

1 A bill to be entitled
2 An act relating to vacation and timeshare plans;
3 amending s. 721.05, F.S.; revising and providing
4 definitions; creating s. 721.2055, F.S.; providing
5 legislative intent; providing services included in
6 timeshare exit assistance or relief services;
7 prohibiting specified actions by a time share exit
8 assistance or relief services provider during the
9 course of providing certain services; requiring
10 certain disclosures in general and purchaser-specific
11 commercial communications; providing requirements for
12 oral or audible communications; requiring a written
13 agreement to provide services; providing requirements
14 for the written agreement; providing requirements for
15 when specific entities are providing relief;
16 prohibiting a person from providing assistance or
17 support to a timeshare exit assistance or relief
18 services provider if the person knows the provider is
19 violating the law; providing exemptions; requiring
20 certain records be maintained for a specific duration;
21 providing requirements for timeshare exit assistance
22 or relief services providers; providing criminal and
23 civil penalties; amending s. 721.21, F.S.; providing
24 that a purchaser or owners' association may bring an
25 action for damages against a resale service provider

26 | or timeshare exit assistance or relief services
27 | provider; amending s. 721.52, F.S.; revising the
28 | definition of the term "nonspecific multisite
29 | timeshare plan"; providing an effective date.
30 |

31 | Be It Enacted by the Legislature of the State of Florida:
32 |

33 | Section 1. Subsections (44), (45), and (46) of section
34 | 721.05, Florida Statutes, are amended, and subsections (53),
35 | (54), and (55) are added to that section, to read:

36 | 721.05 Definitions.—As used in this chapter, the term:

37 | (44) "Resale service provider" means any resale
38 | advertiser, or other person or entity, including any agent or
39 | employee of such person or entity, who offers or uses
40 | telemarketing, direct mail, e-mail, or any other means of
41 | communication in connection with the offering of resale
42 | brokerage or resale advertising services to consumer timeshare
43 | resellers. The term does not include developers or managing
44 | entities to the extent they offer resale brokerage or resale
45 | advertising services to owners of timeshare interests in their
46 | own timeshare plans; resale brokers to the extent that resale
47 | advertising services are offered in connection with resale
48 | brokerage services and no fee for the advertising service is
49 | collected in advance; or a consumer timeshare reseller who
50 | acquires a timeshare interest or timeshare interests for his or

51 her own use and occupancy and who later offers the timeshare
52 interest or timeshare interests for rent or offers for resale in
53 a given calendar year seven or fewer of the timeshare interests
54 that he or she acquired for his or her own use and occupancy. If
55 a resale service provider also offers timeshare exit assistance
56 or relief services, the resale service provider must comply with
57 ss. 721.205 and 721.2055.

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

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

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

62 (c) One or more reserved occupancy rights relating to, or
63 arranged through, an exchange program ~~in which a purchaser is a~~
64 ~~member.~~

65 (46) "Consumer timeshare reseller" means a purchaser who
66 acquires a timeshare interest for his or her own use and
67 occupancy and later offers the timeshare interest, or occupancy
68 rights associated with the timeshare interest, for resale or
69 rental.

70 (53) "Timeshare exit assistance or relief services" means
71 any service, plan, or program offered in this state; provided to
72 a purchaser who is a resident of this state; offered anywhere in
73 connection with a timeshare plan containing accommodations
74 located in this state; or a timeshare plan located or
75 domesticated in this state, in exchange for consideration, that

76 represents, expressly or by implication, to assist or attempt to
 77 assist a purchaser with any of the actions, activities, or
 78 services listed in s. 721.2055(2).

79 (54) "Timeshare exit assistance or relief services
 80 provider" or "provider" means any person or entity that offers
 81 to provide, or arranges for others to provide timeshare exit
 82 assistance or relief services. If a provider also offers resale
 83 brokerage services, resale advertising services, or timeshare
 84 interest transfer services, the provider must comply with ss.
 85 721.205 and 721.2055. The term does not include:

86 (a) A developer or managing entity, or an agent or
 87 contractor of a developer or managing entity, to the extent that
 88 they offer timeshare exit assistance or relief services to
 89 purchasers of timeshare interests in their own timeshare plans.

