**A** **BILL**

TO AMEND SECTION 27‑32‑10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS CONCERNING VACATION TIME SHARING PLANS, SO AS TO DEFINE AND REDEFINE CERTAIN TERMS; TO AMEND SECTION 27‑32‑55, RELATING TO FEES FOR THE RESALE OF AN INTEREST IN A VACATION TIMESHARE, SO AS TO PROVIDE REQUIREMENTS OF A RESALE VACATION TIMESHARE SERVICE PROVIDER; TO AMEND SECTION 27‑32‑80, RELATING TO THE TRANSFER OF AN INTEREST IN A VACATION TIME SHARING PLAN FROM A SELLER TO A THIRD PARTY, SO AS TO MAKE THE PROVISIONS APPLICABLE TO A RESALE OF THE INTEREST; AND TO AMEND SECTION 27‑32‑130, RELATING TO ENFORCEMENT AND IMPLEMENTATION PROVISIONS, SO AS TO MAKE THE PROVISIONS APPLICABLE TO A VACATION TIME SHARING ASSOCIATION.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 27‑32‑10 of the 1976 Code, as last amended by Act 310 of 2006, is further amended to read:

“Section 27‑32‑10. For purposes of this chapter:

(1) ‘Accommodations means any hotel or motel room, condominium or cooperative unit, cabin, lodge, apartment, or other private or commercial structure designed for occupancy by one or more individuals or a recreational vehicle campsite or campground.

(2) ‘Person’ means any individual, corporation, firm, association, joint venture, partnership, trust estate, business trust, syndicate, fiduciary, and any other group or combination.

(3) ‘Contract’ means the agreement between the seller and a purchaser: (a) setting forth the terms and conditions of the purchase and sale of an ownership interest in a vacation time sharing ownership plan, or (b) setting forth the terms and conditions of the purchase and sale of a lease or other right‑to‑use interest in a vacation time sharing lease plan.

(4) ‘Commission’ means the South Carolina Real Estate Commission.

(5) ‘Facilities’ means a structure, service, or property, whether improved or unimproved, made available to the purchaser for recreational, social, family, or personal use.

(6) ‘Seller’ means a person who creates a vacation time sharing plan or is in the business of selling interests in a vacation timeshare plan, or employs agents to do the same, or a person who succeeds to the interest of a seller by sale, lease, resale, assignment, mortgage, or other transfer; except that, the term includes only a person who offers interests in vacation time sharing plans in the State of South Carolina in the ordinary course of business. The term ‘seller’ does not include the following:

(a) an owner of a time sharing interest who has acquired the time sharing interest for his own use and occupancy and who later offers it for resale on his own behalf or through a real estate broker;

(b) a managing entity or owners’ association of a time sharing plan, not otherwise a seller, that offers on the association’s behalf time sharing interests in the time sharing plan transferred to the association through foreclosure, deed in lieu of foreclosure, or gratuitous transfer; or

(c) a person who owns or is conveyed, assigned, or transferred time sharing interests, and who subsequently conveys, assigns, or transfers all acquired time sharing interests to a single purchaser in a single transaction, which transaction may occur in stages.

(7) ‘Vacation time sharing ownership plan’ means any arrangement, plan, or similar devise, whether by tenancy in common, sale, term for years, deed, or other means, in which the purchaser receives an ownership interest in real property and the right to use accommodations or facilities, or both, for a period or periods of time during a given year, but not necessarily for consecutive years, which extends for a period of more than one year. A vacation time sharing ownership plan may be created in a condominium established on a term for years or leasehold interest having an original duration of thirty years or longer. An interest in a vacation time sharing ownership plan is recognized as an interest in real property for all purposes pursuant to the laws of this State.

(8) ‘Vacation time sharing lease plan’ means any arrangement, plan, or similar devise, whether by membership agreement, lease, rental agreement, license, use agreement, security, or other means, in which the purchaser receives a right to use accommodations or facilities, or both, but does not receive an ownership interest in real property, for a period or periods of time during a given year, but not necessarily for consecutive years, which extends for a period of more than three years. These lease plans do not include an arrangement or agreement in which a purchaser in exchange for an advance fee and yearly dues is entitled to select from a designated list of facilities located in more than one state, accommodations of companies that operate nationwide in at least nine states in the United States through franchises or ownership, for a specified time period and at reduced rates and under which an interest in real property is not transferred.

