

1-1 By: Harris S.B. No. 1036
1-2 (In the Senate - Filed February 20, 2009; March 13, 2009, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 1, 2009, reported favorably by the following vote: Yeas 9,
1-5 Nays 0; April 1, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to amendments to the Texas Timeshare Act.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Subsection (c), Section 221.022, Property Code,
1-11 is amended to read as follows:

1-12 (c) The commission may accept an abbreviated registration
1-13 application from a developer of a timeshare plan for any [~~if all~~]
1-14 accommodations in the plan [~~are~~] located outside this state. The
1-15 developer must file written notice of the intent to register under
1-16 this section not later than the 15th day before the date the
1-17 abbreviated application is submitted.

1-18 SECTION 2. Subsections (b) and (d), Section 221.032,
1-19 Property Code, are amended to read as follows:

1-20 (b) The timeshare disclosure statement for a single-site
1-21 timeshare plan or a multisite timeshare plan that includes a
1-22 specific timeshare interest must include:

1-23 (1) the type of timeshare plan offered and the name and
1-24 address of:

1-25 (A) the developer; and

1-26 (B) the single site or specific site offered for
1-27 the multisite timeshare plan;

1-28 (2) a description of the duration and operation of the
1-29 timeshare plan;

1-30 (3) a description of the existing or proposed
1-31 accommodations, including the type and number of timeshare
1-32 interests in the accommodations expressed in periods of seven-day
1-33 use availability or other time increment applicable to the
1-34 timeshare plan. The description of each type of accommodation
1-35 included in the timeshare plan shall be categorized by the number of
1-36 bedrooms, the number of bathrooms, and sleeping capacity, and shall
1-37 include a statement indicating whether the accommodation contains a
1-38 full kitchen, which means a kitchen that has a minimum of a
1-39 dishwasher, range, sink, oven, and refrigerator. If the
1-40 accommodations are proposed or incomplete, a schedule for
1-41 commencement, completion, and availability of the accommodations
1-42 shall be provided;

1-43 (4) a description of any existing or proposed
1-44 amenities of the timeshare plan and, if the amenities are proposed
1-45 or incomplete, a schedule for commencement, completion, and
1-46 availability of the amenities;

1-47 (5) the extent to which financial arrangements have
1-48 been provided for the completion of all promised accommodations and
1-49 amenities that are committed to be built;

1-50 (6) a description of the method and timing for
1-51 performing maintenance of the accommodations;

1-52 (7) a statement indicating that, on an annual basis,
1-53 the sum of the nights that purchasers are entitled to use the
1-54 accommodations does not exceed the number of nights the
1-55 accommodations are available for use by the purchasers;

1-56 (8) a description of the method by which purchasers'
1-57 use of the accommodations is scheduled;

1-58 (9) a statement that an association exists or is
1-59 expected to be created or that such an association does not exist
1-60 and is not expected to be created and, if such an association exists
1-61 or is reasonably contemplated, a description of its powers and
1-62 responsibilities;

1-63 (10) relating to the single-site timeshare plan or the
1-64 specific timeshare interest of a multisite timeshare plan, copies

2-1 of the following documents, if applicable, including any amendments
2-2 to the documents, unless separately provided to the purchaser
2-3 simultaneously with the timeshare disclosure statement:

2-4 (A) the declaration;
2-5 (B) the association articles of incorporation;
2-6 (C) the association bylaws;
2-7 (D) the association rules; and
2-8 (E) any lease or contract, excluding the purchase
2-9 contract and other loan documents required to be signed by the
2-10 purchaser at closing;

2-11 (11) the name and principal address of the managing
2-12 entity and a description of the procedures, if any, for altering the
2-13 powers and responsibilities of the managing entity and for removing
2-14 or replacing it;

2-15 (12) the current annual budget, if available, or the
2-16 projected annual budget for the timeshare plan or timeshare
2-17 properties managed by the same managing entity if assessments are
2-18 deposited in a common account. The budget must include:

2-19 (A) a statement of the amount reserved or
2-20 budgeted for repairs, replacements, and refurbishment;
2-21 (B) the projected common expense liability, if
2-22 any, by category of expenditure for the timeshare plan or timeshare
2-23 properties managed by the same managing entity; and
2-24 (C) ~~the name and address of the person who~~
2-25 ~~prepared the operating budget; and~~
2-26 ~~(D)~~ the assumptions on which the operating
2-27 budget is based;

