

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2261
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Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties assert that legislative action is necessary to combat fraud in timeshare transactions with transfer and exit companies that solicit timeshare interest owners to transfer ownership of their timeshares while claiming to relieve owners of maintenance fees, taxes, and other obligations of ownership. These companies typically require payment in advance, using aggressive and often misleading telemarketing and seminar sales techniques to sell owners on their services. Reports indicate that the companies using misleading tactics often take the up-front, nonrefundable payment from the timeshare interest owner and do not follow through with the transfer or tell the owner that the buyer that was lined up has backed out. C.S.H.B. 2261 seeks to address these deceptive practices while permitting legitimate service providers to continue to operate.

C.S.H.B. 2261 amends current law relating to the transfer or termination of certain timeshare interests.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 221.003(b), Property Code, to provide that timeshare properties located outside this state are subject only to Subchapters C through H and J.

SECTION 2. Amends Chapter 221, Property Code, by adding Subchapter J, as follows:

SUBCHAPTER J. SERVICE AGREEMENTS TO TRANSFER OR TERMINATE A TIMESHARE INTEREST

Sec. 221.101. TRANSFER OR TERMINATION OF TIMESHARE INTEREST. Defines "termination" and "transfer."

Sec. 221.102. APPLICABILITY. (a) Provides that this subchapter applies to a timeshare interest if the timeshare interest has been acquired only for the purchaser's personal, family, or household use and:

- (1) the timeshare interest is owned by a resident of this state;
- (2) the timeshare property is located in this state; or
- (3) the timeshare interest acquired is in a multisite timeshare plan required to be registered under Subchapter C (Registration).

(b) Provides that this subchapter, except as provided by Subsection (c), applies to a person who:

- (1) is acting in the ordinary course of business; and

(2) directly or indirectly, regardless of whether acting in person, by mail, by telephone, or by any mode of Internet or electronic communication, offers or advertises an offer to engage in, for consideration, the following activities:

(A) obtaining or attempting to obtain on behalf of a timeshare interest owner a termination of contractual obligations relating to a timeshare interest;

(B) selling, renting, listing, or advertising a timeshare interest on behalf of a timeshare interest owner;

(C) purchasing a timeshare interest from a timeshare interest owner; or

(D) assisting in the transfer of an owner's timeshare interest.

(c) Provides that this subchapter does not apply to:

(1) a license holder under Chapter 1101 (Real Estate Brokers and Salespersons), Occupations Code, acting as a broker, agent, or salesperson under that person's license in connection with the transfer or termination of a timeshare interest;

(2) a developer, association, or managing entity for a timeshare interest to be transferred or terminated or a third party acting at the specific request of the developer, association, or managing entity; or

(3) an attorney, title agent, title company, or escrow company that:

(A) provides only closing, settlement, or other specific transaction services in connection with the transfer or termination of a timeshare interest; and

(B) does not otherwise engage in activities described by Subsection (b).

Sec. 221.103. GENERAL DISCLOSURES REQUIRED. Requires a person subject to this subchapter who enters into an agreement with a timeshare interest owner to facilitate the transfer or termination of a timeshare interest to provide to the timeshare interest owner, before the third day before the date the timeshare interest owner enters into the agreement the following written disclosures, as applicable:

(1) the name, telephone number, and physical address of the person providing services under the agreement and any affiliate, agent, or third-party representative of that person;

(2) if the person identified in Subdivision (1) or an affiliate, agent, or third-party representative of that person providing services under the agreement, is an attorney licensed to practice law in this state, a disclosure of whether the attorney will be providing services under the agreement and representing the timeshare interest owner in connection with the transfer or termination of the timeshare interest;

(3) a description, legally sufficient for identification, of the timeshare interest to be transferred or terminated;

(4) a description of the method of transfer or termination or a copy of the instrument that will be used for transferring or terminating the timeshare interest;

(5) a description of any interest the timeshare interest owner retains after the transfer;

(6) a description of the scope of a power of attorney or other delegation of authority, if any, that the timeshare interest owner is required to give to complete the transfer of the timeshare interest;

(7) an itemized statement of any amounts the timeshare owner is required to pay as consideration or reimbursement for services provided in connection with the agreement;

(8) the name of each recipient of amounts described by Subdivision (7);

(9) the estimated date for completing all services sufficient to transfer or terminate the timeshare interest; and

(10) a statement that, on completion of the transfer or termination of the timeshare interest, the person will give written notice of the transfer or termination to:

(A) the developer, association, or managing entity, as applicable; and

(B) if applicable, the exchange company for the timeshare interest.

Sec. 221.104. DISCLOSURE OF AUTHORIZED USE OF TIMESHARE INTEREST.

(a) Requires a person subject to this subchapter who enters into an agreement with a timeshare interest owner to facilitate the transfer or termination of a timeshare interest to disclose in writing to the timeshare interest owner the name of any person, other than the timeshare interest owner, who may occupy, rent, exchange, or otherwise use the timeshare interest during the term of the agreement.

