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CS/CS/CS/HB 1001

2012 Legislature

1  
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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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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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 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 or resale advertising services to consumer ~~owners of~~ timeshare resellers interests. The term does not include developers ~~or~~ managing entities, ~~or exchange companies~~ to the extent they offer resale brokerage or resale advertising services to owners of timeshare interests in their own timeshare plans; resale brokers to the extent that resale advertising services are offered in connection with resale brokerage

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

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

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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 or managing entity to the extent that  
 99 either of them offers resale advertising services to owners of  
 100 timeshare interests in their own timeshare plans; or

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

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

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

120       721.20 Licensing requirements; suspension or revocation of  
 121 license; exceptions to applicability; collection of advance fees  
 122 for listings unlawful.—

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

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

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

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140 721.205 Resale service providers; disclosure obligations.-

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

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

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

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

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

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

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

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

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

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

188 (e) Make or submit any charge to a consumer timeshare  
 189 reseller's credit card account; make or cause to be made any  
 190 electronic transfer of consumer timeshare reseller funds; or  
 191 collect any payment from a consumer timeshare reseller that  
 192 exceeds an aggregate total amount of \$75 or more in any 12-month  
 193 period until after the resale advertiser has received a written  
 194 contract complying in all respects with paragraph (f) that has  
 195 been signed by the consumer timeshare reseller.

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196       (f) Engage in any resale advertising services for  
 197 compensation or valuable consideration without first obtaining a  
 198 written contract to provide such services signed by the consumer  
 199 timeshare reseller. Notwithstanding any other law, the contract  
 200 must be printed in at least 12-point type and must contain the  
 201 following information:

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

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

216       3. A statement printed in at least 12-point boldfaced type  
 217 immediately preceding the space in the contract provided for the  
 218 consumer timeshare reseller's signature in substantially the  
 219 following form:

220  
 221                   TIMESHARE OWNER'S RIGHT OF CANCELLATION

222  
 223       ...(Name of resale advertiser)... will provide resale



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224 advertising services pursuant to this contract. If  
 225 ...(name of resale advertiser)... represents that  
 226 ...(name of resale advertiser)... has identified a  
 227 person who is interested in purchasing or renting your  
 228 timeshare interest, then ...(name of resale  
 229 advertiser)... must provide you with the name,  
 230 address, and telephone number of such represented  
 231 interested resale purchaser.

232  
 233 You have an unwaivable right to cancel this contract  
 234 for any reason within 10 days after the date you sign  
 235 this contract. If you decide to cancel this contract,  
 236 you must notify ...(name of resale advertiser)... in  
 237 writing of your intent to cancel. Your notice of  
 238 cancellation shall be effective upon the date sent and  
 239 shall be sent to ...(resale advertiser's physical  
 240 address)... or to ...(resale advertiser's e-mail  
 241 address).... Your refund will be made within 20 days  
 242 after receipt of notice of cancellation or within 5  
 243 days after receipt of funds from your cleared check,  
 244 whichever is later.

245  
 246 You are not obligated to pay ...(name of resale  
 247 advertiser)... any money unless you sign this contract  
 248 and return it to ...(name of resale advertiser)....

249  
 250 IMPORTANT: Before signing this contract, you should  
 251 carefully review your original timeshare purchase

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252 contract and other project documents to determine  
 253 whether the developer has reserved a right of first  
 254 refusal or other option to purchase your timeshare  
 255 interest or to determine whether there are any  
 256 restrictions or special conditions applicable to the  
 257 resale or rental of your timeshare interest.

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

264 (g) Make or submit any charge to a consumer timeshare  
 265 reseller's credit card account; make or cause to be made any  
 266 electronic transfer of consumer timeshare reseller funds; or  
 267 collect any payment from a consumer timeshare reseller in an  
 268 aggregate amount totaling less than \$75 in any 12-month period  
 269 unless the consumer timeshare reseller has been provided a copy  
 270 of the terms and conditions of the contract provided for in  
 271 paragraph (f) and the consumer timeshare reseller has agreed to  
 272 such terms and conditions by mail or electronic transmission.

273 (h) Fail to honor any cancellation notice sent by the  
 274 consumer timeshare reseller within 10 days after the date the  
 275 consumer timeshare reseller signs the contract for resale  
 276 advertising services in compliance with subparagraph (f)3.

277 (i) Fail to provide a full refund of all money paid by a  
 278 consumer timeshare reseller within 20 days after receipt of  
 279 notice of cancellation or within 5 days after receipt of funds

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280 from a cleared check, whichever is later.

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

286 (4) Notwithstanding obligations placed upon any other  
 287 persons by this section, it is the duty of a resale service  
 288 provider to supervise, manage, and control all aspects of the  
 289 offering of resale advertising services by any agent or employee  
 290 of the resale service provider. Any violation of this section  
 291 that occurs during such offering shall be deemed a violation by  
 292 the resale service provider as well as by the person actually  
 293 committing the violation.

294 (5) Providing resale advertising services with respect to  
 295 a consumer resale timeshare interest in a timeshare property  
 296 located or offered within this state, or in a multisite  
 297 timeshare plan registered or required to be registered to be  
 298 offered in this state, including acting as an agent or third-  
 299 party service provider for a resale service provider,  
 300 constitutes operating, conducting, engaging in, or carrying on a  
 301 business or business venture in this state for the purposes of  
 302 s. 48.193(1).

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

306 (7) Notwithstanding any other penalties provided for in  
 307 this section, any violation of this section is subject to a

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308 civil penalty of not more than \$15,000 per violation. In  
309 addition, a person who violates any provision of this section  
310 commits an unfair and deceptive trade practice as prohibited by  
311 s. 501.204 and is subject to the penalties and remedies provided  
312 in part II of chapter 501.

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