AN ACT

relating to amendments to the Texas Timeshare Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (c), Section 221.022, Property Code, is amended to read as follows:

(c) The commission may accept an abbreviated registration application from a developer of a timeshare plan for any [if all] accommodations in the plan [are] located outside this state. The developer must file written notice of the intent to register under this section not later than the 15th day before the date the abbreviated application is submitted.

SECTION 2. Subsections (b) and (d), Section 221.032, Property Code, are amended to read as follows:

(b) The timeshare disclosure statement for a single-site timeshare plan or a multisite timeshare plan that includes a specific timeshare interest must include:

(1) the type of timeshare plan offered and the name and address of:

(A) the developer; and

(B) the single site or specific site offered for the multisite timeshare plan;

(2) a description of the duration and operation of the timeshare plan;

(3) a description of the existing or proposed
S.B. No. 1036

1 accommodations, including the type and number of timeshare
2 interests in the accommodations expressed in periods of seven-day
3 use availability or other time increment applicable to the
4 timeshare plan. The description of each type of accommodation
5 included in the timeshare plan shall be categorized by the number of
6 bedrooms, the number of bathrooms, and sleeping capacity, and shall
7 include a statement indicating whether the accommodation contains a
8 full kitchen, which means a kitchen that has a minimum of a
9 dishwasher, range, sink, oven, and refrigerator. If the
10 accommodations are proposed or incomplete, a schedule for
11 commencement, completion, and availability of the accommodations
12 shall be provided;
13
14 (4) a description of any existing or proposed
15 amenities of the timeshare plan and, if the amenities are proposed
16 or incomplete, a schedule for commencement, completion, and
17 availability of the amenities;
18
19 (5) the extent to which financial arrangements have
20 been provided for the completion of all promised accommodations and
21 amenities that are committed to be built;
22
23 (6) a description of the method and timing for
24 performing maintenance of the accommodations;
25
26 (7) a statement indicating that, on an annual basis,
27 the sum of the nights that purchasers are entitled to use the
28 accommodations does not exceed the number of nights the
29 accommodations are available for use by the purchasers;
30
31 (8) a description of the method by which purchasers'
S.B. No. 1036

(9) a statement that an association exists or is expected to be created or that such an association does not exist and is not expected to be created and, if such an association exists or is reasonably contemplated, a description of its powers and responsibilities;

(10) relating to the single-site timeshare plan or the specific timeshare interest of a multisite timeshare plan, copies of the following documents, if applicable, including any amendments to the documents, unless separately provided to the purchaser simultaneously with the timeshare disclosure statement:

(A) the declaration;

(B) the association articles of incorporation;

(C) the association bylaws;

(D) the association rules; and

(E) any lease or contract, excluding the purchase contract and other loan documents required to be signed by the purchaser at closing;

(11) the name and principal address of the managing entity and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it;

(12) the current annual budget, if available, or the projected annual budget for the timeshare plan or timeshare properties managed by the same managing entity if assessments are deposited in a common account. The budget must include:

(A) a statement of the amount reserved or budgeted for repairs, replacements, and refurbishment;
S.B. No. 1036

(B) the projected common expense liability, if
any, by category of expenditure for the timeshare plan or timeshare
properties managed by the same managing entity; and

(C) [the name and address of the person who
prepared the operating budget; and

(D)] the assumptions on which the operating
budget is based;

(13) the projected assessments and a description of
the method for calculating and apportioning those assessments among
purchasers;

(14) any initial fee or special fee due from the
purchaser at closing, together with a description of the purpose
and method of calculating the fee;

(15) a description of any lien, defect, or encumbrance
on or affecting title to the timeshare interest and, if applicable,
a copy of each written warranty provided by the developer;

(16) a description of any bankruptcy that is pending
or that has occurred within the past five years, pending civil or
criminal suit, adjudication, or disciplinary actions material to
the timeshare plan of which the developer has knowledge;

(17) a description of any financing offered by or
available through the developer;

(18) any current or anticipated fees or charges to be
paid by timeshare purchasers for the use of any accommodations or
amenities related to the timeshare plan, and a statement that the
fees or charges are subject to change;

(19) a description and amount of insurance coverage
provided for the protection of the purchaser;

(20) the extent to which a timeshare interest may become subject to a tax lien or other lien arising out of claims against purchasers of different timeshare interests;

(21) a description of those matters required by Section 221.041;

(22) a statement disclosing any right of first refusal or other restraint on the transfer of all or any portion of a timeshare interest;

