

CHAPTER 443

H.B. No. 362

AN ACT

relating to reports of timeshare expenses charged and collected by managing entities of timeshare properties; providing a civil penalty.

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

SECTION 1. Section 221.002, Property Code, is amended by amending Subdivision (23) and adding Subdivisions (32), (33), and (34) to read as follows:

(23) "Timeshare expenses" means expenditures, [fees,] charges, or liabilities for the operation of a timeshare property or timeshare system, 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.

(32) "Timeshare fees" means an amount assessed against or collected from an owner by a managing entity in a fiscal year, without regard to the frequency with which the amount is assessed or collected.

(33) "Owner" means a person who holds a legal or equitable interest in a timeshare interest in timeshare property subject to the requirements of this Act.

(34) "Timeshare system" means two or more timeshare properties located in separate geographic areas that are:

(A) managed by the same managing entity; and

(B) subject to a written arrangement or agreement whereby an owner of a timeshare interest in any one of the timeshare properties may use a timeshare unit and the amenities of any of the other timeshare properties as provided in the project instruments.

SECTION 2. Section 221.011(b), Property Code, is amended to read as follows:

(b) The declaration made under this section must 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 and 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 that each timeshare interest bears to the entire timeshare regime; [and]

(5) if applicable, a statement that the timeshare property is part of a timeshare system; and

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

SECTION 3. Section 221.032(b), Property Code, is amended to read as follows:

(b) The timeshare disclosure statement must 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 total number of timeshare units in the timeshare property and whether and under what

circumstances that number may be increased or decreased; and, if a timeshare interest includes amenities not yet in existence, the commencement and completion schedule of the 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 and, if such a council exists or is reasonably contemplated, 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, which operating budget must 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 the 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 on which the operating budget is based;

(7) a description of the nature and estimated amount of any timeshare liability that may in the future be assessed and the method and formula for assessing the 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, and the projected timeshare liability attributable to that service or expense;

(9) a description of the existing or proposed amenities of the timeshare property and, if the amenities are proposed or not yet complete or fully functional, a schedule for the projected commencement, completion, and availability of those 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 that 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 201.041;

(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 *disclosing* 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; [and]

(18) *if applicable, a statement that the timeshare property is part of a timeshare system and that timeshare fees collected from the owners may be placed in a common account*

with the timeshare fees collected from the owners of other timeshare properties participating in the timeshare system; and

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

SECTION 4. Section 221.041, Property Code, is amended to read as follows:

Sec. 221.041. **PURCHASER'S RIGHT TO CANCEL.** (a) A purchaser may cancel a contract to purchase a timeshare interest before the sixth day after the date the contract is signed.

(b) *If a purchaser does not receive a copy of the contract at the time the contract is signed, the purchaser may cancel the contract to purchase the timeshare interest before the sixth day after the date the contract is received by the purchaser.*

(c) A purchaser may not waive his right of cancellation under this section. A contract containing a waiver is voidable by the purchaser.

SECTION 5. Section 221.043, Property Code, is amended to read as follows:

Sec. 221.043. **CONTRACT REQUIREMENTS.** (a) *Attached to each contract shall be a separate page identified as Exhibit A. Exhibit A [The following statement] shall be provided to each purchaser at the time the contract is signed and [The statement shall be on a separate page and attached to the contract as Exhibit A. The statement] shall contain the following information. Subdivisions (1) and (3) shall be provided in the exact language set forth in this section [language] with the seller's name and address, the date of the last day of the fiscal year, and the address of the managing entity inserted where indicated:*

(1) **"PURCHASER'S RIGHT TO CANCEL.**

"(A) BY SIGNING THIS CONTRACT YOU ARE INCURRING AN OBLIGATION TO PURCHASE A TIMESHARE INTEREST. YOU MAY, HOWEVER, CANCEL THIS CONTRACT WITHOUT PENALTY OR OBLIGATION BEFORE THE SIXTH DAY AFTER THE DATE YOU SIGN THE CONTRACT. IF YOU DO NOT RECEIVE A COPY OF THE CONTRACT AT THE TIME THE CONTRACT IS SIGNED, YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY OR OBLIGATION BEFORE THE SIXTH DAY AFTER THE DATE YOU RECEIVE A COPY OF THE CONTRACT.

