

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; resale brokers to the extent that resale advertising services

57 are offered in connection with resale brokerage services and no
 58 fee for the advertising service is collected in advance; or a
 59 consumer timeshare reseller who acquires a timeshare interest or
 60 timeshare interests for his or her own use and occupancy and who
 61 later offers the timeshare interest or timeshare interests for
 62 rent or offers for resale in a given calendar year seven or
 63 fewer of the timeshare interests that he or she acquired for his
 64 or her own use and occupancy.

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

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

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

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

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

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

83 (48) "Resale brokerage services" means, with respect to a
 84 consumer resale timeshare interest in a timeshare property

85 located or offered within this state, any activity that directly
86 or indirectly consists of any of activities described in s.
87 475.01(1)(a).

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

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

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

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

113 (50) "Resale advertising service" means any good or
 114 service relating to, or a promise of assistance in connection
 115 with, advertising or promoting the resale or rental of a
 116 consumer resale timeshare interest located or offered within
 117 this state, including any offer to advertise or promote the sale
 118 or purchase of any such interest.

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

121 721.20 Licensing requirements; suspension or revocation of
 122 license; exceptions to applicability; collection of advance fees
 123 for listings unlawful.-

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

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

139 Section 4. Section 721.205, Florida Statutes, is created
 140 to read:

141 721.205 Resale service providers; disclosure obligations.-

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

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

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

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

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

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

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

167 (c) State or imply to a consumer timeshare reseller,
 168 directly or indirectly, that sales or rentals have been achieved

169 or generated as a result of its advertising services unless the
170 resale advertiser, at the time of making such representation,
171 possesses and is able to provide documentation to substantiate
172 the statement or implication made to the consumer timeshare
173 reseller. In addition, to the extent that a resale advertiser
174 states or implies to a consumer timeshare reseller that the
175 resale advertiser has sold or rented any specific number of
176 timeshare interests, the resale advertiser must also provide the
177 consumer timeshare reseller the ratio or percentage of the
178 timeshare interests advertised for sale by the resale advertiser
179 that have actually resulted in a sale, or the ratio or
180 percentage of all timeshare interests advertised for rental by
181 the resale advertiser that have actually resulted in a rental,
182 for each of the previous 2 calendar years.

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

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

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

197 following information:

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

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

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

216
 217 TIMESHARE OWNER'S RIGHT OF CANCELLATION

218
 219 ...(Name of resale advertiser)... will provide resale
 220 advertising services pursuant to this contract. If
 221 ...(name of resale advertiser)... represents that
 222 ...(name of resale advertiser)... has identified a
 223 person who is interested in purchasing or renting your
 224 timeshare interest, then ...(name of resale

225 advertiser)... must provide you with the name,
 226 address, and telephone number of such represented
 227 interested resale purchaser.
 228
 229 You have an unwaivable right to cancel this contract
 230 for any reason within 10 days after the date you sign
 231 this contract. If you decide to cancel this contract,
 232 you must notify ...(name of resale advertiser)... in
 233 writing of your intent to cancel. Your notice of
 234 cancellation shall be effective upon the date sent and
 235 shall be sent to ...(resale advertiser's physical
 236 address)... or to ...(resale advertiser's e-mail
 237 address).... Your refund will be made within 20 days
 238 after receipt of notice of cancellation or within 5
 239 days after receipt of funds from your cleared check,
 240 whichever is later.
 241
 242 You are not obligated to pay ...(name of resale
 243 advertiser)... any money unless you sign this contract
 244 and return it to ...(name of resale advertiser)....
 245
 246 IMPORTANT: Before signing this contract, you should
 247 carefully review your original timeshare purchase
 248 contract and other project documents to determine
 249 whether the developer has reserved a right of first
 250 refusal or other option to purchase your timeshare
 251 interest or to determine whether there are any
 252 restrictions or special conditions applicable to the

253 resale or rental of your timeshare interest.

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

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

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

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

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

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281 violation.

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

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

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

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