(23) a statement disclosing that any deposit made in connection with the purchase of a timeshare interest must be held by an escrow agent until expiration of any right to cancel the contract and that any deposit must be returned to the purchaser if the purchaser elects to exercise the right of cancellation; or, if the commission accepts from the developer a surety bond, irrevocable letter of credit, or other form of financial assurance instead of an escrow deposit, a statement disclosing that the developer has provided a surety bond, irrevocable letter of credit, or other form of financial assurance in an amount equal to or in excess of the funds that would otherwise be held by an escrow agent and that the deposit must be returned if the purchaser elects to exercise the right of cancellation;

(24) if applicable, a statement that the assessments collected from the purchasers may be placed in a common account with the assessments collected from the purchasers of other timeshare properties managed by the same managing entity;

(25) if the timeshare plan provides purchasers with
the opportunity to participate in an exchange program, a
description of the name and address of the exchange company and the
method by which a purchaser accesses the exchange program; and

(26) any other information the commission determines
is necessary to protect prospective purchasers or to implement the
purpose of this chapter.

(d) A developer who offers a nonspecific timeshare interest
in a multisite timeshare plan must disclose the following
information in written, graphic, or tabular form:

(1) the name and address of the developer;

(2) a description of the type of interest and the usage
rights the purchaser will receive;

(3) a description of the duration and operation of the
timeshare plan;

(4) a description of the type of insurance coverage
provided for each component site;

(5) an explanation of who holds title to the
accommodations of each component site;

(6) a description of each component site, including
the name and address of each component site;

(7) a description of the existing or proposed
accommodations, expressed in periods of seven-day use availability
or any other time increment applicable to the timeshare plan. The
description of each type of accommodation included in the timeshare
plan shall be categorized by the number of bedrooms, the number of
bathrooms, and sleeping capacity, and shall include a statement
indicating whether the accommodation contains a full kitchen, which
means a kitchen that has a minimum of a dishwasher, range, sink, oven, and refrigerator. If the accommodations are proposed or incomplete, a schedule for commencement, completion, and availability of the accommodations shall be provided;

(8) a statement that an association exists or is expected to be created or that such an association does not exist and is not expected to be created and, if such an association exists or is reasonably contemplated, a description of its powers and responsibilities;

(9) if applicable, copies of the following documents applicable to the multisite timeshare plan, including any amendments to the documents, unless separately provided to the purchaser simultaneously with the timeshare disclosure statement:

(A) the declaration;
(B) the association articles of incorporation;
(C) the association bylaws;
(D) the association rules; and
(E) any lease or contract, excluding the purchase contract and other loan documents required to be signed by the purchaser at closing;

(10) a description of the method and timing for performing maintenance of the accommodations;

(11) a statement indicating that, on an annual basis, the sum of the nights that purchasers are entitled to use the accommodations does not exceed the number of nights the accommodations are available for use by the purchasers;

(12) a description of each type of accommodation
S.B. No. 1036

1 included in the timeshare plan, categorized by the number of
2 bedrooms, the number of bathrooms, and sleeping capacity, and a
3 statement indicating whether the accommodation contains a full
4 kitchen, which means a kitchen that has a minimum of a dishwasher,
5 range, sink, oven, and refrigerator;
6
7 (13) a description of amenities available for use by
8 the purchaser at each component site;
9
10 (14) the location of each component site of the
11 multisite timeshare plan, the historical occupancy of each
12 component site for the prior 12-month period, if the component site
13 was part of the multisite timeshare plan during such 12-month time
14 period, as well as any periodic adjustment or amendment to the
15 reservation system that may be needed in order to respond to actual
16 purchaser use patterns and changes in purchaser use demand for the
17 accommodations existing at the time within the multisite timeshare
18 plan;
19
20 (15) a description of the right to make any additions,
21 substitutions, or deletions of accommodations, amenities, or
22 component sites, and a description of the basis upon which
23 accommodations, amenities, or component sites may be added to,
24 substituted in, or deleted from the multisite timeshare plan;
25
26 (16) a description of the reservation system that
27 shall include all of the following:
28
29 (A) the entity responsible for operating the
30 reservation system, its relationship to the developer, and the
31 duration of any agreement for operation of the reservation system;
32
33 (B) a summary of the rules governing access to
and use of the reservation system; and

(C) the existence of and an explanation regarding
any priority reservation features that affect a purchaser's ability
to make reservations for the use of a given accommodation on a
first-come, first-served basis;

