

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
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As Engrossed: S3/13/13
A Bill

SENATE BILL 897

By: Senators D. Johnson, Files
By: Representatives Dale, Biviano

For An Act To Be Entitled

AN ACT TO CLARIFY THE JURISDICTION AND REGULATORY
AUTHORITY OF THE ARKANSAS REAL ESTATE COMMISSION; TO
REGULATE TRANSACTIONS INVOLVING RESALE TIMESHARE
PROPERTY; AND FOR OTHER PURPOSES.

Subtitle

TO CLARIFY THE JURISDICTION AND
REGULATORY AUTHORITY OF THE ARKANSAS REAL
ESTATE COMMISSION; TO REGULATE
TRANSACTIONS INVOLVING RESALE TIMESHARE
PROPERTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 18, Chapter 14, Subchapter 1 is amended
to read as follows:

18-14-101. Title.

This chapter shall be known and may be cited as the "Arkansas Time-
Share Act".

18-14-102. Definitions.

As used in this chapter:

(1) "Accommodation" means an apartment, condominium or
cooperative unit, cabin, lodge, hotel or motel room, or other private or
commercial structure that:



(A) Is affixed to real property;

(B) Is designed for occupancy or use by one (1) or more individuals; and

(C) Is part of a time-share plan;

(2) "Acquisition agent" means a person ~~who~~ that by ~~means of~~ telephone, ~~mail, advertisement,~~ inducement, solicitation, or otherwise in the ordinary course of ~~the acquisition agent's~~ business ~~attempts~~ directly tries to encourage ~~any~~ a person in this state to attend a sales presentation for a time-share ~~program~~ plan;

~~(2) "Agency" means the Arkansas Real Estate Commission, which is an agency within the meaning of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;~~

(3) "Amenities" means a recreational facility made available to purchasers in a time-share plan;

(4) "Association" means a council or an association composed of the owners of time-share interests in a time-share plan;

(5)(A) "Broker" means a person that sells or offers to sell in the ordinary course of business, time-share interests in a time-share plan to a purchaser.

(B) A broker and a sales agent conducting business from a location in this state, whether on a temporary or on-going basis, are subject to § 17-42-101 et seq.

(C) A violation that results from a time-share activity is not subject to § 17-42-401 et seq.;

(6)(A) "Component site" means a specific geographic location where accommodations that are part of a multisite time-share plan are located.

(B) Separate phases of a single time-share property in a specific geographic location under common management are considered a single component site;

~~(3)(7)(A) "Developer" in the case of any given property, means any person or entity which is in the business of creating or which is in the business of selling its own time share intervals in any time share program. This definition does not include a person acting solely as a sales agent;~~
means:

(i) A person who establishes a time-share plan, or

is in the business of selling time-share interests or that uses a broker to sell time-share interests; or

(ii) A person that succeeds in the developer's interest by sale, lease, assignment, mortgage, or other transfer, if the person:

(a) Offers at least twelve (12) time-share interests in a particular time-share plan; and

(b) Is in the business of selling time-share interests or uses a broker to sell time-share interests.

(B) "Developer" does not include a broker who is in the business of selling time-share interests;

~~(4) "Development", "project", or "property" means all of the real property subject to a project instrument and containing more than one (1) unit;~~

~~(5)(8) "Exchange agent" means a person who exchanges or offers to exchange time-share intervals in an exchange program with other time-share intervals that owns or operates an exchange program;~~

(9) "Exchange program" means a method, arrangement, or procedure for the voluntary exchange of time-share interests among time-share owners;

~~(6)(10) "Managing agent" means a person who undertakes the duties, responsibilities, and obligations of the management of a time-share program responsible for operating and maintaining a time-share property or time-share plan on behalf of the association;~~

~~(7)(11)(A) "Offering" means any an offer to sell, a solicitation, an inducement, or an advertisement made in this state, whether directly or indirectly, whether or by radio, television, newspaper, magazine, or by mail, or electronic media, whereby in which a person is given an opportunity or encouraged to acquire a time-share interval interest.~~

