

1 A bill to be entitled
2 An act relating to timeshares; amending s. 721.02,
3 F.S.; revising purposes of the chapter to include the
4 provision of certain disclosure; amending s. 721.05,
5 F.S.; revising the definition of the term "resale
6 service provider"; defining the terms "consumer resale
7 timeshare interest," "consumer timeshare reseller,"
8 "resale broker," "resale brokerage services," "resale
9 advertiser," and "resale advertising service";
10 amending s. 721.20, F.S.; deleting a provision
11 requiring resale service providers to provide certain
12 fee or cost and listing information to timeshare
13 interest owners; creating s. 721.205, F.S.; specifying
14 information a resale service provider must provide to
15 the consumer timeshare reseller; prohibiting
16 unlicensed resale service providers from engaging in
17 certain activities; prohibiting certain services
18 related to the offering of resale advertising by
19 resale advertisers; providing certain restrictions on
20 the offering of resale advertising services by resale
21 advertisers; providing voidability of certain
22 contracts; providing duties of a resale service
23 provider; providing that the provision of resale
24 advertising services in this state constitutes
25 operating, conducting, engaging in, or carrying on a
26 business or business venture for purposes relating to
27 jurisdiction of the courts of this state; providing
28 penalties; providing an effective date.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) of section 721.02, Florida Statutes, is renumbered as subsection (6), and a new subsection (5) is added to that section to read:

721.02 Purposes.—The purposes of this chapter are to:

(5) Require full and fair disclosure of terms, conditions, and services by resale service providers acting on behalf of consumer timeshare resellers or on behalf of prospective consumer resale purchasers, regardless of the business model employed by the resale service provider.

Section 2. Subsection (44) of section 721.05, Florida Statutes, is amended, and subsections (45) through (50) are added to that section, to read:

721.05 Definitions.—As used in this chapter, the term:

(44) "Resale service provider" means any resale advertiser, or other person or entity, including any agent or employee of such person or entity, who offers or uses unsolicited telemarketing, direct mail, or e-mail, or any other means of communication in connection with the offering of resale brokerage or resale advertising services to consumer owners of timeshare resellers interests. The term does not include developers or, managing entities, or exchange companies to the extent they offer resale brokerage or resale advertising services to owners of timeshare interests in their own timeshare plans; resale brokers to the extent that resale advertising services are offered in connection with resale brokerage

57 services and no fee for the advertising service is collected in
58 advance; or a consumer timeshare reseller who acquires a
59 timeshare interest or timeshare interests for his or her own use
60 and occupancy and who later offers the timeshare interest or
61 timeshare interests for rent or offers for resale in a given
62 calendar year seven or fewer of the timeshare interests that he
63 or she acquired for his or her own use and occupancy ~~or members~~
64 ~~of their own exchange programs.~~

65 (45) "Consumer resale timeshare interest" means:

66 (a) A timeshare interest owned by a purchaser;

67 (b) One or more reserved occupancy rights relating to a
68 timeshare interest owned by a purchaser; or

69 (c) One or more reserved occupancy rights relating to, or
70 arranged through, an exchange program in which a purchaser is a
71 member.

72 (46) "Consumer timeshare reseller" means a purchaser who
73 acquires a timeshare interest for his or her own use and
74 occupancy and later offers the timeshare interest for resale or
75 rental.

76 (47) "Resale broker" means any person, or any agent or
77 employee of such person, who is licensed pursuant to chapter 475
78 and who offers or provides resale brokerage services to consumer
79 timeshare resellers for compensation or valuable consideration,
80 regardless of whether the offer is made in person, by mail, by
81 telephone, through the Internet, or by any other medium of
82 communication.

83 (48) "Resale brokerage services" means, with respect to a
84 consumer resale timeshare interest in a timeshare property

85 located or offered within this state, any activity that directly
86 or indirectly consists of any of activities described in s.
87 475.01(1)(a).

88 (49) "Resale advertiser" means any person who offers,
89 personally or through an agent, resale advertising services to
90 consumer timeshare resellers for compensation or valuable
91 consideration, regardless of whether the offer is made in
92 person, by mail, by telephone, through the Internet, or by any
93 other medium of communication. The term does not include:

94 (a) A resale broker to the extent that resale advertising
95 services are offered in connection with timeshare resale
96 brokerage services and no fee for the resale advertising service
97 is collected in advance;

98 (b) A developer or managing entity to the extent that
99 either of them offers resale advertising services to owners of
100 timeshare interests in their own timeshare plans; or

101 (c) A newspaper, periodical, or website owner, operator,
102 or publisher, unless the newspaper, periodical, or website
103 owner, operator, or publisher derives more than 10 percent of
104 its gross revenue from providing resale advertising services.
105 For purposes of this paragraph, the calculation of gross revenue
106 derived from providing resale advertising services includes
107 revenue of any affiliate, parent, agent, and subsidiary of the
108 newspaper, periodical, or website owner, operator, or publisher,
109 so long as the resulting percentage of gross revenue is not
110 decreased by the inclusion of such affiliate, parent,
111 subsidiary, or agent in the calculation.