(17) the name and principal address of the managing
entity for the multisite timeshare plan and a description of the
procedures, if any, for altering the powers and responsibilities of
the managing entity and for removing or replacing it, and a
description of the relationship between the multisite timeshare
plan managing entity and the managing entity of the component sites
of the multisite timeshare plan, if different from the multisite
timeshare plan managing entity;

(18) the current annual budget of the multisite
timeshare plan, if available, or the projected annual budget for
the multisite timeshare plan, which must include:

(A) a statement of the amount reserved or
budgeted for repairs, replacements, and refurbishment;

(B) the projected common expense liability, if
any, by category of expenditure for the multisite timeshare plan;

and

(C) [the name and address of the person who
prepared the operating budget, and

[D] the assumptions on which the operating
budget is based;

(19) the projected assessments and a description of
the method for calculating and apportioning those assessments among
purchasers of the multisite timeshare plan;

(20) if applicable, a statement that the assessments
collected from the purchasers may be placed in a common account with
the assessments collected from the purchasers of other timeshare
properties managed by the same managing entity;

(21) any current fees or charges to be paid by
timeshare purchasers for the use of any amenities related to the
timeshare plan and a statement that the fees or charges are subject
to change;

(22) any initial or special fee due from the purchaser
at closing, together with a description of the purpose of and method
of calculating the fee;

(23) a description of the purchaser's liability for
any fees associated with the multisite timeshare plan;

(24) a description of any lien, defect, or encumbrance
on or affecting title to the timeshare interest and, if applicable,
a copy of each written warranty provided by the developer;

(25) the extent to which a timeshare interest may
become subject to a tax lien or other lien arising out of claims
against purchasers of different timeshare interests;

(26) a description of those matters required by
Section 221.041;

(27) a description of any financing offered by or
available through the developer;

(28) a description of any bankruptcy that is pending
or that has occurred within the past five years, pending civil or
criminal suits, adjudications, or disciplinary actions material to
the timeshare plan of which the developer has knowledge;
(29) a statement disclosing any right of first refusal
or other restraint on the transfer of all or a portion of a
timeshare interest;
(30) a statement disclosing that any deposit made in
connection with the purchase of a timeshare interest must be held by
an escrow agent until expiration of any right to cancel the contract
and that any deposit must be returned to the purchaser if the
purchaser elects to exercise the right of cancellation; or, if the
commission accepts from the developer a surety bond, irrevocable
letter of credit, or other form of financial assurance instead of an
escrow deposit, a statement disclosing that the developer has
provided a surety bond, irrevocable letter of credit, or other form
of financial assurance in an amount equal to or in excess of the
funds that would otherwise be held by an escrow agent and that the
deposit must be returned if the purchaser elects to exercise the
right of cancellation;
(31) if the timeshare plan provides purchasers with
the opportunity to participate in an exchange program, a
description of the name and address of the exchange company and the
method by which a purchaser accesses the exchange program; and
(32) any other information the commission determines
is necessary to protect prospective purchasers or to implement the
purpose of this chapter.

SECTION 3. Subchapter D, Chapter 221, Property Code, is
amended by adding Section 221.037 to read as follows:

Sec. 221.037. ALTERNATIVE TERMINOLOGY OR NAME. (a) In
providing the disclosures required by this chapter, the use of the
terms "vacation ownership interest" or "vacation ownership plan" to
refer to the timeshare interest or plan offered by the developer, or
the use of other terms that are substantially similar and that are
regularly used by the developer to denote a timeshare interest or
plan, is sufficient and complies with the requirements of this
chapter.

(b) In providing the full name of a developer or a marketing
company as required by this chapter, the disclosure of an assumed
name of the developer or the marketing company, if the entity has
complied with the requirements of the applicable assumed business
names statutes or other laws regarding the use of the assumed name,
is sufficient and complies with this chapter.

