

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 738  
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Business & Commerce  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In recent years the Federal Trade Commission, state law enforcement, and other law enforcement entities have filed around 200 actions to stop fraudulent operations offering timeshare transfer and sales services.

Transfer or exit companies solicit time share owners to transfer ownership of their time shares, claiming to relieve owners of maintenance fees, taxes and other obligations of ownership, but do not complete the transaction. These companies typically require payment in advance, using aggressive and often misleading telemarketing and seminar sales techniques to "sell" owners on their services.

Another common scam includes claiming a buyer is ready and waiting to purchase the owner's time share. The transfer company will handle the transaction again, in exchange for advance fees up to several thousand dollars. After securing payment, usually through a credit card, the owner is told the buyer has moved on.

S.B. 738 would help protect Texas timeshare owners by requiring transfer companies to disclose valuable information up-front, act in good faith while providing services, and makes fraudulent timeshare services an offense under the Business & Commerce Code. S.B. 738 also provides definitions for "transfer" and "termination" with respect to a timeshare interest.

As proposed, S.B. 738 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:

(i) a release of the owner's timeshare interest from any person, including the developer, association, or managing entity; or

(ii) a judgment or court order invalidating the owner's 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

(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 that 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 provide to the timeshare interest owner 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) a description, legally sufficient for identification, of the timeshare interest to be transferred or terminated;
- (3) 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;
- (4) a description of any interest the timeshare interest owner retains after the transfer;
- (5) 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;
- (6) 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;
- (7) the name of each recipient of amounts described by Subdivision (6);
- (8) the estimated date for completing all services sufficient to transfer or terminate the timeshare interest; and
- (9) 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 that a person subject to this subchapter who enters into an agreement with a timeshare interest owner to facilitate the transfer of the timeshare interest 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, 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 that a person subject to this subchapter who enters into an agreement with a timeshare interest owner to facilitate the termination of the timeshare interest 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.** Provides that a person facilitating the transfer or termination of a timeshare interest may 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) and (b), 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; or

(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 the developer, the association, or the managing entity before the completion of a transfer or termination.

Sec. 221.111. SUPERVISORY DUTIES. (a) Requires that the person who enters into an agreement to facilitate the transfer or termination of a timeshare interest 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.