90 (b) A mortgagee or lienor, or agent or contractor of a
 91 mortgagee or lienor, to the extent that they offer timeshare
 92 exit assistance or relief services to a borrower or debtor
 93 related to a mortgage, lien, or encumbrance against the
 94 purchaser's timeshare interest.

95 (c) The servicer of a mortgagee or lienor, or an agent or
 96 contractor of such servicer.

97 (d) An exchange company, or an agent or contractor of an
 98 exchange company.

99 (55) "Commercial communication" means any form of
 100 communication that is designed to promote, directly or

101 indirectly, the goods, services, or image of a company,
102 organization, or person pursuing a commercial, industrial, or
103 craft activity or exercising a regulated profession.

104 Section 2. Section 721.2055, Florida Statutes, is created
105 to read:

106 721.2055 Timeshare exit assistance or relief services
107 providers; legislative intent; disclosure obligations;
108 penalties.-

109 (1) The Legislature finds that purchasers who are in
110 default of their obligations to pay assessments, real property
111 taxes, or other sums due, or to pay amounts due under a
112 mortgage, lien, or encumbrance against their timeshare
113 interests, or who may no longer desire to own their timeshare
114 interests, may be vulnerable to fraud, deception, and unfair
115 practices with timeshare exit assistance or relief services
116 providers. The intent of this section is to provide a purchaser
117 with information necessary to make an informed decision
118 regarding the desirability of timeshare exit assistance or
119 relief services. It is further the intent of the Legislature to
120 require that timeshare exit assistance or relief services
121 agreements be in writing in order to safeguard purchasers
122 against deceit and financial hardship; to prohibit
123 representations that tend to mislead; to prohibit or restrict
124 unfair contract terms; and to provide a cooling-off period for
125 purchasers who enter into agreements for timeshare exit

126 assistance or relief services.

127 (2) Timeshare exit assistance or relief services consist
 128 of:

129 (a) Stopping, preventing, or postponing any payment of
 130 assessments, real property taxes, or any other sums imposed
 131 against a purchaser's timeshare interest, or a payment due to a
 132 mortgagee or other lienor under a mortgage, lien, or other
 133 encumbrance secured by a purchaser's timeshare interest.

134 (b) Negotiating, obtaining, or arranging a modification of
 135 any requirement to pay an assessment, real property tax, or any
 136 other sum imposed against a purchaser's timeshare interest, or
 137 the terms of a mortgage, lien, or other encumbrance secured by a
 138 purchaser's timeshare interest, including a reduction in the
 139 amount of interest, principal balance, monthly payments, or
 140 fees.

141 (c) Obtaining any forbearance or modification from a
 142 managing entity in the timing of the payment of an assessment,
 143 real property tax, or any other sum due, or from a mortgagee or
 144 lienor in the timing of the payment of a mortgage, lien, or
 145 other encumbrance secured by a purchaser's timeshare interest.

146 (d) Negotiating, obtaining, or arranging an extension of
 147 time within which the purchaser may cure his or her default on a
 148 purchaser's obligations to pay an assessment, real property tax,
 149 or any other sum, or an amount due to a mortgagee or lienor
 150 under a mortgage, lien, or other encumbrance secured by a

151 purchaser's timeshare interest.

152 (e) Negotiating, obtaining, or arranging a deed in lieu of
153 foreclosure of a purchaser's timeshare interest, or any
154 disposition of a purchaser's timeshare interest, other than to a
155 bona fide third party who pays value, a developer, a managing
156 entity, or a mortgagee or lienor.

157 (3) In the course of offering or providing timeshare exit
158 assistance or relief services, a timeshare exit assistance or
159 relief services provider may not:

160 (a) Engage in or initiate timeshare exit assistance or
161 relief services without first executing a written agreement with
162 the purchaser for such services.

163 (b) Solicit, charge, receive, or attempt to collect or
164 secure payment, directly or indirectly, for timeshare exit
165 assistance or relief services before completing or performing
166 all services contained in the written agreement for services.

167 (c) Represent, expressly or by implication, in connection
168 with the advertising, marketing, promoting, offering for sale,
169 selling, or performing any timeshare exit assistance or relief
170 services, that a purchaser cannot or should not contact or
171 communicate with his or her developer, managing entity, exchange
172 company, mortgagee, or lienor, or that the developer, managing
173 entity, exchange company, mortgagee, or lienor is prohibited
174 from contacting or communicating with a purchaser.

