

REALTY REGULATION BOARD LAWS
AS OF THE 2019 LEGISLATIVE SESSION

TITLE 37, CHAPTER 53
TIMESHARE SALES

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CHAPTER 53 TIMESHARE SALES

Chapter Compiler's Comments

Severability: Section 31, Ch. 444, L. 1987, was a severability section.

Chapter Cross-References

Unit Ownership Act — condominiums, Title 70, ch. 23.

Chapter Administrative Rules

Title 24, chapter 210, subchapter 10, ARM Timeshare licensure and registration.

Chapter Law Review Articles

Timeshares to Spare, Newberry, 87 A.B.A. J. 85 (2001).

Taxation of Timeshares—Acquisition, Use, and Disposition Issues, Craig & Luttmann, 27 J. Real Est. Tax'n 301 (2000).

Marketing Resort Timeshares: The Rules of the Game, Scavo, 73 St. John's L. Rev. 217 (1999).

Time-Share Condominiums: Property's Fourth Dimension, Dubord, 32 Me. L. Rev. 181 (1980).

Regulation of Resort Time-Sharing, Gunnar, 57 Or. L. Rev. 31 (1977).

Part 1 General

37-53-101. Short title. This chapter may be cited as the "Montana Timeshare Act".

History: En. Sec. 1, Ch. 444, L. 1987.

37-53-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Affiliate" means a person who controls, is controlled by, or is under the control of a developer.

(2) "Association" or "owners' association" means the association of owners created by the timeshare instruments for purposes of managing and maintaining the project for the benefit of all timeshare owners.

(3) "Board" means the board of realty regulation provided for in 2-15-1757.

(4) "Developer" means:

(a) a person creating timeshares or engaged in the business of selling the person's own timeshares;

(b) a person who controls, is controlled by, or is in common control with the person engaged in creating or selling timeshares; or

(c) any successor, agent, or assignee of a person referred to in subsection (4)(a) or (4)(b).

(5) (a) "Expenses" means expenditures, fees, charges, or liabilities, including any allocations to reserves:

(i) incurred, with respect to timeshare intervals or units, by or on behalf of all timeshare owners in one timeshare property; and

(ii) imposed on the timeshare intervals or units by the entity governing the project of which the timeshare intervals or units are a part.

(b) The term does not include purchase money payable for timeshare intervals or units.

(6) "Managing entity" means a person hired by the timeshare association or developer to manage the timeshare plan or the timeshare property.

(7) "Offer" or "offering" means an inducement, solicitation, or attempt to encourage a person to acquire a timeshare interest. An offer is made in this state if the offer originates in this state or is advertised in this state or if the principal timeshare property is located in this state.

(8) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity.

(9) "Project" means the real property or real estate, which must contain more than one unit, in which timeshares are created by a single instrument or set of instruments.

(10) "Promoter" means any person who induces, solicits, or encourages another person to review or acquire a timeshare interval.

(11) "Public offering statement" means the written statement required by 37-53-303.

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

(13) "Real estate" means real estate as defined in 37-51-102.

(14) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a timeshare for value.

(15) "Timeshare instrument" means one or more documents, by whatever name denominated, creating or regulating timeshares.

(16) "Timeshare interval" or "timeshare interest" means the right, however evidenced or documented, to use and occupy one or more timeshare units on a periodic basis according to an arrangement allocating the use and occupancy rights between similar users.

(17) "Timeshare owner" means a person, other than a developer, who is an owner or co-owner of a timeshare. If title to a timeshare is held in trust, timeshare owner means the beneficiary of the trust.

(18) "Timeshare salesperson" means a person who for a salary, commission, or compensation of any kind is associated with a timeshare development to sell, purchase, or negotiate for sale, purchase, lease, or exchange of the timeshare interests in real estate and who, on behalf of a developer, sells or offers to sell a timeshare to a purchaser.

(19) "Timeshare unit" or "unit" means the real property or portion of real property in which the timeshare interval exists or will exist, including campgrounds, campsites, and outdoor recreation sites with spaces designed or promoted for the purpose of locating a trailer, tent, tent trailer, camper, or similar device for land-based portable housing.