"(B) IF YOU DECIDE TO CANCEL THIS CONTRACT, YOU MAY DO SO BY EITHER 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 (INSERT NAME OF SELLER) AT (INSERT ADDRESS OF SELLER). FOR YOUR PROTECTION, SHOULD YOU DECIDE TO CANCEL YOU SHOULD EITHER SEND YOUR NOTICE OF CANCELLATION BY CERTIFIED MAIL WITH A RETURN RECEIPT REQUESTED OR OBTAIN A SIGNED AND DATED RECEIPT IF DELIVERING IT IN PERSON.

"(C) A PURCHASER SHOULD NOT RELY ON STATEMENTS OTHER THAN THOSE INCLUDED IN THIS CONTRACT AND THE DISCLOSURE STATEMENT."

(2) A statement disclosing the amount of the timeshare fees, on a monthly or annual basis, which are being assessed currently against or collected from the owners of a timeshare interest. Immediately following the timeshare fee disclosure statement shall be a statement that the timeshare fees collected by the managing entity may be used to pay for the administrative and operating expenses of the property; and

(3) "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 NO LATER THAN THE 90TH DAY FOLLOWING (INSERT THE DATE OF THE LAST DAY OF THE FISCAL YEAR). YOU MAY REQUEST THE STATEMENT BY WRITING TO (INSERT ADDRESS OF THE MANAGING ENTITY)."

(b) Immediately following the *required statements* [statement] on Exhibit A shall be a space reserved for the signature of the purchaser. The seller shall obtain the purchaser's signature on Exhibit A at the time the contract is signed.

(c) The contract must 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;
- (4) the name of the person or persons actively involved in the sales presentation on behalf of the seller;
- (5) a warranty that the timeshare common properties are not mortgaged, unless the mortgage contains a nondisturbance clause which protects the timeshare owner in the event of foreclosure; and
- (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 timeshare unit is not passed to the buyer, then the contract must contain a warranty that the timeshare is free and clear; or if subject to a mortgage, the mortgage must contain a nondisturbance clause which protects the timeshare owner in the event of foreclosure.

SECTION 6. Section 221.071(a), Property Code, is amended to read as follows:

(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 et seq., Business & Commerce Code), by engaging in any of the following acts:

- (1) failing to disclose information concerning a timeshare interest required by Subchapter D;
- (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; [or]
- (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;
- (7) *failing to provide a copy of the contract to the purchaser at the time the contract is signed by the purchaser, unless the purchaser requests in writing that the contract be mailed, and the contract is mailed to the purchaser before the end of the next business day;*
- (8) *failing to provide the annual timeshare fee and expense statement as required by Section 221.074; or*
- (9) *furnishing false information in the annual timeshare fee and expense statement as required by Section 221.074.*

SECTION 7. Subchapter H, Chapter 221, Property Code, is amended by adding Sections 221.074 and 221.075 to read as follows:

Sec. 221.074. ANNUAL TIMESHARE FEE AND EXPENSE STATEMENT. (a) Notwithstanding a provision of the promotional disclosure statement, project instrument, timeshare instrument, or bylaws adopted pursuant to a timeshare instrument, not later than the 60th day after the last day of each fiscal year the managing entity shall make available

to each owner a written annual accounting of the operation of the timeshare property or timeshare system. The statement shall include:

(1) a balance sheet;

(2) an income and expense statement which complies with generally accepted accounting principles and reflects the collection and expenditure of timeshare fees;

(3) the current operating budget for the timeshare property or timeshare system required by Section 221.032(b)(6);

(4) an accounting identifying any unfunded reserves for capital improvements and maintenance and upkeep of the timeshare property; and

(5) the name and address of each member of the board of directors of the council of purchasers or the owners' association, if one exists, and the name, address, and telephone number of a designated representative of the managing entity.

(b) The managing entity shall make the fee statement available to owners of record of a timeshare interest as of the last day of the fiscal year as reflected in the managing entity's records.