175 (d) Misrepresent, expressly or by implication, any

176 material aspect of timeshare exit assistance or relief services,
177 including, but not limited to:

178 1. The likelihood of negotiating, obtaining, or arranging
179 a represented service or result.

180 2. The amount of time it will take the provider to
181 accomplish a represented service or result.

182 3. That a provider is affiliated with, endorsed or
183 approved by, or otherwise associated with, any developer,
184 managing entity, mortgagee or lienor, exchange company,
185 timeshare plan, government or government agency, nonprofit
186 counselor agency or program, or other individual, entity, or
187 program.

188 4. The purchaser's obligation to make payments under the
189 terms of the purchaser's assessment obligation or mortgage,
190 lien, or other encumbrance.

191 5. The terms and conditions of any refund, cancellation,
192 exchange, or repurchase policy for a timeshare exit assistance
193 or relief service, including, but not limited to, the likelihood
194 of obtaining a full or partial refund or the circumstances in
195 which a full or partial refund may be granted, for a timeshare
196 exit assistance or relief service.

197 6. The terms and conditions of the purchaser's assessment
198 obligation or mortgage, lien, or other encumbrance, including,
199 but not limited to, the amount owed.

200 7. That the provider has completed the represented

201 services or has a right to claim, demand, charge, collect, or
202 receive payment or other consideration.

203 8. That the purchaser will receive legal representation.

204 9. The availability, performance, cost, or characteristics
205 of any alternative to timeshare exit assistance or relief
206 services through which the purchaser can obtain relief,
207 including negotiating directly with the developer, managing
208 entity, mortgagee, or lienor.

209 10. The amount of money or the percentage of the
210 obligation amount that a purchaser may save by using timeshare
211 exit assistance or relief services.

212 11. The total cost to purchase timeshare exit assistance
213 or relief services.

214 12. The terms, conditions, or limitations of any offer of
215 relief that the provider obtains from the purchaser's developer,
216 managing entity, mortgagee, or lienor, including the time period
217 in which the purchaser must decide to accept the offer.

218 13. That the purchaser's information was obtained from, or
219 provided to, the provider by the developer or managing entity of
220 the purchaser's timeshare plan or an exchange company.

221 (e) Attempt to transfer, cause another person to attempt
222 to transfer, or advise a purchaser to attempt to transfer a
223 conveyance of the legal or beneficial title of a purchaser's
224 timeshare interest to a third party, as evidenced by filing a
225 deed for conveyance of legal title, a deed in lieu of

226 foreclosure, or any other instrument for conveyance of
227 beneficial title, to the clerk of the court when such third
228 party has not expressly accepted the transfer. A provider may
229 not limit any applicable right of first refusal held by the
230 developer or managing entity. Any attempted transfer is unlawful
231 and a violation of s. 817.535.

232 (f) Represent, expressly or by implication, the benefits,
233 performance, or efficacy of timeshare exit assistance or relief
234 services unless, at the time the representation is made, the
235 provider possesses and relies on competent and reliable evidence
236 that substantiates that the representation is true.

237 (4) In every general commercial communication, a timeshare
238 exit assistance or relief services provider must:

239 (a) Include a statement in conspicuous type in
240 substantially the following form:

241
242 "IMPORTANT NOTICE
243 ...(Name of timeshare exit assistance or relief
244 services provider)... is not associated with, nor are
245 our services approved by, any government or government
246 agency or your developer, managing entity, exchange
247 company, timeshare plan, mortgagee, or lienor."

248
249 (b) Include a statement in conspicuous type in
250 substantially the following form, if the provider has

251 represented, expressly or by implication, that purchasers will
252 receive any relief or result from a developer, managing entity,
253 mortgagee, or lienor:

254
255 "IMPORTANT NOTICE

256 ...Even if you accept this offer and use our services,
257 your developer, managing entity, mortgagee, or lienor
258 may not agree to change or release you from your
259 obligations."