(b) Requires that the agreement state the name of each person receiving consideration for the occupation, rent, exchange, or use of the timeshare interest if a person is authorized to occupy, rent, exchange, or otherwise use the timeshare interest during the term of the agreement.

Sec. 221.105. DISCLOSURES RELATING TO PAYMENT OF FEES FOR TRANSFER SERVICES. Requires a person subject to this subchapter who enters into an agreement with a timeshare interest owner to facilitate the transfer of the timeshare interest to conspicuously disclose in writing to the timeshare interest owner that the timeshare interest owner is not required to pay any consideration or reimbursement under the agreement until the timeshare interest owner receives:

(1) a written acknowledgement from the developer, the association, or the managing entity that the person facilitating the transfer under the agreement complied with all applicable policies, of the developer, association, or managing entity, if any, governing the transfer of the timeshare interest; and

(2) a copy of the instrument transferring the timeshare interest, recorded, if required by applicable law, in the real property records of the county in which the timeshare property is located.

Sec. 221.106. REQUIRED NOTICE FOR TRANSFER SERVICES. Requires a person subject to this subchapter who enters into an agreement with a timeshare interest owner to facilitate the transfer of the timeshare interest to provide to the timeshare interest owner a

statement printed in 14-point boldface type or 14-point uppercase typewritten letters that reads substantially similar to the statement as set forth.

Sec. 221.107. **REQUIRED NOTICE FOR TERMINATION SERVICES.** Requires a person subject to this subchapter who enters into an agreement with a timeshare interest owner to facilitate the termination of the timeshare interest to provide to the timeshare interest owner a statement printed in 14-point boldface type or 14-point uppercase typewritten letters that reads substantially similar to the statement as set forth.

Sec. 221.108. **RELIANCE.** Authorizes a person facilitating the transfer or termination of a timeshare interest, in making disclosures required by this subchapter, to rely on written information provided by the timeshare interest owner, the developer, the association, or the managing entity.

Sec. 221.109. **DUTY OF GOOD FAITH REGARDING TRANSFER OR TERMINATION SERVICES.** Requires a person facilitating the transfer or termination of a timeshare interest to act in good faith to accomplish the transfer or termination not later than the 180th day after the date the person enters into an agreement with the timeshare interest owner.

Sec. 221.110. **DECEPTIVE TRADE PRACTICES.** Provides that a person subject to this subchapter commits a false, misleading, or deceptive act or practice within the meaning of Sections 17.46(a) (relating to unlawful trade acts subject to action by the consumer protection division) and (b) (sets forth certain trade practices as false, misleading, or deceptive), Business & Commerce Code, by engaging in any of the following acts:

- (1) failing to disclose information as required by this subchapter;
- (2) making false or misleading statements concerning:
 - (A) the existence of an offer related to the purchase or rent of a timeshare interest;
 - (B) the likelihood of the completion or the time necessary to complete any sale, rental, transfer, or termination of a timeshare interest;
 - (C) the value of a timeshare interest;
 - (D) the current or future costs, including assessments, maintenance fees, or taxes, of owning a timeshare interest;
 - (E) the method by which or source from which a timeshare interest owner's name, address, telephone number, or other contact information was obtained;
 - (F) the identity of the person providing services to facilitate the transfer or termination of a timeshare interest or any affiliate, agent, or third-party representative of that person;
 - (G) the terms and conditions under which services to facilitate a transfer or termination of a timeshare interest are offered;
 - (H) the willingness of a developer, association, or managing entity to:
 - (i) agree to the transfer or termination of a timeshare interest; or
 - (ii) execute instruments necessary to transfer or terminate the timeshare interest; or

(I) the manner in which consideration or reimbursements paid by a timeshare interest owner will be used or applied;

(3) encouraging or inducing a timeshare interest owner to stop paying the developer, the association, or the managing entity in violation of a contract with or any other legally enforceable obligation to the developer, the association, or the managing entity before the completion of a transfer or termination; or

(4) receiving or collecting consideration for or reimbursement related to the facilitation of the transfer of a timeshare interest before the timeshare interest owner receives the documents described by Sections 221.105(1) and (2).

Sec. 221.111. SUPERVISORY DUTIES. (a) Requires the person who enters into an agreement to facilitate the transfer or termination of a timeshare interest to supervise, manage, and control all aspects of the services provided under the agreement.

(b) Requires that any violation of this subchapter that occurs during the provision of services is considered a violation by the person who enters into the agreement and any affiliate, agent, or third-party representative of that person.

(c) Provides that Section 221.035 (Supervisory Duties of Developer) does not apply to a person providing services under this subchapter.

SECTION 3. (a) Provides that the disclosure and notice requirements provided by Subchapter J, Chapter 221, Property Code, as added by this Act, apply only to an agreement to facilitate the transfer or termination of a timeshare interest entered into on or after the effective date of this Act. Makes application of this Act prospective.

(b) Provides that Section 221.110, Property Code, as added by this Act, applies only to conduct that occurs on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2015.