

By: Harris

S.B. No. 1036

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. Subsection (c), Section 221.022, Property Code, is amended to read as follows:

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

SECTION 2. Subsections (b) and (d), Section 221.032, Property Code, are amended to read as follows:

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

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

(A) the developer; and

(B) the single site or specific site offered for the multisite timeshare plan;

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

(3) a description of the existing or proposed

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

13 (4) a description of any existing or proposed
14 amenities of the timeshare plan and, if the amenities are proposed
15 or incomplete, a schedule for commencement, completion, and
16 availability of the amenities;

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) a statement that an association exists or is
2 expected to be created or that such an association does not exist
3 and is not expected to be created and, if such an association exists
4 or is reasonably contemplated, a description of its powers and
5 responsibilities;

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

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

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

22 (12) the current annual budget, if available, or the
23 projected annual budget for the timeshare plan or timeshare
24 properties managed by the same managing entity if assessments are
25 deposited in a common account. The budget must include:

- 26 (A) a statement of the amount reserved or
27 budgeted for repairs, replacements, and refurbishment;

1 (B) the projected common expense liability, if
2 any, by category of expenditure for the timeshare plan or timeshare
3 properties managed by the same managing entity; and

4 (C) [~~the name and address of the person who~~
5 ~~prepared the operating budget; and~~

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

8 (13) the projected assessments and a description of
9 the method for calculating and apportioning those assessments among
10 purchasers;

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

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

17 (16) a description of any bankruptcy that is pending
18 or that has occurred within the past five years, pending civil or
19 criminal suit, adjudication, or disciplinary actions material to
20 the timeshare plan of which the developer has knowledge;

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

23 (18) any current or anticipated fees or charges to be
24 paid by timeshare purchasers for the use of any accommodations or
25 amenities related to the timeshare plan, and a statement that the
26 fees or charges are subject to change;

27 (19) a description and amount of insurance coverage

1 provided for the protection of the purchaser;

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

5 (21) a description of those matters required by
6 Section 221.041;

7 (22) a statement disclosing any right of first refusal
8 or other restraint on the transfer of all or any portion of a
9 timeshare interest;

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

23 (24) if applicable, a statement that the assessments
24 collected from the purchasers may be placed in a common account with
25 the assessments collected from the purchasers of other timeshare
26 properties managed by the same managing entity;

27 (25) if the timeshare plan provides purchasers with

1 the opportunity to participate in an exchange program, a
2 description of the name and address of the exchange company and the
3 method by which a purchaser accesses the exchange program; and

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

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

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

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

13 (3) a description of the duration and operation of the
14 timeshare plan;

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

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

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

21 (7) a description of the existing or proposed
22 accommodations, expressed in periods of seven-day use availability
23 or any other time increment applicable to the timeshare plan. The
24 description of each type of accommodation included in the timeshare
25 plan shall be categorized by the number of bedrooms, the number of
26 bathrooms, and sleeping capacity, and shall include a statement
27 indicating whether the accommodation contains a full kitchen, which

1 means a kitchen that has a minimum of a dishwasher, range, sink,
2 oven, and refrigerator. If the accommodations are proposed or
3 incomplete, a schedule for commencement, completion, and
4 availability of the accommodations shall be provided;

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

10 (9) if applicable, copies of the following documents
11 applicable to the multisite timeshare plan, including any
12 amendments to the documents, unless separately provided to the
13 purchaser simultaneously with the timeshare disclosure statement:

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

21 (10) a description of the method and timing for
22 performing maintenance of the accommodations;

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

27 (12) a description of each type of accommodation

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

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

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

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

22 (16) a description of the reservation system that
23 shall include all of the following:

24 (A) the entity responsible for operating the
25 reservation system, its relationship to the developer, and the
26 duration of any agreement for operation of the reservation system;

27 (B) a summary of the rules governing access to

1 and use of the reservation system; and

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

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

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

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

19 (B) the projected common expense liability, if
20 any, by category of expenditure for the multisite timeshare plan;
21 and

22 (C) ~~[the name and address of the person who~~
23 ~~prepared the operating budget, and~~

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

26 (19) the projected assessments and a description of
27 the method for calculating and apportioning those assessments among

1 purchasers of the multisite timeshare plan;

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

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

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

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

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

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

21 (26) a description of those matters required by
22 Section 221.041;

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

25 (28) a description of any bankruptcy that is pending
26 or that has occurred within the past five years, pending civil or
27 criminal suits, adjudications, or disciplinary actions material to

1 the timeshare plan of which the developer has knowledge;

2 (29) a statement disclosing any right of first refusal
3 or other restraint on the transfer of all or a portion of a
4 timeshare interest;

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

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

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

25 SECTION 3. Subchapter D, Chapter 221, Property Code, is
26 amended by adding Section 221.037 to read as follows:

27 Sec. 221.037. ALTERNATIVE TERMINOLOGY OR NAME. (a) In

1 providing the disclosures required by this chapter, the use of the
2 terms "vacation ownership interest" or "vacation ownership plan" to
3 refer to the timeshare interest or plan offered by the developer, or
4 the use of other terms that are substantially similar and that are
5 regularly used by the developer to denote a timeshare interest or
6 plan, is sufficient and complies with the requirements of this
7 chapter.