History: En. Sec. 2, Ch. 444, L. 1987; amd. Sec. 1414, Ch. 56, L. 2009; amd. Sec. 1, Ch. 317, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 317 deleted definition of advertisement that read: "'Advertisement" means a written, printed, audio, or visual communication that is published in whole or in part to sell, offer to sell, or solicit an offer for a timeshare"; in definition of developer in (c) after "successor" inserted "agent"; inserted definition of expenses; in definition of offer or offering at end of first sentence inserted "interest" and near middle of second sentence inserted "or is advertised in this state"; deleted definition of prize and gift promotional offer that read: "'Prize and gift promotional offer" means advertising material stating that a prospective purchaser may receive goods or services other than the timeshare plan itself, either free or at a discount, including but not limited to the use of a prize, gift, award, premium, or lodging or vacation certificate"; inserted definition of public offering statement; deleted definition of timeshare broker that read: "'Timeshare broker" means a natural person who supervises a timeshare sales operation and one or more timeshare salespersons"; deleted definition of timeshare expenses that read: "'Timeshare expenses" means expenditures, fees, charges, or liabilities:

(a) incurred with respect to the timeshares by or on behalf of all timeshare owners in one timeshare property; and

(b) imposed on the timeshare by the entity governing a project of which the timeshare is a part, together with any allocations to reserve. The term does not include purchase money payable for timeshares"; in definition of timeshare salesperson after "associated" substituted "with a timeshare development" for "either directly or indirectly, regularly or occasionally, with a timeshare broker"; in definition of timeshare unit after "timeshare" substituted "interval exists or will exist" for "exists and that is designated for separate use"; and made minor changes in style. Amendment effective October 1, 2009.

37-53-103. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 29, Ch. 444, L. 1987; amd. Sec. 49, Ch. 271, L. 2003.

37-53-104. Rulemaking authority. The board shall adopt rules to carry out the provisions of this chapter. The rules may include but are not limited to:

- (1) registration information that must be supplied;
- (2) documents acceptable in lieu of registration documents under 37-53-204;
- (3) qualifications for applicants as provided in 37-53-301;
- (4) continuing education requirements for renewal of a timeshare salesperson's license;
- (5) additional information included in a public offering statement; and
- (6) fees established pursuant to 37-1-134.

History: En. Sec. 30, Ch. 444, L. 1987; amd. Sec. 105, Ch. 467, L. 2005; amd. Sec. 2, Ch. 317, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 317 in (1) at beginning substituted "registration" for "qualifications for applicants and any additional applicant"; deleted former (3) and (4) that read: "(3) conditions that may be placed upon registration under 37-53-212;

(4) the subject matter of the examination or continuing education requirement for license as a timeshare salesperson or timeshare broker"; inserted (3) concerning qualifications for applicants; inserted (4) concerning continuing education; in (5) at end substituted "public offering statement" for "disclosure document"; and made minor changes in style. Amendment effective October 1, 2009.

2005 Amendment: Chapter 467 in (1) at beginning substituted "qualifications for applicants" for "format of forms for applications and renewal of registration" and after "and" deleted "prescribing"; inserted (6) allowing the board to adopt rules related to statutory fees; and made minor changes in style. Amendment effective July 1, 2005.

1987 Statement of Intent: The statement of intent attached to Ch. 444, L. 1987, provided: "A statement of intent is required for this act because it delegates rulemaking authority to the board of realty regulation. The board is authorized to adopt rules concerning:

- (1) licensing of timeshare brokers and timeshare salespersons;
- (2) information contained in applications for registration of timeshare offerings;
- (3) documents acceptable in lieu of registration documents;
- (4) conditions upon registration;
- (5) gift and promotional activities; and
- (6) disciplinary proceedings.

It is the intent of the legislature that the board use as guidelines for these rules the rules of the board of realty regulation implemented pursuant to the real estate licensing laws and the rules of other states governing the timeshare industry. The board may also use as guidelines for these rules the rules of the securities division of the state auditor's office."

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Administrative Rules

Title 24, chapter 210, subchapter 10, ARM Timeshare licensure and registration.

Part 2

Registration of Timeshare Offerings

37-53-201. Registration of timeshare offering required. A timeshare offering may not be advertised, offered, or sold in this state unless it is registered as provided in this chapter.

History: En. Sec. 3, Ch. 444, L. 1987.