260
261 (5) In addition to the disclosures required in subsection
262 (4), for every purchaser-specific commercial communication, a
263 timeshare exit assistance or relief services provider must:

264 (a) Include a statement in conspicuous type in
265 substantially the following form:

266
267 "You may stop doing business with us at any time. You
268 may accept or reject the offer of assistance we obtain
269 from your ...(developer, managing entity, mortgagee,
270 or lienor).... If you reject the offer, you are not
271 responsible for any payment for our services. If you
272 accept the offer, you will be responsible for
273 ...(amount to be paid or method for calculating the
274 amount)... for our services."
275

276 For purposes of this paragraph, the amount "you will have to
277 pay" shall consist of the total amount the purchaser must pay to
278 purchase, receive, and use all of the timeshare exit assistance
279 or relief services that are subject to the sales offer,
280 including, but not limited to, all fees and charges.

281 (b) Include a statement in conspicuous type in
282 substantially the following form, if the provider has
283 represented, expressly or by implication, in connection with
284 advertising, marketing, promoting, offering for sale, selling,
285 or performing of any timeshare exit assistance or relief
286 service, that the purchaser should temporarily or permanently
287 discontinue payments, in whole or in part, on any obligation to
288 pay an assessment, real property tax, or other sums due, or any
289 amount due to a mortgagee or lienor:

291 "If you stop paying your obligations, you could lose
292 your timeshare interest through foreclosure or any
293 other legal means, lose any money you have paid for
294 your timeshare interest, and damage your credit
295 rating."

296
297 (6) For any timeshare exit assistance or relief service
298 that is disseminated orally or through audible means, the
299 disclosures required in subsections (4) and (5) shall be
300 preceded by the statement: "Before using this service, consider

301 the following information." The disclosures shall be
302 disseminated in a slow and deliberate manner and at a reasonably
303 understandable volume and pitch.

304 (7) A timeshare exit assistance or relief services
305 provider may not engage in timeshare exit assistance or relief
306 services without first obtaining a written agreement signed by
307 the purchaser to provide such services.

308 (a) The written agreement shall include the name and
309 address of the person or entity providing timeshare exit
310 assistance or relief services, the exact nature and specific
311 detail of each service to be provided, the total amount and
312 terms of the charges to be paid by the purchaser for the
313 services, and the effective date of the agreement. The effective
314 date of the agreement may not be earlier than the date the
315 purchaser signs the agreement. The timeshare exit assistance or
316 relief services provider must give the purchaser a copy of the
317 agreement to review at least 1 business day before the purchaser
318 is to sign the agreement.

319 (b) The purchaser has the right to cancel the written
320 agreement without any penalty or obligation within 10 business
321 days after signing the agreement. The right to cancel may not be
322 waived by the purchaser or limited in any manner by the
323 provider. A purchaser must notify the provider in writing of his
324 or her intent to cancel the agreement. Such notice of
325 cancellation may be mailed or e-mailed to the provider. The

326 notice of cancellation is effective on the date it is sent. If
327 the purchaser cancels the agreement, any payments that have been
328 made under paragraph (10) (b) to the provider must be returned to
329 the purchaser within 10 business days after delivery of the
330 notice of cancellation or within 5 business days after receipt
331 of funds from the purchaser's cleared bank, whichever is later.

332 (c) An agreement for timeshare exit assistance or relief
333 services must contain, immediately above the signature line, a
334 statement in conspicuous type in substantially the following
335 form:

336
337 "RIGHT OF CANCELLATION

338 ...(Name of timeshare exit assistance or relief
339 services provider)... will provide services to you
340 pursuant to this agreement. You have an unwaivable
341 right to cancel this agreement for any reason within
342 10 days after the date you sign this agreement. Unless
343 covered by an exemption, ...(name of timeshare exit
344 assistance or relief services provider)... is
345 prohibited by law from accepting any money, property,
346 or other form of payment from you until all promised
347 services are completed. If you decide to cancel this
348 agreement, you must notify ...(name of timeshare exit
349 assistance or relief services provider)... in writing
350 of your intent to cancel. Your notice of cancellation

351 is effective on the date it is sent. The notice shall
352 be mailed to ...(name and mailing address of timeshare
353 exit assistance or relief services provider)... or
354 sent to ...(e-mail address of timeshare exit
355 assistance or relief services provider).... If
356 applicable, your refund will be made within 10
357 business days after receipt of the notice of
358 cancellation or within 5 business days after receipt
359 of funds from your cleared bank, whichever is later.