(B) This definition shall "Offering" does not include a property time-share owner who that may refer persons to a developer-owned subdivision a person to a developer provided that if the time-share owner's activities are limited to the referral of a prospective purchaser to the developer-owned subdivision developer, and the time-share owner receives only nominal consideration which is not contingent upon the sale of a time-share interval and does not refer more than twenty (20) prospective purchasers to the developer annually;

~~(8)~~(12) "Person" means one (1) or more natural persons, corporations, partnerships, associations, trusts, other entities, or any combination thereof;

~~(9)~~(13) "Project instrument" means ~~one (1) a time-share instrument or more recordable other applicable documents~~ document that establishes a time-share plan applicable to the whole project by whatever name denominated, containing that contains restrictions or covenants ~~regulating to regulate~~ the use, occupancy, or disposition of ~~an entire project~~ a time-share plan, including a declaration, rule, or an amendment thereto, of a condominium, and the articles of incorporation, bylaws, rules of an association, or an amendment thereto ~~any amendments to the document but excluding any law, ordinance, or government regulation;~~

~~(10)~~(14) "Public offering statement" means ~~that~~ the statement required by under § 18-14-404;

~~(11)~~(15) "Purchaser" means ~~any~~ a person other than a developer or lender who acquires an interest in a time-share ~~interval~~ plan;

(16)(A) "Reservation system" means the method, arrangement, or procedure where a purchaser is required to compete with other purchasers to reserve an accommodation of a multisite time-share plan for one (1) or more time-share periods regardless of whether the reservation system is operated and maintained by the multisite time-share plan, a managing entity, an exchange company, or other person.

(B) If a purchaser is required to use an exchange program as the principal means of reserving an accommodation and facility of the plan, the arrangement is a reservation system.

(C) If the exchange company uses a mechanism to exchange time-share periods among members of the exchange program, the use of the mechanism is not a reservation system in a multistate time-share plan;

~~(12) "Sales agent" means a person who sells, or offers to sell, in his or her ordinary course of business, time-share intervals in a time-share program to a purchaser. All such sales agents shall be licensed and subject to the provisions of § 17-42-101 et seq. Provided, however, that the provisions of § 17-42-101 et seq., pertaining to the Real Estate Recovery Fund shall not apply to violations occurring as a result of, or in connection with, any time-share activity;~~

~~(13)~~(17)(A) "Time-share estate" means an ~~ownership or leasehold~~

~~estate in property devoted to a time share fee such as tenants in common, time span ownership, or interval ownership, and a time share lease arrangement by which the purchaser receives a right to occupy a time-share property, together with a real estate interest in the time-share property.~~

(B) "Time-share estate" includes real property interests held in a trust in which the owners or the owners' association of the time-share plan are the express beneficiaries of that trust and the trustee is independent of the developer.

(C) If the real property interests are held in a trust, the conveyance of the real property to the trust shall be free of financial liens and encumbrances or include a recorded nondisturbance agreement;

~~(14) "Time share instrument" means any document, by whatever name denominated, creating or regulating time share programs, but excluding any law, ordinance, or governmental regulation;~~

~~(15) "Time share interval" means a time share estate or a time share use;~~

(18) "Time-share instrument" means a master deed, master lease, declaration, or other instrument used to establish a time-share plan;

(19) "Time-share interest" means a time-share estate or a time-share use;

(20)(A) "Time-share plan" means an arrangement, plan, scheme, or similar method, excluding an exchange program but including a membership agreement, sale, lease, deed, license, or right-to-use agreement, in which a purchaser, in exchange for consideration, receives an ownership right in or the right to use the accommodations for a period of time less than a year during a given year, but not necessarily consecutive years, regardless of whether the period of time is determined in advance.

