

## CHAPTER 41

## S.B. No. 92

An Act relating to the regulation of timeshare interests; enacting the Texas Timeshare Act.

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1. SHORT TITLE.** This Act shall be known and may be cited as the Texas Timeshare Act.

**SECTION 2. DEFINITIONS.** As used in this Act, unless the context otherwise requires:

(1) "Accommodation" means any apartment, condominium or cooperative unit, or hotel or motel room in a building or commercial structure which is situated on a timeshare property and subject to a timeshare regime.

(2) "Advertising" means a direct or indirect solicitation or inducement to purchase and includes but is not necessarily limited to a solicitation or inducement made by print or electronic media, through the mail, or by personal contact.

(3) "Amenities" means all common areas and includes but is not necessarily limited to recreational and maintenance facilities of the timeshare property.

(4) "Commission" means the Texas Real Estate Commission.

(5) "Co-owner" means a person, corporation, partnership, association, trust, or other legal entity.

(6) "Council of purchasers" means a council or association composed of all persons who have purchased a timeshare estate.

(7) "Developer" means any person who creates a timeshare regime.

(8) "Dispose" or "disposition" means a voluntary transfer of any legal or equitable timeshare interest, but does not include the transfer or release of a real estate lien or of a security interest.

(9) "Escrow agent" means an independent bonded escrow company or an institution whose accounts are insured by a governmental agency or instrumentality and who is responsible for the receipt and disbursement of funds in accordance with this Act.

(10) "Exchange company" means any person, including a developer, who operates an exchange program.

(11) "Exchange disclosure statement" means a written statement that includes the information which is required by Subsection (c) of Section 7 of this Act.

(12) "Exchange program" means any program under which the owner of a timeshare interest may exchange a timeshare period for another timeshare period in the same or a different timeshare property, but does not include a one-time exchange of timeshare periods in the same timeshare property if offered to a purchaser by a developer after that purchaser's disposition.

(13) "Managing entity" means the person responsible for operating and maintaining a timeshare property.

(14) "Master deed" or "master lease" or "declaration" means the deed, lease, or declaration establishing real property as a timeshare regime.

(15) "Offering" or "offer" means any advertisement, inducement, or solicitation and includes but is not necessarily limited to any attempt to encourage a person to purchase a timeshare interest other than as a security for an obligation.

(16) "Person" means a natural person, corporation, government, partnership, association, trust, or other legal or commercial entity.

(17) "Project instrument" means one or more recordable documents, by whatever name denominated, applying to the whole of a timeshare project and containing restrictions or covenants regulating the use, occupancy, or disposition of units in a project, including but not necessarily limited to a master deed, master lease, declaration, or bylaws for a condominium.

(18) "Promotion" means any program or activity that is used to induce any person to attend a timeshare sales presentation.

(19) "Promotional disclosure statement" means a written statement that includes the information which is required by Subsection (a) of Section 7 of this Act.

(20) "Purchaser" means any person, other than a seller, who by means of a voluntary transfer acquires a legal or equitable interest in a timeshare interest other than as a security for an obligation.

(21) "Seller" means any person, including a developer, who in the ordinary course of business offers a timeshare interest for sale to the public, but does not include a person who acquires a timeshare interest for his use and subsequently offers it for resale.

(22) "Substantially complete" means that the timeshare unit, including furnishings and appliances, is complete as represented in the timeshare disclosure statement, the accommodations are ready for occupancy, and the amenities dedicated to the timeshare regime are as represented in the timeshare disclosure statement.

(23) "Timeshare estate" means any arrangement under which the purchaser receives a freehold estate or an estate for years in a timeshare property and the right to use an accommodation or amenities, or both, in such property for a timeshare period on a recurring basis.

(24) "Timeshare disclosure statement" means a written statement that includes the information which is required by Subsection (b) of Section 7 of this Act.