(9) ‘Vacation time sharing plan’ means either a vacation time sharing ownership plan or a vacation time sharing lease plan.

(10) ‘Substantially complete’ means all structural components and mechanical systems of all buildings containing or comprising facilities or accommodations are finished in accordance with the plans or specifications of the vacation time sharing plan, as evidenced by a recorded certificate of completion executed by an independent registered surveyor, architect, or engineer.

(11) ‘Unit week’ means a number of consecutive days, normally seven consecutive days in duration, which may reasonably be assigned to purchasers of vacation time sharing plans by the seller.

(12) ‘Escrow agent’ means a bank or trust company doing business in this State or a bonded trust agent bonded in at least the amount of the trust; except, that nothing contained in this chapter prevents investment of funds escrowed pursuant to this chapter by the bank, trust company, or bonded agent, with payment of all interest and dividends to the seller of vacation time sharing plans.

(13) ‘Escrow account’ means funds held or maintained by an escrow agent.

(14) ‘Fund’ and ‘recovery fund’ means the South Carolina Vacation Time Sharing Recovery Fund.

(15) ‘Claim’ means a monetary loss sustained or allegedly sustained by a person due to the wrongdoing of a registrant or licensee.

(16) ‘Real estate broker’s trust account’ means a demand account in a bank or savings institution in this State held by a duly licensed South Carolina real estate broker.

(17) ‘Resale’ or ‘resale vacation timeshare’ means where a party offers the interest in a vacation timeshare that he previously acquired for his own occupancy and use to another consumer for purchase or rental. For the purposes of this item, ‘vacation timeshare’ includes all or substantially all of the ownership, rights, and interests that the seller has in the timeshare.

(18) ‘Resale service provider’ means any resale advertiser, person, entity, or the agent or employee of a person or entity, who directly or indirectly offers or uses telemarketing, direct mail, e‑mail, or any other form of communication to encourage or solicit timeshare owners to transfer legal ownership of a timeshare and the associated obligations to a third party for a fee. This term does not include developers, associations or entities which manage a vacation time sharing plan that offer resale services to owners of timeshare interests in their own vacation time sharing plans, or a person or entity who offers resale advising services with no fee being collected.

(19) ‘Vacation Timeshare Resale Service’ is a service that:

(a) includes any of the following activities, engaged in directly or indirectly and for consideration, regardless of whether performed in person, through the use of telemarketing, direct mail, e‑mail, or any other forms of communication:

(i) the sale, rental, listing or advertising of, or an offer to sell, rent, list, or advertise, a resale vacation timeshare;

(ii) the purchase of or offer to purchase a resale vacation timeshare;

(iii) the transfer of or offer to assist with the transfer of a resale vacation timeshare; and

(iv) the invalidation of or an offer to invalidate the purchase or ownership of a resale vacation timeshare or the purchase of a vacation timeshare resale service; and

(b) does not include:

(i) a developer, association of vacation timeshare owners, or other person responsible for managing or operating a vacation timeshare plan or arrangement by which the rights or interests associated with a vacation timeshare resale is part of an existing vacation timeshare plan or arrangement managed by that developer, association, or person; and

(ii) attorneys, title agents, title companies, or escrow companies providing closing, settlement, or other transaction services as long as the services are provided in the normal course of business in supporting the conveyance of title or in issuing title insurance products in a vacation timeshare resale transaction.

(20) ‘Vacation time sharing association” means an association made up of all owners of timeshare interests in a vacation timeshare plan, including developers and purchasers of such vacation timeshare plan.”

SECTION 2. Section 27‑32‑55 of the 1976 Code is amended to read:

“Section 27‑32‑55. (A) An owner of an interest in a vacation time sharing plan may not be charged an up‑front appraisal fee for the resale of his interest but may be charged only an up‑front marketing fee or commission upon the resale of the interest in an amount stipulated by written agreement between the owner and his sales agent. A person violating the provisions of this section has committed an unfair trade practice pursuant to Section 39‑5‑20 and is subject to all penalties and remedies provided by law for this violation.