SECTION 4. Subsection (c), Section 221.043, Property Code,
is amended to read as follows:

(c) The purchase contract must also include the following:

(1) the name and address of the developer and the
address of the timeshare property or the address of any available
timeshare interest being offered;

(2) an agreement describing the cancellation policy
prescribed by Section 221.041;

(3) the name of the person or persons primarily
involved in the sales presentation on behalf of the developer;

(4) a statement disclosing the amount of the periodic
assessments currently assessed against or collected from the
purchasers of the timeshare interest, immediately followed by a
statement providing that collected assessments will be used by the
managing entity to pay for expenditures, charges, reserves, or liabilities relating to the operation of the timeshare plan or timeshare properties managed by the managing entity;

(5) [a statement disclosing that the timeshare common properties are not mortgaged, unless the mortgage contains a nondisturbance clause which fully protects the use and enjoyment rights of each timeshare owner in the event of foreclosure;]

(6) [in the event such timeshare interests are sold under a lease, right to use, or membership agreement where free and clear title to the accommodation is not passed to the purchaser, then the purchase contract must contain a statement that the timeshare is free and clear, or if subject to a mortgage, the mortgage must contain a nondisturbance clause which fully protects the use and enjoyment rights of each timeshare owner in the event of foreclosure;]

(7) [the date the purchaser signs the contract; and]

(8) [the following statement:]

"AS A TIMESHARE OWNER, YOU HAVE A RIGHT TO REQUEST A WRITTEN ANNUAL TIMESHARE FEE AND EXPENSE STATEMENT. THIS STATEMENT IS PREPARED ANNUALLY BY THE MANAGING ENTITY AND WILL BE AVAILABLE NOT LATER THAN FIVE MONTHS AFTER (INSERT THE DATE OF THE LAST DAY OF THE FISCAL YEAR). YOU MAY REQUEST THE STATEMENT BY WRITING TO (INSERT NAME AND ADDRESS OF THE MANAGING ENTITY)."

SECTION 5. Section 221.062, Property Code, is amended by adding Subsection (h) to read as follows:

(h) Excluding any encumbrance placed against the purchaser's timeshare interest that secures the purchaser's payment
of purchase money financing for the purchase, the developer is not
entitled to the release of any funds escrowed with respect to each
timeshare interest until the developer has provided the commission
with satisfactory evidence that:

(1) the timeshare interest and any other property or
rights to property appurtenant to the timeshare interest, including
any amenities represented to the purchaser as being part of the
timeshare plan, are free and clear of any of the claims of the
developer, any owner of the underlying fee, a mortgagee, judgment
creditor, or other lienor, or any other person having an interest in
or lien or encumbrance against the timeshare interest or
appurtenant property or property rights;

(2) the developer, any owner of the underlying fee, a
mortgagee, judgment creditor, or other lienor, or any other person
having an interest in or lien or encumbrance against the timeshare
interest or appurtenant property or property rights, including any
amenities represented to the purchaser as being part of the
timeshare plan, has recorded a subordination and notice to
creditors document in the jurisdiction in which the timeshare
interest is located that expressly and effectively provides that
the interest holder's right, lien, or encumbrance does not
adversely affect and is subordinate to the rights of the owners of
the timeshare interests in the timeshare plan, regardless of the
date of purchase, on and after the effective date of the
subordination document;

(3) the developer, any owner of the underlying fee, a
mortgagee, judgment creditor, or other lienor, or any other person
having an interest in or lien or encumbrance against the timeshare
interest or appurtenant property or property rights, including any
amenities represented to the purchaser as being part of the
timeshare plan, has transferred the subject accommodations or
amenities or all use rights therein to a nonprofit organization or
an owners’ association to be held for the use and benefit of the
purchasers of the timeshare plan, which entity shall act as a
fiduciary to the purchasers, provided that the developer has
transferred control of that entity to the purchasers or does not
exercise its voting rights in that entity with respect to the
subject accommodations or amenities and, prior to the transfer, any
lien or other encumbrance against the accommodation or facility is
subject to a subordination and notice to creditors instrument
pursuant to this subsection; or

(4) alternative arrangements have been made that are
adequate to protect the rights of the purchasers of the timeshare
interests and are approved by the commission.

SECTION 6. This Act applies to timeshare plans created on or
after January 15, 2010, and to any developer who offers or disposes
of an interest in a timeshare plan and a managing entity that
manages a timeshare property under Chapter 221, Property Code, as
amended by this Act, on or after that date.

SECTION 7. This Act takes effect September 1, 2009.
S.B. No. 1036

David B. Swindler
President of the Senate

I hereby certify that S.B. No. 1036 passed the Senate on April 9, 2009, by the following vote: Yeas 31, Nays 0.

Joe Straus
Speaker of the House

I hereby certify that S.B. No. 1036 passed the House on May 19, 2009, by the following vote: Yeas 145, Nays 0, one present not voting.

Batsy Span
Secretary of the Senate

Robert H. Harvey
Chief Clerk of the House

-approved-

30 May 09
Date

Rick Perry
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
11TH FLOOR, D'CLOCK
MAY 30 2009
Secretary of State

16