(25) "Timeshare expenses" means expenditures, fees, charges, or liabilities, including any allocations to maintain reserves but excluding any purchase money payable for timeshare interests:

(A) incurred in connection with a timeshare interest by or on behalf of the owner of all timeshare interests in a timeshare property; and

(B) imposed on timeshare interests by the managing entity.

(26) "Timeshare interest" means a timeshare estate or timeshare use.

(27) "Timeshare instrument" means a master deed, master lease, declaration, or any other instrument used in the creation of a timeshare regime.

(28) "Timeshare liability" means the liability for timeshare expenses allocated to each timeshare interest.

(29) "Timeshare period" means the period within which the purchaser of a timeshare interest is entitled to the exclusive possession, occupancy, and use of a timeshare unit and to the general use of all amenities.

(30) "Timeshare property" means all real property that is subject to a timeshare declaration, including all accommodations and amenities.

(31) "Timeshare regime" means the real property use that is created by the filing and recordation of a master deed, master lease, or declaration.

(32) "Timeshare unit" means any accommodation that is divided into timeshare periods.

(33) "Timeshare use" means any arrangement other than a hotel or motel operation, whether by lease, rental agreement, license, use agreement or other means, under which the purchaser receives a right to use an accommodation or amenities or both for a timeshare period on a recurring basis, but under which the purchaser does not receive a freehold estate or an estate for years in a timeshare property.

**SECTION 3. DECLARATION.** When a developer, the sole owner, or the co-owner of a building or proposed building or buildings expressly declares through the recordation of a master deed, master lease, or declaration which sets forth the information provided in Subsections (a) and (b) of this section, and which sets forth the intent to submit that property to a timeshare regime, that property shall be established thenceforth as a timeshare regime.

(a) The declaration made under this section shall include:

(1) a legal description of the timeshare property, including a ground plan indicating the location of each existing or proposed building to be constructed on the timeshare property;

(2) a description of each existing or proposed timeshare unit, including the location and square footage of each unit; the description shall include an interior floor plan of each existing or proposed building;

(3) a description of the amenities furnished or to be furnished to the purchaser;

(4) a statement of the fractional or percentage part which each timeshare interest bears to the entire timeshare regime; and

(5) any additional provisions that are consistent with this section.

(b) Any timeshare interest created pursuant to this section is an interest in land within the meaning of Subsection (1) of Section 2 of The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes); provided, however, that Subsection (b) of Section 1 of The Real Estate License Act shall not apply to the acts of an exchange company in exchanging timeshare periods under a timeshare program.

(c) Any timeshare interest located wholly without this state may be sold or otherwise disposed of within this state if the timeshare property is in full compliance with the legal requirements of and may be validly sold or otherwise disposed of as a timeshare property in the jurisdiction in which the timeshare property is located and if all information required in this section is included in the disclosure statement.

**SECTION 4. CONVEYANCE AND ENCUMBRANCE.** Once the property is established as a timeshare regime, each timeshare interest may be individually conveyed or encumbered and shall be entirely independent of all other timeshare interests in the same timeshare property. Any title or interest in a timeshare interest may be recorded.

**SECTION 5. COMMON OWNERSHIP.** Any timeshare interest may be jointly or commonly owned by more than one person.

**SECTION 6. REGISTRATION.** (a) No person shall offer or dispose of a timeshare interest unless the timeshare property is registered with the commission; provided, however, that a developer or any person acting on his behalf may accept a reservation and a deposit from the prospective purchaser if the deposit is placed in an escrow account with an escrow agent and if such deposit is fully refundable at any time at the request of the purchaser. In no event shall the deposit be forfeited unless by a subsequent written instrument the purchaser affirmatively creates a binding obligation. A developer or anyone acting on his behalf shall not dispose of or encumber a timeshare interest during any period within which there is in effect an order by the commission or by any court of competent jurisdiction revoking or suspending the registration of the timeshare property of which such timeshare interest is a part.

(b) An application for registration filed under this section shall include a timeshare disclosure statement and any required exchange disclosure statement required by Section 7 of this Act, certified copies of all timeshare instruments, and such other information as may be required by the commission.

