

By the Committee on Regulated Industries; and Senator Gardiner

580-02432-12

20121408c1

1                   A bill to be entitled  
2           An act relating to timeshares; amending s. 721.02,  
3           F.S.; revising purposes of ch. 721, F.S., to include  
4           the provision of certain disclosure; amending s.  
5           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 that a resale  
15          service provider must provide to the consumer  
16          timeshare reseller; prohibiting unlicensed resale  
17          service 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.

580-02432-12

20121408c1

30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58

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

Section 1. Subsection (5) of section 721.02, Florida Statutes, is redesignated 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, or a resale broker to the extent that resale advertising services are offered in connection with resale brokerage

580-02432-12

20121408c1

59 services and no fee for the advertising service is collected in  
60 advance. The term also does not include a consumer timeshare  
61 reseller who acquires a timeshare interest or timeshare  
62 interests for his or her own use and occupancy and who later  
63 offers the timeshare interest or timeshare interests for rent or  
64 offers for resale in a given calendar year seven or fewer of the  
65 timeshare interests that he or she acquired for his or her own  
66 use and occupancy.

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

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

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

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

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

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

85 (48) "Resale brokerage services" means, with respect to a  
86 consumer resale timeshare interest in a timeshare property  
87 located or offered within this state, any activity that directly

580-02432-12

20121408c1

88 or indirectly consists of any of activities described in s.  
89 475.01(1)(a).

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

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

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

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

115 (50) "Resale advertising service" means any good or service  
116 relating to, or a promise of assistance in connection with,

580-02432-12

20121408c1

117 advertising or promoting the resale or rental of a consumer  
118 resale timeshare interest located or offered within this state,  
119 including any offer to advertise or promote the sale or purchase  
120 of any such interest.

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

123 721.20 Licensing requirements; suspension or revocation of  
124 license; exceptions to applicability; collection of advance fees  
125 for listings unlawful.-

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

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

141 Section 4. Section 721.205, Florida Statutes, is created to  
142 read:

143 721.205 Resale service providers; disclosure obligations.-

144 (1) (a) Before engaging in resale advertising services, a  
145 resale service provider must provide to the consumer timeshare

580-02432-12

20121408c1

146 reseller:

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

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

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  
168 purchaser.

169 (c) State or imply to a consumer timeshare reseller,  
170 directly or indirectly, that sales or rentals have been achieved  
171 or generated as a result of its advertising services unless the  
172 resale advertiser, at the time of making such representation,  
173 possesses and is able to provide documentation to substantiate  
174 the statement or implication made to the consumer timeshare

580-02432-12

20121408c1

175 reseller. In addition, to the extent that a resale advertiser  
176 states or implies to a consumer timeshare reseller that the  
177 resale advertiser has sold or rented any specific number of  
178 timeshare interests, the resale advertiser must also provide the  
179 consumer timeshare reseller the ratio or percentage of either  
180 the timeshare interests advertised for sale by the resale  
181 advertiser which have actually resulted in a sale, or the ratio  
182 or percentage of all timeshare interests advertised for rental  
183 which have actually resulted in a rental, for each of the  
184 previous 2 calendar years.

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

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

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

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

580-02432-12

20121408c1

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

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

218  
219                   TIMESHARE OWNER'S RIGHT OF CANCELLATION

220  
221       ...(Name of resale advertiser)... will provide resale  
222 advertising services pursuant to this contract. If ...(name of  
223 resale advertiser)... represents that ...(name of resale  
224 advertiser)... has identified a person who is interested in  
225 purchasing or renting your timeshare interest, then ...(name of  
226 resale advertiser)... must provide you with the name, address,  
227 and telephone number of such represented interested resale  
228 purchaser.

229  
230       You have an unwaivable right to cancel this contract for  
231 any reason within 10 days after the date you sign this contract.  
232 If you decide to cancel this contract, you must notify ...(name



580-02432-12

20121408c1

233 of resale advertiser)... in writing of your intent to cancel.  
234 Your notice of cancellation shall be effective upon the date  
235 sent and shall be sent to ...(resale advertiser's physical  
236 address)... or to ...(resale advertiser's e-mail address)....  
237 Your refund will be made within 20 days after receipt of notice  
238 of cancellation or within 5 days after receipt of funds from  
239 your cleared check, whichever is later.

240

241 You are not obligated to pay ...(name of resale  
242 advertiser)... any money unless you sign this contract and  
243 return it to ...(name of resale advertiser)....

244

245 IMPORTANT: Before signing this contract, you should  
246 carefully review your original timeshare purchase contract and  
247 other project documents to determine whether the developer has  
248 reserved a right of first refusal or other option to purchase  
249 your timeshare interest or to determine whether there are any  
250 restrictions or special conditions applicable to the resale or  
251 rental of your timeshare interest.

252

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

258 (g) Fail to honor any cancellation notice received from the  
259 consumer timeshare reseller within 10 days after the date the  
260 consumer timeshare reseller signs the contract for resale  
261 advertising services in compliance with subparagraph (f)3.

580-02432-12

20121408c1

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

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

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

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

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

580-02432-12

20121408c1

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

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