360
361 IMPORTANT: It is recommended that you contact your
362 developer, managing entity, mortgagee, or lienor
363 before signing this agreement. Your developer,
364 managing entity, mortgagee, or lienor may be willing
365 to negotiate a payment plan, restructure your debt
366 obligation, or accept the transfer of your timeshare
367 interest free of charge."

368
369 (8) (a) If the timeshare exit assistance or relief services
370 to be provided include relief from the purchaser's developer,
371 managing entity, mortgagee, or lienor, the timeshare exit
372 assistance or relief services provider may not request or
373 receive payment of any fee or other consideration until the
374 purchaser has executed a written agreement with the purchaser's
375 developer, managing entity, mortgagee, or lienor that

376 incorporates the offer of assistance or relief.

377 (b) When the timeshare exit assistance or relief services
378 provider gives the purchaser the written agreement specified in
379 paragraph (a), the provider shall also provide the purchaser:

380 1. A notice, on a separate page from the written
381 agreement, in conspicuous type in substantially the following
382 form:

383
384 "IMPORTANT NOTICE

385 This is an offer of assistance or relief obtained from
386 your ...(name of developer, managing entity,
387 mortgagee, or lienor).... You may accept or reject
388 this offer. If you reject the offer, you are not
389 responsible for any payment for our services. If you
390 accept the offer, you will be responsible for
391 ...(amount to be paid or method for calculating the
392 amount)... for our services."

393
394 2. A notice from the purchaser's developer, managing
395 entity, mortgagee, or lienor that describes all material
396 differences between the terms, conditions, and limitations
397 associated with the purchaser's current debt obligation and the
398 terms, conditions, and limitations associated with the
399 purchaser's debt obligation if he or she accepts the offer. The
400 notice must contain, but is not limited to: the differences in

401 the principal balance; interest rate, including the maximum rate
402 and any adjustable rates, if applicable; amount and number of
403 the purchaser's scheduled periodic payments, if applicable;
404 monthly amounts owed for principal, interest, taxes, and any
405 insurance on the debt obligation; the amount of any delinquent
406 payments owing or outstanding; the assessed fees or penalties;
407 and the term of the debt obligation. A statement shall be
408 included with the notice in conspicuous type in substantially
409 the following form: "Important information from your ...(name of
410 developer, managing entity, mortgagee, or lienor)... about this
411 offer."

412 (9) A person may not provide substantial assistance or
413 support to any timeshare exit assistance or relief services
414 provider when that person knows or consciously avoids knowing
415 that the provider is engaged in any act or practice that
416 violates this section. This subsection does not prohibit a
417 developer, managing entity, mortgagor, or lienor from agreeing
418 to the offer of assistance or relief for a purchaser made by a
419 timeshare exit assistance or relief services provider.

420 (10) (a) An attorney who is a member of The Florida Bar, or
421 his or her law firm, a real estate broker licensed under chapter
422 475, or his or her brokerage firm, a title insurance agent
423 licensed under s. 626.8417, a title insurance agency licensed
424 under s. 626.8418, and a title insurer authorized to transact
425 business in this state pursuant to s. 624.401, are exempt from

426 the provisions of this section, with the exception of paragraph
 427 (3)(b), if the attorney, real estate broker, title insurance
 428 agent or agency, or title insurer:

429 1. Provides timeshare exit assistance or relief services
 430 as part of their usual practice or business.

431 2. Complies with state laws and regulations that cover the
 432 same type of conduct governed by this section.

433 (b) An attorney, real estate broker, title insurance agent
 434 or agency, or title insurer exempt under paragraph (a) may
 435 request or receive payment of any fee or other consideration
 436 prior to completion or performance of all promised timeshare
 437 exit assistance or relief services if such person:

438 1. Deposits the funds received from the purchaser in a
 439 client trust account, broker account, or escrow account.

440 2. Does not receive disbursement of the funds before
 441 completing or performing all promised services.

442 3. Complies with state laws and regulations, including
 443 licensing regulations, applicable to client trust accounts,
 444 broker accounts, or escrow accounts.

445 (11) Any attempt to waive the purchaser protections
 446 provided in this section is unlawful.

