

CHAPTER 2012-76

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 1001

An act relating to timeshares; amending s. 721.02, F.S.; revising purposes of the chapter to include the provision of certain disclosure; amending s. 721.05, F.S.; revising the definition of the term “resale service provider”; defining the terms “consumer resale timeshare interest,” “consumer timeshare reseller,” “resale broker,” “resale brokerage services,” “resale advertiser,” and “resale advertising service”; amending s. 721.20, F.S.; deleting a provision requiring resale service providers to provide certain fee or cost and listing information to timeshare interest owners; creating s. 721.205, F.S.; specifying information a resale service provider must provide to the consumer timeshare reseller; prohibiting unlicensed resale service providers from engaging in certain activities; prohibiting certain services related to the offering of resale advertising by resale advertisers; providing certain restrictions on the offering of resale advertising services by resale advertisers; providing voidability of certain contracts; providing duties of a resale service provider; providing that the provision of resale advertising services in this state constitutes operating, conducting, engaging in, or carrying on a business or business venture for purposes relating to jurisdiction of the courts of this state; providing penalties; providing an effective date.

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

(45) “Consumer resale timeshare interest” means:

(a) A timeshare interest owned by a purchaser;

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

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

(46) “Consumer timeshare reseller” means a purchaser who acquires a timeshare interest for his or her own use and occupancy and later offers the timeshare interest for resale or rental.

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

(48) “Resale brokerage services” means, with respect to a consumer resale timeshare interest in a timeshare property located or offered within this state, any activity that directly or indirectly consists of any of activities described in s. 475.01(1)(a).

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

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

(b) A developer or managing entity to the extent that either of them offers resale advertising services to owners of timeshare interests in their own timeshare plans; or

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

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

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

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

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

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

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

721.205 Resale service providers; disclosure obligations.—

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

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

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

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

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

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

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

(c) State or imply to a consumer timeshare reseller, directly or indirectly, that sales or rentals have been achieved or generated as a result of its advertising services unless the resale advertiser, at the time of making such representation, possesses and is able to provide documentation to substantiate the statement or implication made to the consumer timeshare reseller. In addition, to the extent that a resale advertiser states or implies to a consumer timeshare reseller that the resale advertiser has sold or rented any specific number of timeshare interests, the resale advertiser must also provide the consumer timeshare reseller the ratio or percentage of all the timeshare interests that have resulted in a sale versus the number of timeshare interests advertised for sale by the resale advertiser for each of the previous 2 calendar years if the statement or implication is about a sale or sales, or the ratio or percentage of all the timeshare interests that have actually resulted in a rental versus the number of timeshare interests advertised for rental by the resale advertiser for each of the previous 2 calendar years if the statement or implication is about a rental or rentals.

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

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

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

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

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

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

TIMESHARE OWNER'S RIGHT OF CANCELLATION

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

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

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

IMPORTANT: Before signing this contract, you should carefully review your original timeshare purchase contract and other project documents to determine whether the developer has reserved a right of first refusal or other option to purchase your timeshare interest or to determine whether there are any restrictions or special conditions applicable to the resale or rental of your timeshare interest.

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

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

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

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

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

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

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

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

(7) Notwithstanding any other penalties provided for in this section, any violation of this section is subject to a civil penalty of not more than \$15,000 per violation. In addition, a person who violates any provision of this section commits an unfair and deceptive trade practice as prohibited by s. 501.204

and is subject to the penalties and remedies provided in part II of chapter 501.

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

Approved by the Governor April 6, 2012.

Filed in Office Secretary of State April 6, 2012.