(c) The statement shall be delivered in person or by mail to each person on the board of directors of the council of purchasers or the owners' association, if one exists.

(d) The managing entity shall post prominently in the registration area of each timeshare property the following notice, with the date of the last day of the current fiscal year and the address of the managing entity inserted where indicated:

"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 NO LATER THAN THE 90TH DAY FOLLOWING (INSERT THE DATE OF THE LAST DAY OF THE CURRENT FISCAL YEAR). YOU MAY REQUEST THE STATEMENT, BY WRITING TO (INSERT ADDRESS OF THE MANAGING ENTITY)."

(e) If a request for the statement is received by the managing entity prior to the date by which the statement is available, the statement shall be provided no later than one week after the date the statement becomes available. If a request for the statement is received by the managing entity after the date the statement becomes available, the statement shall be provided no later than two weeks after the date the request is received by the managing entity. For the purposes of this section, the statement shall be deemed provided if it is deposited in the mail, properly addressed, with postage prepaid.

(f) A managing entity shall provide a separate annual timeshare fee and expense statement for each timeshare property unless the property is part of a timeshare system. A managing entity may provide a consolidated statement for all timeshare properties comprising a timeshare system.

Sec. 221.075. **CIVIL PENALTY FOR LATE STATEMENT; INJUNCTION.** (a) On a written request filed with the commission by a managing entity before the date on which the statement required by Section 221.074 must be made available, the commission for good cause shown may grant the managing entity an extension of no more than 30 days in which to provide the statement.

(b) If the statement required by Section 221.074 is late and an extension has not been granted under Subsection (a), the managing entity required to provide the statement is liable to the state for a civil penalty not to exceed:

(1) \$500 per day for each of the first 10 days that the statement is late; and

(2) \$1,000 per day for each day after the 10th day, until the managing entity has complied with Section 221.074.

(c) In no event shall the civil penalties exceed \$25,000 for any one statement period.

(d) A managing entity may not assess against or collect from the owners of a timeshare property the amount of a penalty incurred under this section.

(e) If it appears that a managing entity has violated Section 221.074, the attorney general may institute an action for injunctive relief, a civil penalty, or both.

SECTION 8. Subchapter H, Chapter 221, Property Code, is amended by adding Sections 221.076 and 221.077 to read as follows:

Sec. 221.076. MANAGING ENTITIES THAT MANAGE MORE THAN ONE TIME-SHARE SYSTEM OR PROPERTY. (a) A managing entity that manages two or more timeshare properties which are not participants of the same timeshare system may not commingle the timeshare fees collected from owners of one timeshare property with the timeshare fees collected from owners of any other timeshare property.

(b) A managing entity that manages two or more timeshare systems may not commingle the timeshare fees collected from owners participating in one timeshare system with the timeshare fees collected from owners participating in any other timeshare system.

(c) A managing entity which manages a timeshare system may deposit timeshare fees collected from owners of one timeshare property into a common account with timeshare fees collected from owners of other timeshare properties participating in the same timeshare system only if the practice is disclosed in the timeshare disclosure statement for each timeshare property in the timeshare system and the appropriate statement is included in the declaration for each timeshare regime as required by Subchapter B. Nothing in this section shall be construed to allow a managing entity to commingle the timeshare fees of:

- (1) separate timeshare systems;
- (2) separate timeshare properties which are not part of a timeshare system; or
- (3) a timeshare system with the timeshare fees of a separate timeshare property which is not a participant in the timeshare system.

Sec. 221.077. AVAILABILITY OF BOOKS AND RECORDS. A managing entity, on written request of an owner, shall make available for examination at its registered office or principal place of business and at any reasonable time or times the relevant books and records relating to the collection and expenditure of timeshare fees.

SECTION 9. This Act takes effect September 1, 1993, except that Section 7 takes effect January 1, 1995.

SECTION 10. 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.

Passed by the House on May 14, 1993, by a non-record vote; passed by the Senate on May 22, 1993, by a viva-voce vote.

Approved June 6, 1993.

Effective Sept. 1, 1993, except § 7, effective Jan. 1, 1995.