2-28 (13) the projected assessments and a description of
2-29 the method for calculating and apportioning those assessments among
2-30 purchasers;

2-31 (14) any initial fee or special fee due from the
2-32 purchaser at closing, together with a description of the purpose
2-33 and method of calculating the fee;

2-34 (15) a description of any lien, defect, or encumbrance
2-35 on or affecting title to the timeshare interest and, if applicable,
2-36 a copy of each written warranty provided by the developer;

2-37 (16) a description of any bankruptcy that is pending
2-38 or that has occurred within the past five years, pending civil or
2-39 criminal suit, adjudication, or disciplinary actions material to
2-40 the timeshare plan of which the developer has knowledge;

2-41 (17) a description of any financing offered by or
2-42 available through the developer;

2-43 (18) any current or anticipated fees or charges to be
2-44 paid by timeshare purchasers for the use of any accommodations or
2-45 amenities related to the timeshare plan, and a statement that the
2-46 fees or charges are subject to change;

2-47 (19) a description and amount of insurance coverage
2-48 provided for the protection of the purchaser;

2-49 (20) the extent to which a timeshare interest may
2-50 become subject to a tax lien or other lien arising out of claims
2-51 against purchasers of different timeshare interests;

2-52 (21) a description of those matters required by
2-53 Section 221.041;

2-54 (22) a statement disclosing any right of first refusal
2-55 or other restraint on the transfer of all or any portion of a
2-56 timeshare interest;

2-57 (23) a statement disclosing that any deposit made in
2-58 connection with the purchase of a timeshare interest must be held by
2-59 an escrow agent until expiration of any right to cancel the contract
2-60 and that any deposit must be returned to the purchaser if the
2-61 purchaser elects to exercise the right of cancellation; or, if the
2-62 commission accepts from the developer a surety bond, irrevocable
2-63 letter of credit, or other form of financial assurance instead of an
2-64 escrow deposit, a statement disclosing that the developer has
2-65 provided a surety bond, irrevocable letter of credit, or other form
2-66 of financial assurance in an amount equal to or in excess of the
2-67 funds that would otherwise be held by an escrow agent and that the
2-68 deposit must be returned if the purchaser elects to exercise the
2-69 right of cancellation;

3-1 (24) if applicable, a statement that the assessments
3-2 collected from the purchasers may be placed in a common account with
3-3 the assessments collected from the purchasers of other timeshare
3-4 properties managed by the same managing entity;
3-5 (25) if the timeshare plan provides purchasers with
3-6 the opportunity to participate in an exchange program, a
3-7 description of the name and address of the exchange company and the
3-8 method by which a purchaser accesses the exchange program; and
3-9 (26) any other information the commission determines
3-10 is necessary to protect prospective purchasers or to implement the
3-11 purpose of this chapter.
3-12 (d) A developer who offers a nonspecific timeshare interest
3-13 in a multisite timeshare plan must disclose the following
3-14 information in written, graphic, or tabular form:
3-15 (1) the name and address of the developer;
3-16 (2) a description of the type of interest and the usage
3-17 rights the purchaser will receive;
3-18 (3) a description of the duration and operation of the
3-19 timeshare plan;
3-20 (4) a description of the type of insurance coverage
3-21 provided for each component site;
3-22 (5) an explanation of who holds title to the
3-23 accommodations of each component site;
3-24 (6) a description of each component site, including
3-25 the name and address of each component site;
3-26 (7) a description of the existing or proposed
3-27 accommodations, expressed in periods of seven-day use availability
3-28 or any other time increment applicable to the timeshare plan. The
3-29 description of each type of accommodation included in the timeshare
3-30 plan shall be categorized by the number of bedrooms, the number of
3-31 bathrooms, and sleeping capacity, and shall include a statement
3-32 indicating whether the accommodation contains a full kitchen, which
3-33 means a kitchen that has a minimum of a dishwasher, range, sink,
3-34 oven, and refrigerator. If the accommodations are proposed or
3-35 incomplete, a schedule for commencement, completion, and
3-36 availability of the accommodations shall be provided;
3-37 (8) a statement that an association exists or is
3-38 expected to be created or that such an association does not exist
3-39 and is not expected to be created and, if such an association exists
3-40 or is reasonably contemplated, a description of its powers and
3-41 responsibilities;
3-42 (9) if applicable, copies of the following documents
3-43 applicable to the multisite timeshare plan, including any
3-44 amendments to the documents, unless separately provided to the
3-45 purchaser simultaneously with the timeshare disclosure statement:
3-46 (A) the declaration;
3-47 (B) the association articles of incorporation;
3-48 (C) the association bylaws;
3-49 (D) the association rules; and
3-50 (E) any lease or contract, excluding the purchase
3-51 contract and other loan documents required to be signed by the
3-52 purchaser at closing;
3-53 (10) a description of the method and timing for
3-54 performing maintenance of the accommodations;
3-55 (11) a statement indicating that, on an annual basis,
3-56 the sum of the nights that purchasers are entitled to use the
3-57 accommodations does not exceed the number of nights the
3-58 accommodations are available for use by the purchasers;
3-59 (12) a description of each type of accommodation
3-60 included in the timeshare plan, categorized by the number of
3-61 bedrooms, the number of bathrooms, and sleeping capacity, and a
3-62 statement indicating whether the accommodation contains a full
3-63 kitchen, which means a kitchen that has a minimum of a dishwasher,
3-64 range, sink, oven, and refrigerator;
3-65 (13) a description of amenities available for use by
3-66 the purchaser at each component site;
3-67 (14) the location of each component site of the
3-68 multisite timeshare plan, the historical occupancy of each
3-69 component site for the prior 12-month period, if the component site