112 (50) "Resale advertising service" means any good or
 113 service relating to, or a promise of assistance in connection
 114 with, advertising or promoting the resale or rental of a
 115 consumer resale timeshare interest located or offered within
 116 this state, including any offer to advertise or promote the sale
 117 or purchase of any such interest.

118 Section 3. Subsection (9) of section 721.20, Florida
 119 Statutes, is amended to read:

120 721.20 Licensing requirements; suspension or revocation of
 121 license; exceptions to applicability; collection of advance fees
 122 for listings unlawful.-

123 ~~(9)(a) Prior to listing or advertising a timeshare~~
 124 ~~interest for resale, a resale service provider shall provide to~~
 125 ~~the timeshare interest owner a description of any fees or costs~~
 126 ~~relating to the advertising, listing, or sale of the timeshare~~
 127 ~~interest that the timeshare interest owner, or any other person,~~
 128 ~~must pay to the resale service provider or any third party, when~~
 129 ~~such fees or costs are due, and the ratio or percentage of the~~
 130 ~~number of listings of timeshare interests for sale versus the~~
 131 ~~number of timeshare interests sold by the resale service~~
 132 ~~provider for each of the previous 2 calendar years.~~

133 ~~(b) Failure to disclose this information in writing~~
 134 ~~constitutes an unfair and deceptive trade practice pursuant to~~
 135 ~~chapter 501. Any contract entered into in violation of this~~
 136 ~~subsection is void and the purchaser is entitled to a full~~
 137 ~~refund of any moneys paid to the resale service provider.~~

138 Section 4. Section 721.205, Florida Statutes, is created
 139 to read:

140 721.205 Resale service providers; disclosure obligations.-

141 (1) (a) Before engaging in resale advertising services, a
 142 resale service provider must provide to the consumer timeshare
 143 reseller:

144 1. A description of any fees or costs related to such
 145 services that the consumer timeshare reseller, or any other
 146 person, is required pay to the resale service provider or to any
 147 third party.

148 2. A description of when such fees or costs are due.

149 (b) A resale service provider may not engage in those
 150 activities described in s. 475.01(1) (a) without being the holder
 151 of a valid and current active license in accordance with chapter
 152 475.

153 (2) In the course of offering resale advertising services,
 154 a resale advertiser may not:

155 (a) State or imply that the resale advertiser will provide
 156 or assist in providing any type of direct sales or resale
 157 brokerage services other than the advertising of the consumer
 158 resale timeshare interest for sale or rent by the consumer
 159 timeshare reseller.

160 (b) State or imply to a consumer timeshare reseller,
 161 directly or indirectly, that the resale advertiser has
 162 identified a person interested in buying or renting the
 163 timeshare resale interest without providing the name, address,
 164 and telephone number of such represented interested resale
 165 purchaser.

166 (c) State or imply to a consumer timeshare reseller,
 167 directly or indirectly, that sales or rentals have been achieved

168 or generated as a result of its advertising services unless the
169 resale advertiser, at the time of making such representation,
170 possesses and is able to provide documentation to substantiate
171 the statement or implication made to the consumer timeshare
172 reseller. In addition, to the extent that a resale advertiser
173 states or implies to a consumer timeshare reseller that the
174 resale advertiser has sold or rented any specific number of
175 timeshare interests, the resale advertiser must also provide the
176 consumer timeshare reseller the ratio or percentage of all the
177 timeshare interests that have resulted in a sale versus the
178 number of timeshare interests advertised for sale by the resale
179 advertiser for each of the previous 2 calendar years if the
180 statement or implication is about a sale or sales, or the ratio
181 or percentage of all the timeshare interests that have actually
182 resulted in a rental versus the number of timeshare interests
183 advertised for rental by the resale advertiser for each of the
184 previous 2 calendar years if the statement or implication is
185 about a rental or rentals.

186 (d) State or imply to a consumer timeshare reseller that
187 the timeshare interest has a specific resale value.

188 (e) Make or submit any charge to a consumer timeshare
189 reseller's credit card account; make or cause to be made any
190 electronic transfer of consumer timeshare reseller funds; or
191 collect any payment from a consumer timeshare reseller until
192 after the resale advertiser has received a written contract
193 complying in all respects with paragraph (f) that has been
194 signed by the consumer timeshare reseller.