(c) The developer or managing entity shall promptly file amendments to the registration reporting to the commission any material and adverse change in any document contained in such registration.

(d) If existing or proposed timeshare units are in a condominium or similar development, the application for registration shall contain the project instruments of that development and shall affirmatively indicate that the creation and disposition of timeshare interests are not prohibited by such instruments. If the project instruments do not expressly authorize the creation and disposition of timeshare interests, the application shall contain evidence that existing owners of the condominium development were provided at least 60 days notice in writing prior to the application for registration that timeshare interests would be created and sold. In the event the project instruments prohibit the creation or disposition of timeshare interests, the application shall contain a certification by the authorized representative of all existing owners that the project instruments have been properly amended to permit such creation and disposition.

(e) The commission shall investigate all matters relating to the application and may in its discretion require a personal inspection of the proposed timeshare property by any persons designated by it. All direct expenses incurred by the commission in inspecting the property shall be borne by the applicant. The commission may require the applicant to pay an advance deposit sufficient to cover such expenses.

(f) The commission may prescribe and publish forms and rules necessary to carry out the provisions of this Act and shall be empowered to suspend or revoke the registration of any seller if, after notice and hearing, the commission determines that a seller has materially violated this Act.

(g) The commission shall establish reasonable fees for forms and documents it provides to the public and for the filing or registration of documents required by this Act.

**SECTION 7. DISCLOSURE STATEMENTS.** (a) Prior to the use of any promotion in connection with the offering of a timeshare interest, the person who intends to use the promotion shall include the following information in its advertisements to the prospective purchaser:

(1) a statement to the effect that the promotion is intended to solicit purchasers of timeshare interests;

(2) if applicable, a statement to the effect that any person whose name is obtained during the promotion may be solicited to purchase a timeshare interest;

(3) the full name of the developer and seller of the timeshare property;

(4) if applicable, the full name and address of any marketing company involved in the promotion of the timeshare property;

(5) the complete rules of the promotion; and

(6) the method of awarding, the odds of winning, and the approximate retail value of prizes, gifts, or other benefits under the promotion and the date by which each prize, gift, or benefit will be awarded or conferred.

(b) Prior to the signing of any agreement or contract to acquire a timeshare interest, the developer shall provide a timeshare disclosure statement to the prospective purchaser and shall obtain from the purchaser a written acknowledgement of receipt of the timeshare disclosure statement. The timeshare disclosure statement shall include:

(1) the name and address of the developer and the name and specific location of the timeshare property;

(2) a description of the accommodations, amenities, timeshare property, and any project or development within which the timeshare property is located or of which it is a part. The disclosure statement shall also state the total number of timeshare units in the timeshare property and whether and under what circumstances that number may be increased or decreased; if a timeshare interest includes amenities not yet in existence, the disclosure statement shall provide the commencement and completion schedule of such proposed amenities;

(3) a description of the timeshare interests currently available for disposition and, if applicable, the types and number of units available;

(4) a statement that a council of purchasers exists or is expected to be created or that such a council does not exist and is not expected to be created; if such a council exists or is reasonably contemplated, the disclosure statement shall contain a description of its powers and responsibilities;

(5) 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;

(6) a complete budget for the operation of the timeshare property for a period of one year after the first disposition of a timeshare interest in the property, and thereafter, the current operating budget; the operating budget shall include:

(A) the total amount included as a reserve for the maintenance of the timeshare property and for the repair or replacement of personal property or fixtures;

(B) the total amount of any other reserve and the purpose of such reserve;

(C) the projected timeshare liability expressed by categories of expenditure for all timeshare interests;

(D) the timeshare liability projected by categories of expenditures for each timeshare interest;

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

(F) the assumptions upon which the operating budget is based;

(7) a description of the nature and estimated amount of any timeshare liability which may in the future be assessed and the method and formula for assessing such timeshare liability;

