

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 broker, 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 services or resale advertising services to consumer owners ~~of timeshare resellers interests~~. The term does not include developers, managing entities, or exchange companies to the extent they offer resale brokerage services or resale advertising services to owners of timeshare interests in their own timeshare plans or members of their own exchange programs. The term also does not include a consumer timeshare reseller who

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57 acquires a timeshare interest or timeshare interests for his or
58 her own use and occupancy and who later offers the timeshare
59 interest or timeshare interests for rent or offers for resale in
60 a given calendar year seven or fewer of the timeshare interests
61 that he or she acquired for his or her own use and occupancy.

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

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

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

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

69 (46) "Consumer timeshare reseller" means a purchaser who
70 acquires a timeshare interest for his or her own use and
71 occupancy and later offers the timeshare interest for resale or
72 rental or enters into a resale transfer agreement.

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

80 (48) "Resale brokerage services" means, with respect to a
81 consumer resale timeshare interest in a timeshare property
82 located within this state, any activity that directly or
83 indirectly consists of any of activities described in s.
84 475.01(1)(a).

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

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

95 (b) A developer, managing entity, or exchange company to
96 the extent that any of them offers resale advertising services
97 to owners of timeshare interests in their own timeshare plans or
98 members of their own exchange programs; or

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

110 (50) "Resale advertising service" means any good or
111 service relating to, or a promise of assistance in connection
112 with, advertising or promoting the resale or rental of a

113 consumer resale timeshare interest, including any offer or
 114 solicitation to advertise or promote the sale, purchase, or
 115 transfer of any such interest.

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

118 721.20 Licensing requirements; suspension or revocation of
 119 license; exceptions to applicability; collection of advance fees
 120 for listings unlawful.—

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

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

136 Section 4. Section 721.205, Florida Statutes, is created
 137 to read:

138 721.205 Resale service providers; disclosure obligations;
 139 resale transfer agreements; resale transferee entities.—

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

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

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

148 3. The ratio or percentage of the number of timeshare
 149 resale interests sold or rented versus the number of timeshare
 150 resale interests listed for sale or rent by the timeshare resale
 151 broker for each of the previous 2 calendar years.

152 (b) A resale service provider may not engage in those
 153 activities described in s. 475.01(1) (a) without being the holder
 154 of a valid and current active license in accordance with chapter
 155 475.

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

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

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

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168 purchaser; or state or imply, directly or indirectly, that its
169 resale advertising services are successful in identifying buyers
170 or renters unless the resale advertiser documents the responses
171 to its advertisements received by timeshare resale owners and,
172 before any payment for timeshare resale advertising activities
173 is collected, provides the consumer timeshare reseller the ratio
174 or percentage of the timeshare interests advertised for sale
175 that have resulted in a sale, or advertised for rental that have
176 resulted in a rental, for each of the previous 2 calendar years.

177 (c) Make or submit any charge to a consumer timeshare
178 reseller's credit card account; make or cause to be made any
179 electronic transfer of consumer timeshare reseller funds; or
180 collect any payment from a consumer timeshare reseller until
181 after the resale advertiser has received a written contract
182 complying in all respects with paragraph (d) that has been
183 signed by the consumer timeshare reseller.

184 (d) Engage in any resale advertising services for
185 compensation or valuable consideration without first obtaining a
186 written contract to provide such services signed by the consumer
187 timeshare reseller. Notwithstanding any other law, the contract
188 must be printed in at least 12-point type and must contain the
189 following information:

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

194 2. A complete description of all resale advertising
195 services to be provided, including, but not limited to, details

196 regarding the publications, Internet sites, and other media in
 197 or on which the consumer resale timeshare interest will be
 198 advertised, the dates or time intervals for such advertising or
 199 the minimum number of times such advertising will be run in each
 200 specific medium, the itemized cost to the consumer timeshare
 201 reseller of each resale advertising service to be provided, and
 202 a statement of the total cost to the consumer timeshare reseller
 203 of all resale advertising services to be provided.

204 3. A statement printed in at least 12-point boldfaced type
 205 immediately preceding the space in the contract provided for the
 206 consumer timeshare reseller's signature in substantially the
 207 following form:

208
 209 TIMESHARE OWNER'S RIGHT OF CANCELLATION

210
 211 ...(Name of resale advertiser)... will provide resale
 212 advertising services pursuant to this contract. If
 213 ...(name of resale advertiser)... represents that
 214 ...(name of resale advertiser)... has identified a
 215 person who is interested in purchasing or renting your
 216 timeshare interest, then ...(name of resale
 217 advertiser)... must provide you with the name,
 218 address, and telephone number of such represented
 219 interested resale purchaser.

220
 221 You have an unwaivable right to cancel this contract
 222 for any reason within 7 days after the date you sign
 223 this contract. If you decide to cancel this contract,

224 you must notify ... (name of resale advertiser) ... in
 225 writing of your intent to cancel. Your notice of
 226 cancellation shall be effective upon the date sent and
 227 shall be sent to ... (resale advertiser's physical
 228 address) ... or to ... (resale advertiser's e-mail
 229 address) Your refund will be made within 20 days
 230 after receipt of notice of cancellation or within 5
 231 days after receipt of funds from your cleared check,
 232 whichever is later.

233
 234 You are not obligated to pay ... (name of resale
 235 advertiser) ... any money unless you sign this contract
 236 and return it to ... (name of resale advertiser)

237
 238 IMPORTANT: The resale value of your timeshare interest
 239 may be substantially less than you paid to purchase
 240 it. Before signing this contract, you should carefully
 241 review your original timeshare purchase contract and
 242 other project documents to determine whether the
 243 developer has reserved a right of first refusal or
 244 other option to purchase your timeshare interest or to
 245 determine whether there are any restrictions or
 246 special conditions applicable to the resale or rental
 247 of your timeshare interest.

248
 249 4. A statement that any resale contract entered into by or
 250 on behalf of the consumer timeshare reseller must comply in all
 251 respects with s. 721.065, including the provision of a 10-day

252 cancellation period for the prospective consumer resale
 253 purchaser.

254 (e) Fail to honor any cancellation notice received from
 255 the consumer timeshare reseller within 7 days after the date the
 256 consumer timeshare reseller signs the contract for resale
 257 advertising services in compliance with subparagraph (d)3.

258 (f) Fail to provide a full refund of all money paid by a
 259 consumer timeshare reseller within 20 days after the date the
 260 consumer timeshare reseller signs the contract for resale
 261 advertising services in compliance with subparagraph (d)3.

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

267 (4) Notwithstanding obligations placed upon any other
 268 persons by this section, it is the duty of a resale service
 269 provider to supervise, manage, and control all aspects of the
 270 offering of resale brokerage services or resale advertising
 271 services by any agent or employee of the resale service
 272 provider. Any violation of this section that occurs during such
 273 offering shall be deemed a violation by the resale service
 274 provider as well as by the person actually committing the
 275 violation.

276 (5) Providing resale advertising services with respect to
 277 a consumer resale timeshare interest in a timeshare property
 278 located in this state, including acting as an agent or third-
 279 party service provider for a resale service provider,

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280 constitutes operating, conducting, engaging in, or carrying on a
281 business or business venture in this state for the purposes of
282 s. 48.193(1).

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

286 (7) Notwithstanding any other penalties provided for in
287 this section, any violation of this section is subject to a
288 civil penalty of not more than \$15,000 per violation. In
289 addition, a person who violates any provision of this section
290 commits an unfair and deceptive trade practice as prohibited by
291 s. 501.204 and is subject to the penalties and remedies provided
292 in part II of chapter 501.

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