195 (f) Engage in any resale advertising services for

196 compensation or valuable consideration without first obtaining a
 197 written contract to provide such services signed by the consumer
 198 timeshare reseller. Notwithstanding any other law, the contract
 199 must be printed in at least 12-point type and must contain the
 200 following information:

201 1. The name, address, telephone number, and web address,
 202 if any, of the resale advertiser and a mailing address and e-
 203 mail address to which a contract cancellation notice may be
 204 delivered at the consumer timeshare reseller's election.

205 2. A complete description of all resale advertising
 206 services to be provided, including, but not limited to, details
 207 regarding the publications, Internet sites, and other media in
 208 or on which the consumer resale timeshare interest will be
 209 advertised, the dates or time intervals for such advertising or
 210 the minimum number of times such advertising will be run in each
 211 specific medium, the itemized cost to the consumer timeshare
 212 reseller of each resale advertising service to be provided, and
 213 a statement of the total cost to the consumer timeshare reseller
 214 of all resale advertising services to be provided.

215 3. A statement printed in at least 12-point boldfaced type
 216 immediately preceding the space in the contract provided for the
 217 consumer timeshare reseller's signature in substantially the
 218 following form:

219
 220 TIMESHARE OWNER'S RIGHT OF CANCELLATION

221
 222 ...(Name of resale advertiser)... will provide resale
 223 advertising services pursuant to this contract. If

224 ...(name of resale advertiser)... represents that
 225 ...(name of resale advertiser)... has identified a
 226 person who is interested in purchasing or renting your
 227 timeshare interest, then ...(name of resale
 228 advertiser)... must provide you with the name,
 229 address, and telephone number of such represented
 230 interested resale purchaser.

231
 232 You have an unwaivable right to cancel this contract
 233 for any reason within 10 days after the date you sign
 234 this contract. If you decide to cancel this contract,
 235 you must notify ...(name of resale advertiser)... in
 236 writing of your intent to cancel. Your notice of
 237 cancellation shall be effective upon the date sent and
 238 shall be sent to ...(resale advertiser's physical
 239 address)... or to ...(resale advertiser's e-mail
 240 address).... Your refund will be made within 20 days
 241 after receipt of notice of cancellation or within 5
 242 days after receipt of funds from your cleared check,
 243 whichever is later.

244
 245 You are not obligated to pay ...(name of resale
 246 advertiser)... any money unless you sign this contract
 247 and return it to ...(name of resale advertiser)....

248
 249 IMPORTANT: Before signing this contract, you should
 250 carefully review your original timeshare purchase
 251 contract and other project documents to determine

252 whether the developer has reserved a right of first
253 refusal or other option to purchase your timeshare
254 interest or to determine whether there are any
255 restrictions or special conditions applicable to the
256 resale or rental of your timeshare interest.

257
258 4. A statement that any resale contract entered into by or
259 on behalf of the consumer timeshare reseller must comply in all
260 respects with s. 721.065, including the provision of a 10-day
261 cancellation period for the prospective consumer resale
262 purchaser.

263 (g) Fail to honor any cancellation notice sent by the
264 consumer timeshare reseller within 10 days after the date the
265 consumer timeshare reseller signs the contract for resale
266 advertising services in compliance with subparagraph (f)3.

267 (h) Fail to provide a full refund of all money paid by a
268 consumer timeshare reseller within 20 days after receipt of
269 notice of cancellation or within 5 days after receipt of funds
270 from a cleared check, whichever is later.

271 (3) If a resale service provider uses a contract for
272 resale advertising services that fails to comply with subsection
273 (2), such contract shall be voidable at the option of the
274 consumer timeshare reseller for a period of 1 year after the
275 date it is executed by the consumer timeshare reseller.

276 (4) Notwithstanding obligations placed upon any other
277 persons by this section, it is the duty of a resale service
278 provider to supervise, manage, and control all aspects of the
279 offering of resale advertising services by any agent or employee

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280 of the resale service provider. Any violation of this section
281 that occurs during such offering shall be deemed a violation by
282 the resale service provider as well as by the person actually
283 committing the violation.

284 (5) Providing resale advertising services with respect to
285 a consumer resale timeshare interest in a timeshare property
286 located or offered within this state, or in a multisite
287 timeshare plan registered or required to be registered to be
288 offered in this state, including acting as an agent or third-
289 party service provider for a resale service provider,
290 constitutes operating, conducting, engaging in, or carrying on a
291 business or business venture in this state for the purposes of
292 s. 48.193(1).

293 (6) The use of any unfair or deceptive act or practice by
294 any person in connection with resale advertising services is a
295 violation of this section.

296 (7) Notwithstanding any other penalties provided for in
297 this section, any violation of this section is subject to a
298 civil penalty of not more than \$15,000 per violation. In
299 addition, a person who violates any provision of this section
300 commits an unfair and deceptive trade practice as prohibited by
301 s. 501.204 and is subject to the penalties and remedies provided
302 in part II of chapter 501.

303 Section 5. This act shall take effect July 1, 2012.