

By Senator Gardiner

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1                   A bill to be entitled  
2           An act relating to timeshares; amending s. 721.02,  
3           F.S.; revising the purposes of ch. 721, F.S., to  
4           include the provision of certain disclosure; amending  
5           s. 721.05, F.S.; revising the definition of the term  
6           "resale service provider"; defining the terms  
7           "consumer resale timeshare interest," "consumer  
8           timeshare reseller," "resale broker," "resale  
9           brokerage services," "resale advertiser," and "resale  
10          advertising service"; amending s. 721.20, F.S.;  
11          deleting a provision requiring resale service  
12          providers to provide certain fee or cost and listing  
13          information to timeshare interest owners; creating s.  
14          721.205, F.S.; specifying information a resale service  
15          provider must provide to the consumer timeshare  
16          reseller; prohibiting unlicensed resale service  
17          providers from engaging in certain activities;  
18          prohibiting certain services related to the offering  
19          of resale advertising by resale advertisers; providing  
20          certain restrictions on the offering of resale  
21          advertising services by resale advertisers; providing  
22          voidability of certain contracts; providing duties of  
23          a resale service provider; providing that the  
24          provision of resale advertising services in this state  
25          constitutes operating, conducting, engaging in, or  
26          carrying on a business or business venture for  
27          purposes relating to jurisdiction of the courts of  
28          this state; providing penalties; providing an  
29          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 acquires a timeshare interest or timeshare interests for his or

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

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

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

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

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

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

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

81 (48) "Resale brokerage services" means, with respect to a  
82 consumer resale timeshare interest in a timeshare property  
83 located within this state, any activity that directly or  
84 indirectly consists of any of the activities described in s.  
85 475.01(1)(a).

86 (49) "Resale advertiser" means any person who offers,  
87 personally or through an agent, resale advertising services to

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88 consumer timeshare resellers for compensation or valuable  
89 consideration, regardless of whether the offer is made in  
90 person, by mail, by telephone, through the Internet, or by any  
91 other medium of communication. The term does not include:

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

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

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

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

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

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

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

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

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

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

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

144 1. A description of any fees or costs related to such  
145 services that the consumer timeshare reseller, or any other

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146 person, is required to pay to the resale service provider or to  
147 any third party.

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

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

153 (b) A resale service provider may not engage in those  
154 activities described in s. 475.01(1)(a) without being the holder  
155 of a valid and current active license in accordance with chapter  
156 475.

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

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

164 (b) State or imply to a consumer timeshare reseller,  
165 directly or indirectly, that the resale advertiser has  
166 identified a person interested in buying or renting the  
167 timeshare resale interest without providing the name, address,  
168 and telephone number of such represented interested resale  
169 purchaser; or state or imply, directly or indirectly, that its  
170 resale advertising services are successful in identifying buyers  
171 or renters unless the resale advertiser documents the responses  
172 to its advertisements received by timeshare resale owners and,  
173 before any payment for timeshare resale advertising activities  
174 is collected, provides the consumer timeshare reseller the ratio

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175 or percentage of the timeshare interests advertised for sale  
176 that have resulted in a sale, or advertised for rental that have  
177 resulted in a rental, for each of the previous 2 calendar years.

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

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

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

195 2. A complete description of all resale advertising  
196 services to be provided, including, but not limited to, details  
197 regarding the publications, Internet sites, and other media in  
198 or on which the consumer resale timeshare interest will be  
199 advertised, the dates or time intervals for such advertising or  
200 the minimum number of times such advertising will be run in each  
201 specific medium, the itemized cost to the consumer timeshare  
202 reseller of each resale advertising service to be provided, and  
203 a statement of the total cost to the consumer timeshare reseller

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204 of all resale advertising services to be provided.

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

209  
210 TIMESHARE OWNER'S RIGHT OF CANCELLATION

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

221  
222 You have an unwaivable right to cancel this contract  
223 for any reason within 7 days after the date you sign  
224 this contract. If you decide to cancel this contract,  
225 you must notify ...(name of resale advertiser)... in  
226 writing of your intent to cancel. Your notice of  
227 cancellation shall be effective upon the date sent and  
228 shall be sent to ...(resale advertiser's physical  
229 address)... or to ...(resale advertiser's e-mail  
230 address).... Your refund will be made within 20 days  
231 after receipt of notice of cancellation or within 5  
232 days after receipt of funds from your cleared check,



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233 whichever is later.

234

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

238

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

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250 4. A statement that any resale contract entered into by or  
251 on behalf of the consumer timeshare reseller must comply in all  
252 respects with s. 721.065, including the provision of a 10-day  
253 cancellation period for the prospective consumer resale  
254 purchaser.

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

259 (f) Fail to provide a full refund of all money paid by a  
260 consumer timeshare reseller within 20 days after the date the  
261 consumer timeshare reseller signs the contract for resale

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262 advertising services in compliance with subparagraph (d)3.

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

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

277 (5) Providing resale advertising services with respect to a  
278 consumer resale timeshare interest in a timeshare property  
279 located in this state, including acting as an agent or third-  
280 party service provider for a resale service provider,  
281 constitutes operating, conducting, engaging in, or carrying on a  
282 business or business venture in this state for the purposes of  
283 s. 48.193(1).

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

287 (7) Notwithstanding any other penalties provided for in  
288 this section, any violation of this section is subject to a  
289 civil penalty of not more than \$15,000 per violation. In  
290 addition, a person who violates any provision of this section

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291 commits an unfair and deceptive trade practice as prohibited by  
292 s. 501.204 and is subject to the penalties and remedies provided  
293 in part II of chapter 501.

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