447 (12)(a) A timeshare exit assistance or relief services
 448 provider shall maintain, for 24 months after the date the record
 449 was created, the following records:

450 1. All contracts or other agreements between the provider

451 and a purchaser for any timeshare exit assistance or relief
452 services.

453 2. Copies of all written communications between the
454 provider and a purchaser that occur before the date the
455 purchaser entered into an agreement with the provider.

456 3. Copies of all documents or telephone recordings created
457 in connection with subsection (13).

458 4. All purchaser files containing the names, phone
459 numbers, amounts paid, and descriptions of timeshare exit
460 assistance or relief services contracted for, to the extent the
461 provider keeps such information in the ordinary course of
462 business.

463 5. Copies of sales scripts, training materials, commercial
464 communications, and other marketing materials, including
465 Internet sites and blogs, for timeshare exit assistance or
466 relief services.

467 6. Copies of the disclosures provided to the purchaser
468 under subsections (4) or (5).

469 (b) A timeshare exit assistance or relief services
470 provider may keep the records required in this subsection in any
471 form and in the same manner, format, or place as it keeps such
472 records in the ordinary course of business.

473 (13) A timeshare exit assistance or relief services
474 provider must:

475 (a) Take reasonable steps to monitor and ensure that all

476 of its employees and independent contractors comply with this
477 section. At a minimum, these steps shall include:

478 1. Monitoring the communications directed at specific
479 purchasers.

480 2. Performing random recording and testing of the oral
481 representations made by employees or independent contractors
482 engaged in sales or other customer service functions, if the
483 provider uses telemarketing.

484 3. Establishing a procedure for receiving and responding
485 to all purchaser complaints.

486 4. Ascertaining the number and nature of purchaser
487 complaints regarding transactions in which employees or
488 independent contractors are involved.

489 (b) Promptly investigate each purchaser complaint
490 received.

491 (c) Take corrective action with respect to any employee or
492 independent contractor who is not complying with this section.
493 Such action may include training, disciplining, or terminating
494 the employee or independent contractor.

495 (d) Maintain information and material necessary to
496 demonstrate compliance with paragraph (a).

497 (14) Any person who intentionally fails to comply with the
498 provisions of this section is guilty of a felony of the third
499 degree, punishable as provided in s. 775.082, s. 775.083, or s.
500 775.084. The failure to establish the required account under

501 subsection (10) or place funds in such account is prima facie
502 evidence of an intentional violation of this section.

503 (15) A person who violates this section is subject to a
504 civil penalty of not more than \$15,000 per violation.

505 (16) A person who violates any provision of this section
506 commits an unfair and deceptive trade practice as prohibited
507 under part II of chapter 501, and is subject to the penalties
508 and remedies provided therein.

509 Section 3. Section 721.21, Florida Statutes, is amended to
510 read:

511 721.21 Purchasers' remedies.—An action for damages or for
512 injunctive or declaratory relief for a violation of this chapter
513 may be brought by any purchaser or owners' association against
514 the developer, a seller, an escrow agent, ~~or~~ the managing
515 entity, a resale service provider, or timeshare exit assistance
516 or relief services provider. The prevailing party in any such
517 action, or in any action in which the purchaser claims a right
518 of voidability based upon either a closing before the expiration
519 of the cancellation period or an amendment which materially
520 alters or modifies the offering in a manner adverse to the
521 purchaser, may be entitled to reasonable attorney's fees. Relief
522 under this section does not exclude other remedies provided by
523 law.

524 Section 4. Subsection (5) of section 721.52, Florida
525 Statutes, is amended to read:

526 721.52 Definitions.—As used in this chapter, the term:
527 (5) "Nonspecific multisite timeshare plan" means a
528 multisite timeshare plan with respect to which a purchaser
529 receives a right to use all of the accommodations and
530 facilities, if any, of the multisite timeshare plan through the
531 reservation system, but no specific right to use any particular
532 accommodations and facilities for the remaining term of the
533 multisite timeshare plan in the event that the reservation
534 system is terminated for any reason prior to the expiration of
535 the term of the multisite timeshare plan. Timeshare estates or
536 timeshare licenses may be offered in a nonspecific multisite
537 timeshare plan.

538 Section 5. This act shall take effect July 1, 2019.