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

4-7 (15) a description of the right to make any additions,
 4-8 substitutions, or deletions of accommodations, amenities, or
 4-9 component sites, and a description of the basis upon which
 4-10 accommodations, amenities, or component sites may be added to,
 4-11 substituted in, or deleted from the multisite timeshare plan;

4-12 (16) a description of the reservation system that
 4-13 shall include all of the following:

4-14 (A) the entity responsible for operating the
 4-15 reservation system, its relationship to the developer, and the
 4-16 duration of any agreement for operation of the reservation system;

4-17 (B) a summary of the rules governing access to
 4-18 and use of the reservation system; and

4-19 (C) the existence of and an explanation regarding
 4-20 any priority reservation features that affect a purchaser's ability
 4-21 to make reservations for the use of a given accommodation on a
 4-22 first-come, first-served basis;

4-23 (17) the name and principal address of the managing
 4-24 entity for the multisite timeshare plan and a description of the
 4-25 procedures, if any, for altering the powers and responsibilities of
 4-26 the managing entity and for removing or replacing it, and a
 4-27 description of the relationship between the multisite timeshare
 4-28 plan managing entity and the managing entity of the component sites
 4-29 of the multisite timeshare plan, if different from the multisite
 4-30 timeshare plan managing entity;

4-31 (18) the current annual budget of the multisite
 4-32 timeshare plan, if available, or the projected annual budget for
 4-33 the multisite timeshare plan, which must include:

4-34 (A) a statement of the amount reserved or
 4-35 budgeted for repairs, replacements, and refurbishment;

4-36 (B) the projected common expense liability, if
 4-37 any, by category of expenditure for the multisite timeshare plan;
 4-38 and

4-39 (C) ~~[the name and address of the person who~~
 4-40 ~~prepared the operating budget, and~~

4-41 ~~[(D)]~~ the assumptions on which the operating
 4-42 budget is based;

4-43 (19) the projected assessments and a description of
 4-44 the method for calculating and apportioning those assessments among
 4-45 purchasers of the multisite timeshare plan;

4-46 (20) if applicable, a statement that the assessments
 4-47 collected from the purchasers may be placed in a common account with
 4-48 the assessments collected from the purchasers of other timeshare
 4-49 properties managed by the same managing entity;

4-50 (21) any current fees or charges to be paid by
 4-51 timeshare purchasers for the use of any amenities related to the
 4-52 timeshare plan and a statement that the fees or charges are subject
 4-53 to change;

4-54 (22) any initial or special fee due from the purchaser
 4-55 at closing, together with a description of the purpose of and method
 4-56 of calculating the fee;

4-57 (23) a description of the purchaser's liability for
 4-58 any fees associated with the multisite timeshare plan;