(8) a description of any service that the developer or person acting on his behalf provides or expense that is paid that reasonably may be expected to become a timeshare liability. The timeshare disclosure statement shall also contain the projected timeshare liability attributable to that service or expense;

(9) a description of the existing or proposed amenities of the timeshare property; if the amenities are proposed or not yet complete or fully functional, the disclosure statement shall contain a schedule for the projected commencement, completion, and availability of such amenities;

(10) a description and amount of any current or expected dues, assessments, fees, or charges to be paid by purchasers for the use of accommodations or amenities or for any other purpose;

(11) a description of any unsatisfied final judgment against the developer, seller, managing entity, or exchange company with which the developer is under contract, but not including any individual sales agent or representative who offers a timeshare interest;

(12) a description and status of any pending lawsuit or administrative action of which the developer has actual knowledge which may materially affect a timeshare interest;

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

(14) 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;

(15) a description of those matters required by Section 8 of this Act;

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

(17) a statement that any deposit made in connection with the purchase of a timeshare interest will be held in an escrow account until expiration of any right to cancel the contract or any later time specified in the contract and will be returned to the purchaser if he elects to exercise his right of cancellation;

(18) any other material circumstances concerning a timeshare interest.

(c) Prior to the signing of any agreement or contract to acquire a timeshare interest in which a prospective purchaser is also offered participation in any exchange program, the developer shall also deliver to the prospective purchaser the exchange disclosure statement of any exchange company whose service is advertised or offered by the developer or other person in connection with the disposition. If participation in an exchange program is offered for the first time after a disposition has occurred, any person offering such participation shall also deliver an exchange disclosure statement to the purchaser prior to the execution by the purchaser of any instrument relating to participation in the exchange program. In all cases, the person offering such participation shall obtain from the purchaser a written acknowledgement of receipt of the exchange disclosure statement. The exchange disclosure statement shall include the following information:

(1) the name and address of the exchange company;

(2) if the exchange company is not the developer, a statement describing the legal relationship, if any, between the exchange company and the developer;

(3) a statement indicating the conditions under which the exchange program might terminate or become unavailable;

(4) whether membership or participation or both in the exchange program is voluntary or mandatory;

(5) a complete description of the required procedure for executing an exchange of timeshare periods;

(6) the fee required for membership or participation or both in the program and whether such fee is subject to change;

(7) a statement to the effect that participation in the exchange program is conditioned upon compliance with the terms of a contract between the exchange company and the purchaser;

(8) a statement in conspicuous and bold-faced print to the effect that all exchanges are arranged on a space-available basis and that neither the developer nor the exchange company guarantees that a particular timeshare period can be exchanged; and

(9) a description of seasonal demand and unit occupancy restrictions employed in the exchange program.

(d) No disclosure statements need be delivered in the case of:

(1) a gratuitous disposition of a timeshare interest;

(2) a disposition pursuant to a court order;

(3) a disposition by a governmental agency;

(4) a disposition by foreclosure or deed in lieu of foreclosure;

(5) a disposition that may be canceled by the purchaser without penalty at any time and for any reason;

(6) a disposition of all timeshare interests in a timeshare regime to not more than five persons;

(7) a disposition of a timeshare interest in a timeshare property situated wholly outside this state under a contract executed wholly outside this state, if there has been no offering to the purchaser within this state;

(8) a disposition of a timeshare interest to a purchaser who is not a resident of this state under a contract executed wholly outside this state, if there has been no offering to the purchaser within this state; or

(9) the redispotion of a timeshare interest by a purchaser who acquired such interest for his personal use.

**SECTION 8. PURCHASER'S RIGHT TO CANCEL.** (a) A purchaser may cancel a contract to purchase a timeshare interest before the fourth day after the date the contract is executed if the purchaser did not visit the location of the timeshare unit and have the opportunity to inspect a substantially complete accommodation comparable to the accommodations being offered for sale before the contract was signed. A purchaser may not waive his right of cancellation under this section. A contract containing a waiver is voidable by the purchaser.

