multisite timeshare plan.

S.B. 1036 provides that, for the disclosures required under the act, the use of the terms "vacation ownership interest" or "vacation ownership plan" to refer to the timeshare interest or plan offered by the developer, or the use of other terms that are substantially similar and that are regularly used by the developer to denote a timeshare interest or plan, is sufficient and complies with the requirements of the act. The bill provides that, in providing the full name of a developer or a marketing company as required by the act, the disclosure of an assumed name of the developer or marketing company is sufficient and complies with the act if the company has complied with the requirements of applicable laws relating to assumed business names or the use of the

assumed name.

S.B. 1036 removes from the information that is required to be included in the purchase contract for a timeshare interest a statement disclosing that the timeshare common properties are not mortgaged, with certain exceptions; and, in the event such timeshare interests are sold under a lease, right to use, or membership agreement where free and clear title to the accommodation is not passed to the purchaser, a statement that the timeshare is free and clear, or if subject to a mortgage, the mortgage is required to contain a nondisturbance clause which fully protects the use and enjoyment rights of each timeshare owner in the event of foreclosure.

S.B. 1036 establishes that, excluding certain encumbrances, a developer is not entitled to the release of any funds escrowed with respect to each timeshare interest until the developer has provided the commission with satisfactory evidence that the timeshare interest and any other property or rights to property appurtenant to the timeshare interest, are free and clear of any of the claims of the developer, any owner of the underlying fee, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the timeshare interest or appurtenant property or property rights; that such an interest holder has recorded a subordination and notice to creditors document in the jurisdiction in which the timeshare interest is located that expressly and effectively provides that the interest holder's right, lien, or encumbrance does not adversely affect and is subordinate to the rights of the owners of the timeshare interests in the timeshare plan, regardless of the date of purchase, on and after the effective date of the subordination document; that such an interest holder has transferred the subject accommodations or amenities or all use rights therein to a nonprofit organization or an owners' association to be held for the use and benefit of the purchasers of the timeshare plan, which entity is required to act as a fiduciary to the purchasers, provided that the developer has transferred control of that entity to the purchasers or does not exercise its voting rights in that entity with respect to the subject accommodations or amenities and, prior to the transfer, any lien or other encumbrance against the accommodation or facility is subject to a subordination and notice to creditors instrument under these provisions; or that alternative arrangements have been made that are adequate to protect the rights of the purchasers of the timeshare interests and are approved by the commission.

S.B. 1036 makes its provisions applicable to timeshare plans created on or after January 15, 2010, and to any developer who offers or disposes of an interest in a timeshare plan and a managing entity that manages a timeshare property under the Texas Timeshare Act, as amended by this bill, on or after that date.

**EFFECTIVE DATE**

September 1, 2009.