37-53-202. Application for registration. An application for registration of a timeshare offering must be signed by the developer and accompanied by the registration fee. A timeshare offering may not be registered unless the developer has filed a complete application as determined by the board or the board's designee. Except as provided in 37-53-204, the application must contain:

- (1) financial statements prepared in accordance with generally accepted accounting principles that fully and fairly disclose the current financial condition of the developer;
- (2) a statement disclosing any fees in excess of the stated price per unit to be charged to the purchasers, a description of their purpose, and the method of calculation;
- (3) copies of all timeshare instruments;
- (4) a copy of the public offering statement provided for in 37-53-303;
- (5) an irrevocable consent to service of process signed by the developer; and
- (6) any other information that the board may require by rule.

History: En. Sec. 4, Ch. 444, L. 1987; amd. Sec. 1, Ch. 12, L. 1993; amd. Sec. 3, Ch. 317, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 317 in introductory clause in first sentence after "must be" deleted "in a form developed by the board in conjunction with input from the timeshare industry" and substituted "developer" for "applicant", and inserted second sentence concerning restriction on registering timeshare offering; substituted (1) concerning financial statements prepared in accordance with generally accepted accounting principles for former text that read: "audited financial statements showing the financial condition of the developer and any affiliate, including:

- (a) a balance sheet dated within 4 months before the filing of the application for registration; and
- (b) statements of income, shareholders' equity, and material changes in financial position as of the end of the prior fiscal year and for any period between the end of the prior fiscal year and the date of the last balance sheet"; deleted former (2) and (3) that read: "(2) a projected budget for the timeshare project for 2 years after the offering being made, including but not limited to source of revenues and expenses of construction, development, management, maintenance, advertisement, operating reserves, interest, and any other necessary reserves;

(3) a description of the background of the developer for the previous 10 years, including information about the business experience of the developer and any relevant criminal convictions, civil lawsuits, or administrative actions related to any offering during that period"; deleted former (5) and (6) that read: "(5) a statement disclosing when and where the developer or an affiliate has previously sold timeshares;

(6) a statement of any liens, defects, or encumbrances on or affecting the title to the timeshare units"; in (4) near middle substituted "public offering statement" for "disclosure document" and at end deleted "signed by the applicant"; in (5) at end substituted "developer" for "applicant"; in (6) at end deleted "in the protection of the public interest or necessary to describe the risks involved"; and made minor changes in style. Amendment effective October 1, 2009.

1993 Amendment: Chapter 12 at beginning of (1) inserted "audited". Amendment effective January 29, 1993.

Administrative Rules

ARM 24.210.1025 Timeshare registration — application requirements.

37-53-203. Notice of changes in timeshare offering. If a material change in the timeshare offering occurs, the developer is required to file an amendment to the documents filed under 37-53-202, along with the prescribed fee.

History: En. Sec. 5, Ch. 444, L. 1987; amd. Sec. 50, Ch. 271, L. 2003; amd. Sec. 4, Ch. 317, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 317 substituted current language concerning material change in timeshare offering for former text that read: "(1) A timeshare offering registration is effective for 1 year from the date of approval of the registration application.

(2) Registration of a timeshare offering may be renewed for an additional 1-year period by filing a renewal application with the board no later than 30 days before the expiration of the registration period and paying the prescribed fee. A renewal application must contain any information the board requires to indicate any substantial changes in the information contained in the original application.

(3) If a materially adverse change in the condition of the developer or an affiliate occurs during any year, an amendment to the documents filed under 37-53-202 must be filed, along with the prescribed fee.

(4) This section may not be interpreted to conflict with 37-1-138." Amendment effective October 1, 2009.

2003 Amendment: Chapter 271 inserted (4) to provide that this section may not be interpreted to conflict with 37-1-138. Amendment effective April 9, 2003.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

Administrative Rules

ARM 24.210.1037 Timeshare amendment for material change registration requirements.

37-53-204. Alternative filing documents. (1) In lieu of the documents required to be filed with an application under 37-53-202, the board may accept a public offering statement filed with an agency of the United States or any other state.

(2) The board may prescribe by rule those documents acceptable under subsection (1).

History: En. Sec. 6, Ch. 444, L. 1987; amd. Sec. 5, Ch. 317, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 317 in (1) near middle substituted "public offering statement" for "disclosure document"; deleted former (1)(b) that read: "(b) a disclosure document compiled in accordance with a rule of an agency of the United States or any other state"; in (2) substituted "may" for "shall"; and made minor changes in style. Amendment effective October 1, 2009.