4-59 (24) a description of any lien, defect, or encumbrance
 4-60 on or affecting title to the timeshare interest and, if applicable,
 4-61 a copy of each written warranty provided by the developer;

4-62 (25) the extent to which a timeshare interest may
 4-63 become subject to a tax lien or other lien arising out of claims
 4-64 against purchasers of different timeshare interests;

4-65 (26) a description of those matters required by
 4-66 Section 221.041;

4-67 (27) a description of any financing offered by or
 4-68 available through the developer;

4-69 (28) a description of any bankruptcy that is pending

5-1 or that has occurred within the past five years, pending civil or
5-2 criminal suits, adjudications, or disciplinary actions material to
5-3 the timeshare plan of which the developer has knowledge;

5-4 (29) a statement disclosing any right of first refusal
5-5 or other restraint on the transfer of all or a portion of a
5-6 timeshare interest;

5-7 (30) a statement disclosing that any deposit made in
5-8 connection with the purchase of a timeshare interest must be held by
5-9 an escrow agent until expiration of any right to cancel the contract
5-10 and that any deposit must be returned to the purchaser if the
5-11 purchaser elects to exercise the right of cancellation; or, if the
5-12 commission accepts from the developer a surety bond, irrevocable
5-13 letter of credit, or other form of financial assurance instead of an
5-14 escrow deposit, a statement disclosing that the developer has
5-15 provided a surety bond, irrevocable letter of credit, or other form
5-16 of financial assurance in an amount equal to or in excess of the
5-17 funds that would otherwise be held by an escrow agent and that the
5-18 deposit must be returned if the purchaser elects to exercise the
5-19 right of cancellation;

5-20 (31) if the timeshare plan provides purchasers with
5-21 the opportunity to participate in an exchange program, a
5-22 description of the name and address of the exchange company and the
5-23 method by which a purchaser accesses the exchange program; and

5-24 (32) any other information the commission determines
5-25 is necessary to protect prospective purchasers or to implement the
5-26 purpose of this chapter.

5-27 SECTION 3. Subchapter D, Chapter 221, Property Code, is
5-28 amended by adding Section 221.037 to read as follows:

5-29 Sec. 221.037. ALTERNATIVE TERMINOLOGY OR NAME. (a) In
5-30 providing the disclosures required by this chapter, the use of the
5-31 terms "vacation ownership interest" or "vacation ownership plan" to
5-32 refer to the timeshare interest or plan offered by the developer, or
5-33 the use of other terms that are substantially similar and that are
5-34 regularly used by the developer to denote a timeshare interest or
5-35 plan, is sufficient and complies with the requirements of this
5-36 chapter.

5-37 (b) In providing the full name of a developer or a marketing
5-38 company as required by this chapter, the disclosure of an assumed
5-39 name of the developer or the marketing company, if the entity has
5-40 complied with the requirements of the applicable assumed business
5-41 names statutes or other laws regarding the use of the assumed name,
5-42 is sufficient and complies with this chapter.

5-43 SECTION 4. Subsection (c), Section 221.043, Property Code,
5-44 is amended to read as follows:

5-45 (c) The purchase contract must also include the following:

5-46 (1) the name and address of the developer and the
5-47 address of the timeshare property or the address of any available
5-48 timeshare interest being offered;

5-49 (2) an agreement describing the cancellation policy
5-50 prescribed by Section 221.041;

5-51 (3) the name of the person or persons primarily
5-52 involved in the sales presentation on behalf of the developer;

5-53 (4) a statement disclosing the amount of the periodic
5-54 assessments currently assessed against or collected from the
5-55 purchasers of the timeshare interest, immediately followed by a
5-56 statement providing that collected assessments will be used by the
5-57 managing entity to pay for expenditures, charges, reserves, or
5-58 liabilities relating to the operation of the timeshare plan or
5-59 timeshare properties managed by the managing entity;

5-60 ~~(5) [a statement disclosing that the timeshare common~~
5-61 ~~properties are not mortgaged, unless the mortgage contains a~~
5-62 ~~nondisturbance clause which fully protects the use and enjoyment~~
5-63 ~~rights of each timeshare owner in the event of foreclosure;~~