(B) A time-share plan may be either a:

(i) "Single site time-share plan" which is the right to use an accommodation at a single time-share property; or

(ii) "Multisite time-share plan" which includes:

(a) A "specific time-share interest" which is the right to use an accommodation at a specific time-share property, together with the use rights in accommodations at one (1) or more other component sites established by or acquired through the reservation system of the time-share plan; or

(b) A "nonspecific time-share interest" which is the right to use accommodations at more than one (1) component site established by or acquired through the reservation system of the time-share plan but does not include the specific right to use any particular accommodations;

~~(16) "Time share program" means any arrangement for time share intervals in a time share project whereby the use, occupancy, or possession of real property has been made subject to either a time share estate or time share use whereby such use, occupancy, or possession circulates among purchasers of the time share intervals according to a fixed or floating time schedule on a periodic basis occurring annually over any period of time in excess of three (3) years in duration;~~

~~(17)(21) "Time-share project property" means any real property that is subject to a time share program;~~

(A) One (1) or more accommodations and related amenities that are subject to a time-share instrument; and

(B) Any other property or property rights appurtenant to the accommodations and amenities;

~~(18)(22) "Time-share use" means any contractual right of exclusive occupancy which does not fall within the definition of a time share estate including, without limitation, a vacation license, club membership, limited partnership, or vacation bond pertaining to a time share program any arrangement under which the purchaser receives a right to occupy a time-share property but does not receive a time-share estate.; and~~

~~(19) "Unit" means the real property or real property improvement in a project which is divided into time share intervals.~~

18-14-103. Applicability.

(a) This chapter shall apply applies to any a time-share program created or commenced plan established after February 25, 1983, and ninety (90) days thereafter as to any time share program heretofore created or commenced with respect to the requirements of under §§ 18-14-201 et seq., 18-14-401 et seq., and 18-14-501 et seq.

(b) This chapter does not apply to the offer or sale of a time-share interest if the use extends over a period of three (3) years or less, whether or not the accommodation is located in this state.

18-14-104. Legal status of time-share estates.

(a)(1) A time-share estate is an estate in real property and has the character and incidents of an estate in fee simple at common law. ~~It may include,~~ including an estate for years with a remainder over in fee simple or an estate for years with no remainder if a leasehold.

(2) ~~The foregoing shall supersede~~ This section supersedes any contrary rule at common law.

(b) A document transferring or encumbering a time-share estate in real property ~~may not~~ shall not be rejected for recordation because of the nature or duration of that estate or interest.

(c) ~~Each time-share estate constitutes, for~~ For purposes of title, a time-share estate constitutes a separate estate or interest in property, except for real property tax purposes.

18-14-105. Regulatory discrimination prohibited.

A zoning, subdivision, or other ordinance or regulation ~~may not~~ shall not discriminate against the ~~creation~~ establishment of time-share ~~intervals~~ interests or impose ~~any~~ a requirement upon a time-share ~~program~~ plan ~~which~~ that it would not impose upon a similar development under a different form of ownership.

SECTION 2. Arkansas Code Title 18, Chapter 14, Subchapter 2 is amended to read as follows:

18-14-201. Powers and duties of ~~state agency~~ the Arkansas Real Estate Commission.

(a) The ~~agency~~ Arkansas Real Estate Commission may:

(1) Set fees;

(2) ~~adopt~~ Adopt, amend, and repeal rules ~~or regulations;~~ and

(3) ~~issue~~ Issue orders consistent with, ~~and in furtherance of,~~ the objectives of this chapter;

(4) ~~The agency may prescribe~~ Prescribe forms and procedures for submitting information to the ~~agency~~ commission;

(b)(5) ~~The agency may accept~~ Accept grants-in-aid from any governmental source; ~~and may~~

(6) ~~contract~~ Contract with agencies charged with similar

functions in this or other jurisdictions ~~in furtherance of the objectives of this chapter;~~

~~(e)(7) The agency may cooperate~~ Cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices; ~~and may~~

~~(8) develop~~ Develop information that may be useful in the discharge of the ~~agency's~~ duties of the commission.

~~(d)(9) The agency may initiate~~ Initiate private investigations within or without this state;

~~(e)(10) The agency, after~~ After notice and a hearing under this chapter and the Arkansas Administrative Procedure Act, § 25-15-201 et seq., may:

~~(A) issue~~ Issue a notice of suspension;

~~(B) Impose a civil penalty of no more than five thousand dollars (\$5,000) per occurrence;~~

~~(C) Assess costs against the person if any of the following conditions exist:~~

~~(1)(i) Any A~~ Any A representation in any document or information filed with the ~~agency~~ commission is false or misleading;

~~(2)(ii) Any A~~ Any A developer or agent of a developer has engaged or is engaging in any unlawful act or practice;

