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Indicates New Matter

AMENDED

March 20, 2013

**H. 3491**

Introduced by Reps. Sandifer, Clemmons, Atwater, Ott, D.C. Moss, Erickson, Herbkersman, Ballentine, Forrester, Sottile, Lowe, Toole, Bales, Weeks, Edge and Loftis

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Read the first time February 5, 2013.

**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.

Amend Title To Conform

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, 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. For purposes of section 27‑32‑55, escrow agent also means a licensed South Carolina attorney in good standing, a licensed South Carolina real estate broker in good standing, or a licensed South Carolina title insurance agent in good standing.

(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 vacation time sharing interest’ means a vacation time sharing interest, including all or substantially all ownership, rights, or interests associated with the vacation time sharing interest that has been previously acquired by an owner for his own use and occupancy and is later offered or advertised for sale or rent, or legal ownership is transferred by or with the assistance of a resale service provider.

(18) ‘Resale service provider’ means any person or entity, including any agent or employee of such person or entity, who, directly or indirectly, offers or uses telemarketing, direct mail, email, or any other forms of communication in connection with offering of vacation time sharing resale services. This term does not include the following:

(a) a newspaper, periodical, or publisher, unless the newspaper, periodical, or publisher derives more than ten percent of its gross revenue from vacation time sharing resale services. For purposes of this chapter, the calculation of gross revenue derived from providing vacation time sharing resale services includes revenue of any affiliate, parent, agent, and subsidiary of the newspaper, periodical, 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;

(b) a seller, vacation time sharing association, managing entity, or other person responsible for managing or operating the vacation time sharing plan to the extent they offer vacation time sharing resale services to owners of vacation time sharing interests in such a vacation time sharing plan; or

(c) a consumer vacation time sharing reseller who, in a given calendar year, sells seven or fewer resale vacation time sharing interests.

(19) ‘Vacation time sharing resale service’ means:

(a) the advertising of, or an offer to advertise, any resale vacation time sharing interest for resale or rent; or

(b) the transfer or offer to assist in the transfer of legal ownership of any resale vacation time sharing interest.

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

(21) ‘Consumer vacation time sharing reseller’ means an owner of a resale vacation time sharing interest.”

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

“Section 27‑32‑55. ~~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.~~

(A) Before engaging in any vacation time sharing resale services, a resale service provider must provide a written contract to the consumer vacation time sharing reseller that includes:

(1) The name, physical address, telephone number, and website address, if any, of the resale service provider and any other agent or third party who will provide any of the vacation time sharing resale services on behalf of the resale service provider.

(2) The name, physical address, telephone number, and email address of the escrow agent, if applicable, that will be used to hold funds or other property pursuant to this section.

(3) A complete description of the vacation timesharing resale services.

(4) The duration of the contract for vacation time sharing resale services expressed in days, weeks, months or years.

(5) A description of any fees, costs, or other consideration to be paid to the resale service provider or any agent or third party of it. These fees must include marketing and advertising fees or commissions that are paid upon the resale of a resale vacation time sharing interest.

(6) A statement, if applicable, that the resale service provider will deliver to the consumer vacation time sharing reseller all documentation evidencing the transfer of legal ownership of the resale vacation time sharing interest as provided in subsection (B).

(7) A statement, if applicable, that the consumer time sharing reseller shall have five business days from the date they receive the notice of right to dispute the release funds from the escrow agent as referenced in subsection (B).

(8) The internet addresses and telephone numbers for both the Department of Consumer Affairs and the commission.

(9) A statement printed in at least 12‑point boldfaced type immediately preceding the space in the contract provided for the consumer time sharing reseller’s signature in substantially the following form:

‘You have an unwaivable right to cancel this contract for any reason within 5 business days after the date you sign this contract. If you decide to cancel this contract, you must notify (name of resale service provider) in writing of your intent to cancel. Your notice of cancellation must be effective upon the date sent and must be sent to (resale service provider’s mailing address) or to (resale service provider’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 service provider) any money unless you sign this contract and return it to (name of resale service provider).’

‘Before signing this contract, you should carefully review your original vacation time sharing purchase contract and other project documents to determine whether there are any restrictions or special conditions applicable to the resale or rental of your vacation time sharing interest. You may also wish to contact your resort management company or your vacation time sharing association to learn about resale or rental options that may be available to you.’