(b) If a purchaser elects to cancel a contract under Subsection (a) of this section, he may do so by hand-delivering notice of cancellation to the seller or by mailing notice by prepaid United States mail to the seller or to the seller's agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded before the 21st day after the date on which the seller receives notice of cancellation.

(c) Immediately prior to the space reserved in the contract for the signature of the purchaser, in bold-faced and conspicuous type or print that is larger than the type or print in the remaining text of the contract, substantially the following statement must appear:

"If you have not visited the location of the timeshare unit in which you are acquiring an interest and have not had the opportunity to inspect a substantially complete accommodation, you may cancel this contract without penalty or obligation before the fourth day after the date on which you sign this contract. If you decide to cancel this contract, you may do so by hand-delivering notice of cancellation to the seller or by mailing notice by prepaid United States mail to the seller or the seller's agent for service of process. Your notice of cancellation is effective on the date sent or delivered to (Name of Seller) at (Address of Seller). A purchaser should not rely on statements other than those included in this contract and the disclosure statement."

(d) The contract shall also include the following:

- (1) the name and address of the seller and the address of the timeshare unit;
- (2) whether the purchaser visited the location of the timeshare unit before signing the contract;
- (3) an agreement by the seller that if the purchaser timely exercises the right of cancellation under the contract, all payments made by the purchaser to the seller in connection with the contract shall be returned to such purchaser before the 21st day after the seller receives notice of cancellation; and
- (4) the name of the person or persons actively involved in the sales presentation on behalf of the seller.

**SECTION 9. EXCHANGE PROGRAM.** (a) An exchange company shall employ seasonal demand and unit occupancy restrictions in the operation of its exchange program.

(b) No developer shall incur any liability arising out of the use, delivery, or publication by the developer to the purchaser of written information or audio-visual materials provided to it by the exchange company pursuant to Section 7 of this Act; provided, however, that a developer shall be subject to liability arising out of the use, delivery, or publication to the purchaser of materials provided by the exchange company if the developer knows or has reason to know that such materials are inaccurate or false.

(c) Except for written information or audio-visual materials provided to a developer by an exchange company, no exchange company shall incur liability as a result of:

- (1) a representation made by a developer which relates to any exchange program or exchange company; or
- (2) the use, delivery, or publication by developer of information which relates to an exchange program or exchange company.

**SECTION 10. ESCROW.** (a) The developer or other person acting on its behalf shall establish an escrow account with an escrow agent for the purpose of protecting deposits made by purchasers in connection with proposed dispositions of timeshare interests.

(b) Fifty percent of any deposit obtained from a purchaser shall be placed in the escrow account. The funds or property constituting the escrow deposit may be released from escrow only as follows:

- (1) if the purchaser defaults in the performance of obligations under the terms of a contract to purchase a timeshare interest, the developer or other person legally entitled to the escrow deposit shall file an application with the escrow agent requesting release of the applicable amount; the application for release of escrow deposit, which shall be verified, must include:

(A) a concise statement by the applicant that the purchaser has materially defaulted in the performance of obligations under the terms of a contract to purchase a timeshare interest and that the applicant and the developer have complied with all terms and obligations of that contract;

(B) a complete explanation of the nature of the purchaser's material default under such contract and of the date of its occurrence;

(C) a statement that pursuant to the terms of the purchase contract the applicant is entitled to the escrow deposit;

(D) a statement that the developer has no knowledge of a dispute between the purchaser and developer and a statement that the purchaser has not, to the applicant's knowledge, made a demand for the return of the deposit; and

(E) a statement that the purchaser has not exercised a right of cancellation under Section 8 of this Act.