1987 Statement of Intent: The statement of intent attached to Ch. 444, L. 1987, provided: "A statement of intent is required for this act because it delegates rulemaking authority to the board of realty regulation. The board is authorized to adopt rules concerning:

- (1) licensing of timeshare brokers and timeshare salespersons;
- (2) information contained in applications for registration of timeshare offerings;
- (3) documents acceptable in lieu of registration documents;
- (4) conditions upon registration;
- (5) gift and promotional activities; and
- (6) disciplinary proceedings.

It is the intent of the legislature that the board use as guidelines for these rules the rules of the board of realty regulation implemented pursuant to the real estate licensing laws and the rules of other states governing the timeshare industry. The board may also use as guidelines for these rules the rules of the securities division of the state auditor's office."

Administrative Rules

ARM 24.210.1027 Alternative acceptable documents for timeshare registration.

37-53-205. Exemption from registration. The registration requirements of this chapter do not apply to:

- (1) an offer, sale, or transfer of not more than two timeshare interests by a timeshare owner in a 12-month period;
- (2) a gratuitous transfer of a timeshare interest;
- (3) a sale under court order;
- (4) a sale by any government or a governmental agency;
- (5) a sale by forfeiture, foreclosure, or deed in lieu of foreclosure;
- (6) a sale of a timeshare offering already registered in Montana or a sale of all timeshare units or timeshare intervals in the timeshare offering to any one purchaser; or
- (7) a transfer of a timeshare interest by a timeshare owner other than the developer or the developer's agent unless the transfer is made for the purpose of avoiding the provisions of this chapter.

History: En. Sec. 7, Ch. 444, L. 1987; amd. Sec. 6, Ch. 317, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 317 in (2) at end inserted "interest"; in (6) after "sale of a" substituted "timeshare offering already registered in Montana or a sale of all timeshare units or timeshare intervals in the timeshare offering" for "project or all timeshare units therein"; inserted (7) concerning transfer of timeshare interest; and made minor changes in style. Amendment effective October 1, 2009.

37-53-206 through 37-53-210 reserved.

37-53-211. Repealed. Sec. 13, Ch. 317, L. 2009.
History: En. Sec. 8, Ch. 444, L. 1987; amd. Sec. 107, Ch. 429, L. 1995.

37-53-212. Repealed. Sec. 13, Ch. 317, L. 2009.
History: En. Sec. 9, Ch. 444, L. 1987.

37-53-213. Waiver of liability. The fact that an application for registration has been filed or that a timeshare offering has been registered does not constitute a finding by the board that any document filed under this chapter is complete, true, and not misleading. The filing or registration does not mean that the board has given approval to, recommended, or determined the merits or qualifications of any person, timeshare, or transaction.

History: En. Sec. 10, Ch. 444, L. 1987.

37-53-214. Repealed. Sec. 13, Ch. 317, L. 2009.
History: En. Sec. 11, Ch. 444, L. 1987.

Part 3 Licensure of Brokers and Salespersons

37-53-301. Licensure of timeshare salespersons — licensee duties. (1) A person offering timeshare intervals in a project located in Montana must be licensed as a timeshare salesperson and affiliated with at least one registered timeshare project unless the offering is exempt under 37-53-205.

(2) Licensure may be obtained upon:

(a) completion of an application;

(b) meeting the qualifications listed in subsection (3);

(c) demonstration to the board that the applicant is an individual of good repute and competent to transact the business of a timeshare salesperson in a manner that safeguards the interests of the public;

(d) payment of fees set by the board by rule; and

(e) successful completion of a course of education related to the timeshare industry that has been approved by the board.

(3) An applicant for a timeshare salesperson license must:

(a) be at least 18 years of age; and

(b) have graduated from an accredited high school or completed equivalent education as determined by the board.

(4) The board shall issue a certificate of completion to an applicant who successfully completes the course of education provided for in subsection (2)(e) and may issue a license to an applicant meeting the qualifications and licensure provisions.

(5) A licensed timeshare salesperson shall notify the department of a change of affiliation within 10 days of the change, designate the new license affiliation, and pay all required fees.