(B) A resale service provider must provide a written contract to a vacation timeshare seller before the resale service provider may engage in a timeshare resale service on behalf of a consumer. This contract must include:

(1) the name, physical address, telephone number, and web address, if any, of the resale service provider, and a mailing address to which a contract cancellation notice may be delivered at the discretion of the seller;

(2) the name, physical address, telephone number, and web address, if any, of any other agent or third‑party who will provide any of the vacation timeshare resale services for the resale service provider;

(3) a complete description of the resale services to be provided;

(4) a description of any fees or costs related to such services that the vacation timeshare seller, or any other person, is required to pay to the resale service provider or any other third person, provided:

(a) a fee for advertising a resale vacation timeshare may be collected from an owner of an interest in a vacation time sharing plan prior to placement of the advertisement if all other provisions of this section are met; and

(b) an owner of an interest in a vacation time sharing plan may not be charged an upfront fee for any other timeshare resale service unless the fee is deposited into an escrow account maintained by an independent third party agent until the resale service is completed, and he only may be charged an upfront marketing fee or commission upon the resale of the interest in an amount stipulated in the contract;

(5) a description of when these fees or costs are due; and

(6) provision stating the seller has the unwaivable right to cancel the contract for any reason within ten days after the contract is signed, provided that if the consumer decides to cancel the contract, he must provide written notice of his intent to cancel the contract to the resale service provider. This written notice of cancellation is effective on the date sent. The resale service provider must repay any fees it received to the seller within twenty days after receipt of the written notice of cancellation.

(C) A person shall not knowingly participate in a plan or scheme for which a purpose is to transfer a resale vacation timeshare to a person or entity that he knows or reasonably should know lacks the ability, means, or intent to pay all assessments and taxes associated with ownership of the resale vacation timeshare.

(D) It is a prima facia violation of this section to:

(1) attempt to resale, offer to resale, assist with the resale, engage in resale advertising services, or to receive compensation in connection with the resale of the vacation timeshare ownership interest without a written contract between the seller and resale service provider; or

(2) transfer a resale vacation timeshare to a person who has demonstrated a pattern of nonpayment of assessments, taxes, or fees associated with the obligations of ownership.

(E) A person violating the provisions of this section has committed an unfair and deceptive trade practice pursuant to Section 39‑5‑20 and is subject to all penalties and remedies provided by law for this violation.”

SECTION 3. Section 27‑32‑80 of the 1976 Code is amended to read:

“Section 27‑32‑80. It is a violation of this chapter for a seller of vacation time sharing plans to sell, lease, resale, assign, or otherwise transfer or encumber the seller’s interest in the vacation time sharing plan or the accommodations or facilities to a third party when the sale, lease, resale, assignment, or other transfer substantially affects the rights of the purchasers of the vacation time sharing plan, unless:

(1) the third party agrees in writing to honor fully the rights of purchasers of the vacation time sharing plan to occupy and use the accommodations or facilities;

(2) the third party agrees in writing to honor fully the rights of purchasers of the vacation time sharing plan to cancel their contracts and receive an appropriate refund as provided in this chapter;

(3) the third party agrees in writing to comply with the provisions of this chapter for as long as the third party continues to sell the vacation time sharing plan, or for as long as purchasers of the vacation time sharing plan are entitled to occupy the accommodations or use the facilities, whichever is longer in time; and

(4) written notice is sent to each purchaser of a vacation time sharing plan affected by the transfer by certified mail within thirty days of the sale, lease, assignment, or other transfer.”

SECTION 4. Section 27‑32‑130 of the 1976 Code is amended to read:

“Section 27‑32‑130. The Real Estate Commission is responsible for the enforcement and implementation of this chapter and the Department of Labor, Licensing and Regulation, at the request of the Real Estate Commission, shall prosecute a violation under this chapter. The commission shall promulgate regulations for the implementation of this chapter, subject to the State Administrative Procedures Act. The provisions of this section do not limit the right of a purchaser or lessee or a vacation time sharing association to bring a private action to enforce the provisions of this chapter.”

SECTION 5. This act takes effect upon approval by the Governor.

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