(2) Notwithstanding the provisions of this subsection, the escrow agent may release the escrow deposit to the applicant upon presentation to the escrow agent of:

(A) an affidavit by the developer that the timeshare unit is substantially complete and that no applicable right of cancellation of the contract has been exercised by the purchaser;

(B) if funds were placed in the escrow account in connection with the proposed disposition of a timeshare estate, a true and correct copy of the instrument transferring ownership of the timeshare estate to the purchaser free and clear of all liens and encumbrances, except for any encumbrance created by purchaser financing; and

(C) if funds were placed in the escrow account in connection with the proposed disposition of a timeshare use, a true and correct copy of a properly executed and recorded nondisturbance agreement shall be executed by the developer and all holders of a lien recorded against the timeshare property and shall provide that subsequent owners or foreclosing holders of a lien shall take title to the timeshare property subject to the rights of prior purchasers under their contracts of sale.

(3) In no event shall a deposit be released from escrow until the escrow agent has provided the purchaser written notice of intent to release the escrow at least 14 days prior to such release.

**SECTION 11. VIOLATIONS.** (a) A seller or other person commits a false, misleading, or deceptive act or practice within the meaning of Subsections (a) and (b) of Section 17.46 of the Texas Deceptive Trade Practices-Consumer Protection Act (Article 17.46, Business & Commerce Code), by engaging in any of the following acts:

(1) failing to disclose information concerning a timeshare interest required by Section 7 of this Act;

(2) making false or misleading statements of fact concerning the characteristics of accommodations or amenities available to a consumer;

(3) predicting specific or immediate increases in the value of a timeshare interest without a reasonable basis for such predictions;

(4) making false or misleading statements of fact concerning the duration that accommodations or amenities will be available to a consumer;

(5) making false or misleading statements of fact concerning the conditions under which a purchaser of a timeshare interest may exchange the right to occupy a unit for the right to occupy a unit in the same or another timeshare property; and

(6) representing that a prize, gift, or other benefit will be awarded in connection with a promotion with the intent not to award that prize, gift, or benefit in the manner represented.

(b) The provisions of this section are not exclusive and are in addition to provisions provided for in any other law.

**SECTION 12. INSURANCE.** Prior to the disposition of any timeshare interest, the developer shall maintain the following insurance with respect to the timeshare property:

(1) property insurance on the timeshare property and any personal property for use by purchasers, other than personal property separately owned by a purchaser, insuring against all risks of direct physical loss commonly insured against, in a total amount, after application of deductibles, of the replacement cost of the accommodations and amenities of the timeshare property;

(2) liability insurance covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, and maintenance of the timeshare property.

**SECTION 13. EXEMPT FROM SECURITIES ACT.** The filing of a registration under this Act shall exempt the sale of timeshare interests subject to this Act from registration under the Texas Securities Act.

**SECTION 14. PARTITION.** No action for partition of a timeshare interest may be maintained unless expressly permitted by the declaration.

**SECTION 15. CONFLICTING LAWS.** Whenever the application of the provisions of this Act or the application thereof to any person or circumstances conflicts with the application of other statutory provisions, this Act shall prevail.

**SECTION 16. SEVERABILITY.** If any section, paragraph, sentence, clause, or word of this Act is held to be invalid, the invalidity does not affect other provisions of this Act which can be given effect without the invalid portion.

**SECTION 17. SCOPE.** This Act shall apply to all timeshare properties which are located in this state or offered for sale in this state; provided, however, that those timeshare properties located outside this state shall only be subject to Sections 6, 7, 8, 9, 10, 11, 12, and 13 of this Act.

**SECTION 18. EFFECTIVE DATE.** This Act applies to any timeshare property in existence on or after the effective date of this Act, but does not affect a timeshare contract in existence before that date. A timeshare project for existing units that began sales prior to July 1, 1985, must comply with this Act on or before January 1, 1986. A timeshare project that has not made sales prior to July 1, 1985, must comply with this Act on commencement of sales or on September 1, 1985, whichever is later.

**SECTION 19. EMERGENCY.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on February 26, 1985, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on April 3, 1985, by a viva-voce vote; passed the House, with amendments, on April 2, 1985, by a non-record vote.

Approved: April 18, 1985

Effective: September 1, 1985