5-64 ~~[(6) in the event such timeshare interests are sold~~
5-65 ~~under a lease, right to use, or membership agreement where free and~~
5-66 ~~clear title to the accommodation is not passed to the purchaser,~~
5-67 ~~then the purchase contract must contain a statement that the~~
5-68 ~~timeshare is free and clear, or if subject to a mortgage, the~~
5-69 ~~mortgage must contain a nondisturbance clause which fully protects~~

6-1 ~~the use and enjoyment rights of each timeshare owner in the event of~~
6-2 ~~foreclosure;~~

6-3 [~~7~~] the date the purchaser signs the contract; and

6-4 (6) [~~8~~] the following statement:

6-5 "AS A TIMESHARE OWNER, YOU HAVE A RIGHT TO REQUEST A WRITTEN
6-6 ANNUAL TIMESHARE FEE AND EXPENSE STATEMENT. THIS STATEMENT IS
6-7 PREPARED ANNUALLY BY THE MANAGING ENTITY AND WILL BE AVAILABLE NOT
6-8 LATER THAN FIVE MONTHS AFTER (INSERT THE DATE OF THE LAST DAY OF THE
6-9 FISCAL YEAR). YOU MAY REQUEST THE STATEMENT BY WRITING TO (INSERT
6-10 NAME AND ADDRESS OF THE MANAGING ENTITY)."

6-11 SECTION 5. Section 221.062, Property Code, is amended by
6-12 adding Subsection (h) to read as follows:

6-13 (h) Excluding any encumbrance placed against the
6-14 purchaser's timeshare interest that secures the purchaser's payment
6-15 of purchase money financing for the purchase, the developer is not
6-16 entitled to the release of any funds escrowed with respect to each
6-17 timeshare interest until the developer has provided the commission
6-18 with satisfactory evidence that:

6-19 (1) the timeshare interest and any other property or
6-20 rights to property appurtenant to the timeshare interest, including
6-21 any amenities represented to the purchaser as being part of the
6-22 timeshare plan, are free and clear of any of the claims of the
6-23 developer, any owner of the underlying fee, a mortgagee, judgment
6-24 creditor, or other lienor, or any other person having an interest in
6-25 or lien or encumbrance against the timeshare interest or
6-26 appurtenant property or property rights;

6-27 (2) the developer, any owner of the underlying fee, a
6-28 mortgagee, judgment creditor, or other lienor, or any other person
6-29 having an interest in or lien or encumbrance against the timeshare
6-30 interest or appurtenant property or property rights, including any
6-31 amenities represented to the purchaser as being part of the
6-32 timeshare plan, has recorded a subordination and notice to
6-33 creditors document in the jurisdiction in which the timeshare
6-34 interest is located that expressly and effectively provides that
6-35 the interest holder's right, lien, or encumbrance does not
6-36 adversely affect and is subordinate to the rights of the owners of
6-37 the timeshare interests in the timeshare plan, regardless of the
6-38 date of purchase, on and after the effective date of the
6-39 subordination document;

6-40 (3) the developer, any owner of the underlying fee, a
6-41 mortgagee, judgment creditor, or other lienor, or any other person
6-42 having an interest in or lien or encumbrance against the timeshare
6-43 interest or appurtenant property or property rights, including any
6-44 amenities represented to the purchaser as being part of the
6-45 timeshare plan, has transferred the subject accommodations or
6-46 amenities or all use rights therein to a nonprofit organization or
6-47 an owners' association to be held for the use and benefit of the
6-48 purchasers of the timeshare plan, which entity shall act as a
6-49 fiduciary to the purchasers, provided that the developer has
6-50 transferred control of that entity to the purchasers or does not
6-51 exercise its voting rights in that entity with respect to the
6-52 subject accommodations or amenities and, prior to the transfer, any
6-53 lien or other encumbrance against the accommodation or facility is
6-54 subject to a subordination and notice to creditors instrument
6-55 pursuant to this subsection; or

6-56 (4) alternative arrangements have been made that are
6-57 adequate to protect the rights of the purchasers of the timeshare
6-58 interests and are approved by the commission.

6-59 SECTION 6. This Act applies to timeshare plans created on or
6-60 after January 15, 2010, and to any developer who offers or disposes
6-61 of an interest in a timeshare plan and a managing entity that
6-62 manages a timeshare property under Chapter 221, Property Code, as
6-63 amended by this Act, on or after that date.

6-64 SECTION 7. This Act takes effect September 1, 2009.

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