(6) If a timeshare salesperson is no longer affiliated with a timeshare project, the timeshare salesperson shall notify the board that the license is inactive and pay the fees required by rule. A timeshare salesperson may reactivate an inactive license by filling out an application, listing a new affiliation, and paying all required fees.

History: En. Sec. 12, Ch. 444, L. 1987; amd. Sec. 1415, Ch. 56, L. 2009; amd. Sec. 7, Ch. 317, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 317 in (1) near beginning after "timeshare" substituted "intervals in a project located in Montana" for "units for his own account or for the account of others" and after "salesperson" substituted "and affiliated with at least one registered timeshare project" for "or timeshare broker"; in (2)(a) at end deleted "and personal disclosure statement and passage of an examination prescribed by the board demonstrating knowledge of the timeshare industry and this chapter"; inserted (2)(b) through (2)(d) concerning qualifications, demonstration to board, and payment of fees; deleted former (1)(b) that read: "The board shall then issue a certificate of completion to the applicant"; deleted former (2) that read: "(2) A person licensed as a real estate broker or salesperson under Title 37, chapter 51, may act as a timeshare salesperson or timeshare broker upon successful completion of a course of education related to the timeshare industry that has been approved by the board. The board shall then issue a certificate of completion to the applicant. No license other than that issued pursuant to Title 37, chapter 51, is required"; inserted (3) concerning qualifications of applicant; inserted (4) concerning issuance of certificate of completion; inserted (5) concerning notification of change of affiliation; inserted (6) concerning notification of inactive license and reactivation of license; and made minor changes in style. Amendment effective October 1, 2009.

37-53-302. Denial, suspension, or revocation of license or application. The board may by an order deny, suspend, or revoke a timeshare salesperson's license or application for license if the board finds that the order is in the public interest and that the applicant or licensee:

(1) has filed an application for licensure as a timeshare salesperson that is incomplete or contains any statement that is false or misleading;

(2) has violated or failed to comply with any provision of Title 37, chapters 1, 51, and 53, or any rules adopted by the board if the violation or the failure to comply related to the timeshare business;

(3) has been convicted of a felony unless the provisions of Title 37, chapter 1, part 2, are met;

(4) is permanently or temporarily enjoined by a court from engaging in or continuing any conduct or practice involving an aspect of the timeshare business;

(5) has engaged in dishonest or unethical practices related to public health, welfare, and safety as those practices apply to the timeshare business; or

(6) has not complied with any condition imposed by the board.

History: En. Sec. 13, Ch. 444, L. 1987; amd. Sec. 108, Ch. 429, L. 1995; amd. Sec. 8, Ch. 317, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 317 in introductory clause near middle after "salesperson's" deleted "or timeshare broker's"; in (1) after "licensure" deleted "and personal disclosure statement", after "salesperson" deleted "or timeshare broker", after "incomplete" deleted "in any material respect", after "that is" deleted "in the light of the circumstances under which it was made", and at end deleted "with respect to any material fact"; in (2) after "provision of" substituted "Title 37, chapters 1, 51, and 53, or any rules adopted by the board if the violation or the failure to comply related to the timeshare business" for "this chapter, rules adopted under this chapter, or Title 37, chapter 51"; in (3) at end substituted "unless the provisions of Title 37, chapter 1, part 2, are met" for "involving theft, fraud, or any consumer protection statute or a felony involving moral turpitude and related to the occupation of timeshare salesperson or timeshare broker"; in (5) near middle after "practices" inserted "related to public health, welfare, and safety"; in (6) at end deleted "or is not qualified on the basis of knowledge of the timeshare industry or this chapter"; and made minor changes in style. Amendment effective October 1, 2009.

1995 Amendment: Chapter 429 at beginning, after "order", deleted "subject to 37-53-503".

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

Cross-References

37-53-303. Public offering statement. Unless exempt from registration, a person who offers or sells a timeshare interval shall provide the prospective purchaser with a written public offering statement before the prospective purchaser signs an agreement for the purchase of a timeshare. The public offering statement must include and fully and accurately disclose:

- (1) the official name and address of the developer, its parent or affiliates, and the names and addresses of the director and officers of each;
- (2) the location of the timeshare property;
- (3) a general description of the timeshare units and associated real property, including but not limited to the developer's schedule of commencement and completion of all buildings, units, and amenities or, if completed, a statement that they have been completed;
- (4) a list of all timeshare units and timeshare intervals offered by the developer or promoter in the same project, including:
 - (a) the types, current prices, and number of units;
 - (b) the types and durations of the timeshare intervals;
 - (c) the maximum number of units that may become part of the timeshare property;
 - (d) a statement of the maximum number of timeshare units and timeshare intervals that may be created or a statement that there is not a maximum;
 - (5) a description of the types of financing offered by the promoter or developer;
 - (6) a statement of ownership of all properties included in the timeshare offering, including any liens or encumbrances affecting the property;
 - (7) copies of any agreements or leases to be signed by purchasers at closing and a copy of the timeshare instrument or instruments;
 - (8) the identity of the managing entity and the name, address, and telephone number of the person or persons in charge and the manner, if any, whereby the developer may change the managing entity;
 - (9) a copy of the current budget and projected budget for the timeshare offering. The budget must include:
 - (a) a statement of the amount included in the budget as a reserve for repairs, maintenance, and replacement of the timeshare units;
 - (b) a detailed list of projected common expenses, liabilities, and expenditures for the timeshare units and timeshare intervals; and
 - (c) a statement of any services or expenses not reflected in the budget that the developer provides or pays.
 - (10) a statement in boldface type on the cover page of the public offering statement that, within 7 days after receipt of the public offering statement or the signing of the timeshare purchase agreement, whichever is later, a purchaser may cancel any agreement for the purchase of a timeshare interval and that the cancellation must be in writing and be delivered either in person or by certified mail to the developer or the developer's agent;
 - (11) a prepared legal document that once executed will effectively cancel the agreement between the purchaser and the developer;
 - (12) any restrictions on transfers of a timeshare interval or portion of the timeshare interval;
 - (13) a description of any insurance coverage provided for the benefit of timeshare interval owners by the managing entity or the timeshare interval owners' association;
 - (14) a full and accurate disclosure of whether the timeshare interval owners are permitted or required to become members of or participate in any program for the exchange of property rights among themselves or with the timeshare interval owners of other timeshare units, or both, and a complete description of the program; and
 - (15) any additional information the board finds necessary to fully inform prospective purchasers, including but not limited to the financial information required by 37-53-202.

History: En. Sec. 14, Ch. 444, L. 1987; amd. Sec. 9, Ch. 317, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 317 in introductory clause in first sentence at beginning inserted "Unless exempt from registration", near middle after "timeshare" inserted "interval", and after "written"

substituted "public offering statement" for "disclosure document"; in second sentence near beginning substituted "public offering statement" for "disclosure document" and at end inserted "and fully and accurately disclose"; in (3) near beginning after "description of the" deleted "timeshare property and the" and after "units" inserted remainder of subsection concerning associated real property description requirements; in (4) near beginning substituted "timeshare units and timeshare intervals" for "units" and after "offered by the" inserted "developer or"; in (4)(b) at end substituted "timeshare intervals" for "timeshares"; in (4)(d) near middle substituted "timeshare units and timeshare intervals" for "timeshares"; in (5) at end inserted "or developer"; in (7) at end inserted "or instruments"; in (9) near beginning after "current" substituted "budget and projected budget for the timeshare offering" for "or projected budget of the owners' association along with a description of the nature and purpose of all charges, dues, maintenance fees, and other expenses that may be assessed, including the formula for payment of charges if all timeshares are not sold and a statement of who pays additional costs" and inserted second sentence and (9)(a) through (9)(c) concerning budget requirements; in (10) in two places substituted "public offering statement" for "disclosure document", substituted "7 days" for "3 days", and near middle after "timeshare" substituted "interval" for "from a developer or salesperson"; inserted (11) concerning executed document cancelling agreement; in (12), in (13) in two places, and in (14) in two places after "timeshare" inserted "interval"; in (15) near end after "financial" deleted "and background"; and made minor changes in style. Amendment effective October 1, 2009.

37-53-304. Disclosure to purchaser — cancellation of agreement. The developer or any person offering a timeshare interval shall provide a prospective purchaser with a copy of the public offering statement described in 37-53-303 before the execution of any agreement for the purchase of a timeshare interval. Within 7 days following receipt of a public offering statement or signing of a timeshare purchase agreement, whichever is later, a purchaser may cancel the agreement and receive a refund of any consideration paid by providing written notice of the cancellation to the developer or developer's agent either by certified mail or personal delivery. If the purchaser does not receive the public offering statement, the agreement is voidable by the purchaser until the purchaser receives the public offering statement and for 7 days after receipt. The provisions of this section may not be waived.