8 (b) In providing the full name of a developer or a marketing
9 company as required by this chapter, the disclosure of an assumed
10 name of the developer or the marketing company, if the entity has
11 complied with the requirements of the applicable assumed business
12 names statutes or other laws regarding the use of the assumed name,
13 is sufficient and complies with this chapter.

14 SECTION 4. Subsection (c), Section 221.043, Property Code,
15 is amended to read as follows:

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

17 (1) the name and address of the developer and the
18 address of the timeshare property or the address of any available
19 timeshare interest being offered;

20 (2) an agreement describing the cancellation policy
21 prescribed by Section 221.041;

22 (3) the name of the person or persons primarily
23 involved in the sales presentation on behalf of the developer;

24 (4) a statement disclosing the amount of the periodic
25 assessments currently assessed against or collected from the
26 purchasers of the timeshare interest, immediately followed by a
27 statement providing that collected assessments will be used by the

1 managing entity to pay for expenditures, charges, reserves, or
2 liabilities relating to the operation of the timeshare plan or
3 timeshare properties managed by the managing entity;

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

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

16 ~~[(7)]~~ the date the purchaser signs the contract; and

17 (6) ~~[(8)]~~ the following statement:

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

24 SECTION 5. Section 221.062, Property Code, is amended by
25 adding Subsection (h) to read as follows:

26 (h) Excluding any encumbrance placed against the
27 purchaser's timeshare interest that secures the purchaser's payment

1 of purchase money financing for the purchase, the developer is not
2 entitled to the release of any funds escrowed with respect to each
3 timeshare interest until the developer has provided the commission
4 with satisfactory evidence that:

5 (1) the timeshare interest and any other property or
6 rights to property appurtenant to the timeshare interest, including
7 any amenities represented to the purchaser as being part of the
8 timeshare plan, are free and clear of any of the claims of the
9 developer, any owner of the underlying fee, a mortgagee, judgment
10 creditor, or other lienor, or any other person having an interest in
11 or lien or encumbrance against the timeshare interest or
12 appurtenant property or property rights;

13 (2) the developer, any owner of the underlying fee, a
14 mortgagee, judgment creditor, or other lienor, or any other person
15 having an interest in or lien or encumbrance against the timeshare
16 interest or appurtenant property or property rights, including any
17 amenities represented to the purchaser as being part of the
18 timeshare plan, has recorded a subordination and notice to
19 creditors document in the jurisdiction in which the timeshare
20 interest is located that expressly and effectively provides that
21 the interest holder's right, lien, or encumbrance does not
22 adversely affect and is subordinate to the rights of the owners of
23 the timeshare interests in the timeshare plan, regardless of the
24 date of purchase, on and after the effective date of the
25 subordination document;

26 (3) the developer, any owner of the underlying fee, a
27 mortgagee, judgment creditor, or other lienor, or any other person

1 having an interest in or lien or encumbrance against the timeshare
2 interest or appurtenant property or property rights, including any
3 amenities represented to the purchaser as being part of the
4 timeshare plan, has transferred the subject accommodations or
5 amenities or all use rights therein to a nonprofit organization or
6 an owners' association to be held for the use and benefit of the
7 purchasers of the timeshare plan, which entity shall act as a
8 fiduciary to the purchasers, provided that the developer has
9 transferred control of that entity to the purchasers or does not
10 exercise its voting rights in that entity with respect to the
11 subject accommodations or amenities and, prior to the transfer, any
12 lien or other encumbrance against the accommodation or facility is
13 subject to a subordination and notice to creditors instrument
14 pursuant to this subsection; or

15 (4) alternative arrangements have been made that are
16 adequate to protect the rights of the purchasers of the timeshare
17 interests and are approved by the commission.

18 SECTION 6. This Act applies to timeshare plans created on or
19 after January 15, 2010, and to any developer who offers or disposes
20 of an interest in a timeshare plan and a managing entity that
21 manages a timeshare property under Chapter 221, Property Code, as
22 amended by this Act, on or after that date.

23 SECTION 7. This Act takes effect September 1, 2009.