(B) With respect to all fees, costs and compensation paid to a resale service provider, the following shall apply:

(1) A consumer vacation time sharing reseller may not be charged an appraisal fee in connection with the sale or rental of a resale vacation time sharing interest.

(2) A consumer vacation time sharing reseller may be charged marketing or advertising fees prior to the sale or rental of a resale vacation time sharing interest.

(3) A consumer vacation time sharing reseller shall not pay any advance fee, cost or compensation for vacation time sharing resale services, except as provided in item (2), unless one hundred percent of all funds are deposited into an escrow account until the vacation time sharing resale service is completed and all other requirements of this section have been met.

(a) The funds or other property required to be escrowed hereunder may only be released from escrow to or on the order of the person providing the vacation time sharing resale services upon completion of all of the following:

(i) Presentation by the vacation time sharing resale services provider of an affidavit by such person to the escrow agent that all promised vacation time sharing resale services have been performed, including delivery to both the consumer vacation time sharing reseller and the vacation time sharing plan association or managing entity of a copy of the recorded instrument or other legal document evidencing the transfer of ownership or of legal title to the resale vacation time sharing interest to the transferee.

(ii) The escrow agent’s submission of the affidavit and a notice of right to dispute the release of funds or property in escrow to the consumer vacation time sharing reseller. The notice shall state the consumer vacation time sharing reseller shall have five business days after receipt of such affidavit to submit a written dispute to the escrow agent that all promised vacation time sharing resale services have in fact not been fully performed by the resale service provider. The consumer vacation time sharing reseller may submit the dispute by electronic mail or regular mail. The dispute is effective upon the date sent.

(iii) Failure of the consumer vacation time sharing reseller to submit a dispute pursuant to subsubitem (ii).

(iv) Should the escrow agent receive conflicting demands for funds or other property held in escrow, the escrow agent must immediately notify the commission of the dispute and either promptly submit the matter to arbitration or, by interpleader or otherwise, seek an adjudication of the matter by court.

(b) The commission may audit or examine the escrow account. The resale service provider must make available documents relating to the escrow account or escrow obligation to the commission upon the commission’s request.

(c) The escrow agent must retain all resale transfer agreements, escrow account records, affidavits and notices of dispute received pursuant to this subsection for a period of three years.

(C) No person shall knowingly participate, for consideration or with the expectation of consideration, in any plan or scheme, a purpose of which is to transfer a resale vacation time sharing interest to a person or entity that the person knows or reasonably should know does not have the ability, means, or intent to pay all assessments and taxes associated with ownership of the resale vacation time sharing interest that are due or that come due during the transferee’s ownership. Failure to pay assessments or taxes that are due or that come due after acquisition of a resale vacation time sharing interest by a transferee who acquires the resale vacation time sharing interest for commercial purposes and not for personal use and enjoyment is prima facie evidence of an intentional and purposeful violation of this subsection. It must be considered a violation of this section if there is any transfer, series of transfers, or other action made or taken by any person for the purpose of circumventing this section.

(D) Engagement in any vacation time sharing resale service, or receipt of consideration in connection with, any vacation time sharing resale service without an executed written contract as provided in this section or the transfer of a resale vacation time sharing interest to a person who the resale service provider knows or should have known has demonstrated a pattern of nonpayment of assessments, taxes, or fees associated with the obligations of ownership, is prima facie evidence of a violation of this section.

(E) Providing resale advertising services with respect to a consumer resale vacation time sharing interest in a vacation time share property located or offered within this State or required to be registered 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.

(F) A contract for vacation time sharing resale services resulting from conduct in violation of this section is voidable by the consumer vacation time sharing reseller and the resale service provider shall return all consideration received pursuant to the contract to the consumer vacation time sharing reseller.

(G) A person violating the provisions of this section has committed an unfair trade practice pursuant to Title 39, Chapter 5 of the Unfair Trade Practices Act and is subject to all penalties and remedies provided by law for this violation.

(H) The Department of Consumer Affairs may enforce this section.”

SECTION 3 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 4. This act takes effect upon approval by the Governor.

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