History: En. Sec. 15, Ch. 444, L. 1987; amd. Sec. 10, Ch. 317, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 317 in four places substituted reference to public offering statement for reference to disclosure document; in two places substituted "7 days" for "3 days"; in first sentence near beginning and at end after "timeshare" inserted "interval"; near end of second sentence after "to the" substituted "developer or developer's agent" for "promoter or promoter's agent"; and made minor changes in style. Amendment effective October 1, 2009.

37-53-305. Transfer of developer's interest. A developer may not sell, lease, assign, or otherwise transfer the developer's interest in a project unless the transferee agrees in writing to honor the purchaser's right to use and occupy the timeshare unit, to honor the purchaser's right to cancel, and to comply with this chapter. Each purchaser whose contract may be affected must be given written notice of a transfer immediately after the transfer is made.

History: En. Sec. 16, Ch. 444, L. 1987; amd. Sec. 1416, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

37-53-306. Good faith requirement — prohibited provisions. (1) The parties to a timeshare agreement shall deal with each other in good faith.

(2) A developer may not require a purchaser to agree to a release, assignment, novation, waiver, or any other provision that relieves a person from a duty imposed by this chapter.

(3) Any provision in a timeshare instrument that designates jurisdiction or venue in a forum outside this state or the state or other jurisdiction where the project is located is void with respect to any cause of action that is enforceable in this state.

History: En. Sec. 17, Ch. 444, L. 1987.

37-53-307. Illegal practices. (1) It is unlawful for any person in connection with the offer, sale, or lease of a timeshare interest in this state to:

- (a) make any false or misleading statement of a material fact or to omit a material fact;
- (b) employ any device, scheme, or artifice to defraud;
- (c) engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person;
- (d) file or cause to be filed with the board any document that contains false or misleading information; or
- (e) violate any provision of this chapter or a rule adopted under this chapter.

(2) A violation of this section is a misdemeanor punishable as provided in 46-18-212.

History: En. Sec. 18, Ch. 444, L. 1987; amd. Sec. 11, Ch. 317, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 317 in (1)(e) at end deleted "or any applicable provision of Title 37, chapter 51". Amendment effective October 1, 2009.

Cross-References

Fraud defined, 28-2-404 through 28-2-406.

Unfair trade practices and consumer protection, Title 30, ch. 14.

37-53-308. Civil liability. Any person who offers, sells, or materially aids in the offer or sale of a timeshare interval in violation of this chapter is liable to the person buying the timeshare interval, who may sue to recover the consideration paid for the timeshare interval, together with interest at the current legal rate from date of payment and costs, upon the tender of the timeshare interval or for damages if the person no longer owns the timeshare interval.

History: En. Sec. 19, Ch. 444, L. 1987; amd. Sec. 12, Ch. 317, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 317 in five places after "timeshare" inserted "interval". Amendment effective October 1, 2009.

Cross-References

Legal interest, 31-1-106.

Part 4 Promotional Offers (Repealed)

37-53-401. Repealed. Sec. 13, Ch. 317, L. 2009.

History: En. Sec. 20, Ch. 444, L. 1987.

37-53-402. Repealed. Sec. 13, Ch. 317, L. 2009.

History: En. Sec. 21, Ch. 444, L. 1987.

37-53-403. Repealed. Sec. 13, Ch. 317, L. 2009.

History: En. Sec. 22, Ch. 444, L. 1987.

Part 5 Enforcement

37-53-501. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 23, Ch. 444, L. 1987.

37-53-502. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 24, Ch. 444, L. 1987.

37-53-503. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 25, Ch. 444, L. 1987.

37-53-504. Repealed. Sec. 13, Ch. 317, L. 2009.
History: En. Sec. 26, Ch. 444, L. 1987.

37-53-505. Repealed. Sec. 13, Ch. 317, L. 2009.
History: En. Sec. 27, Ch. 444, L. 1987.

37-53-506. Criminal proceedings. The board may refer evidence concerning violations of this chapter to the attorney general or the proper prosecuting attorney, who may institute appropriate criminal proceedings.

History: En. Sec. 28, Ch. 444, L. 1987.