~~(3)(iii) Any A~~ Any A developer or agent of a developer has ~~disseminated or caused to be disseminated~~ distributed, caused to be distributed, or is distributing, orally or in writing, ~~any~~ false or misleading promotional materials ~~in connection with~~ concerning a time-share ~~program plan;~~

~~(4)(iv) Any A~~ Any A developer or agent of a developer has concealed, diverted, or disposed of any funds or assets of ~~any a~~ a person in a ~~manner impairing way that impairs~~ rights of purchasers of time-share intervals interests in the time-share ~~program plan;~~

~~(5)(v) Any A~~ Any A developer or agent of a developer has failed to perform ~~any a~~ a stipulation or agreement made to induce the ~~agency~~ commission to issue an order relating to that time-share ~~program plan;~~ or

~~(6)(vi) Any A~~ Any A developer or agent of a developer has otherwise violated ~~any provision of this chapter or the agency's~~ rules,

~~regulations, or orders of the commission;~~

~~(f)(11) The agency may issue~~ Issue a cease and desist order if the developer has not registered the time-share ~~program plan under as required by this chapter;~~ and

~~(g)(12) The agency, after~~ After notice and hearing, ~~may~~ issue an order revoking the registration of a time-share ~~program plan~~ upon a determination that a developer or agent of a developer has failed to comply with a notice of suspension issued by the ~~agency~~ commission, which order affects the time-share ~~program plan~~.

(b) In addition to the civil penalties under subdivision (a)(10) of this section, the commission may require the person found to have violated this chapter or the rules or orders of the commission to reimburse any compensation, fees, or other remuneration collected during the activity that resulted in the violation.

18-14-202. Registration, etc., with agency required.

(a)(1)(A) ~~Unless exempted by § 18-14-203, a~~ A developer ~~may not~~ shall not offer or dispose of a time-share ~~interval~~ interest unless the time-share ~~program plan~~ is registered with the ~~agency~~ Arkansas Real Estate Commission.

(B) However, a developer may accept a reservation together with a deposit if the deposit is:

(i) ~~placed~~ Placed in an escrow account with an institution having trust powers; and

(ii) ~~is refundable~~ Refundable to the purchaser at any time ~~at the purchaser's option~~.

(2) ~~In all cases, a~~ A reservation ~~must require~~ requires a subsequent affirmative act by the purchaser via a separate instrument to ~~create~~ establish a binding obligation.

(3) A developer ~~may not~~ shall not dispose of or transfer a time-share ~~interval~~ interest while an order revoking or suspending the registration of the time-share ~~program plan~~ is in effect.

(b)(1) An acquisition agent shall register the time-share ~~program or programs~~ plan for which it is providing prospective purchasers with the ~~agency~~ commission unless there is an effective registration of the ~~program or programs~~ plan filed with the ~~agency~~ commission by the developer.

(2) ~~In any event, the~~ An acquisition agent if other than the

developer shall be required to furnish to the agency commission:

(A) ~~its~~ Its principal office address and telephone number;
 (B) ~~and designate~~ The name of its designated responsible managing employee; ~~and~~

(C) ~~The acquisition agent shall also furnish such~~ Any additional information ~~as the agency commission may require,~~ requires including evidence that a bond in an amount determined by the commission but not to exceed twenty-five thousand dollars (\$25,000) has been placed with a surety company, corporate bond acceptable to the commission, or a cash bond with the commission to cover a violation of any solicitation ordinances, zoning ordinances, building codes, or other regulations governing the use of the premises in which the time-share plan is promoted.

~~(3) The acquisition agent shall furnish evidence that a bond of five thousand dollars (\$5,000) has been placed with a surety company, corporate bond acceptable to the agency, or a cash bond with the agency to cover any violations of any solicitation ordinances, zoning ordinances, building codes, or other regulations governing the use of the premises in which the time-share program is promoted.~~

~~(4)~~(3) Each acquisition agent shall renew the registration ~~at least~~ annually and shall pay a filing fee ~~of fifty dollars (\$50.00)~~ not to exceed one hundred fifty dollars (\$150.00) for the registration and each renewal thereof of the registration.

(c)(1) ~~A sales agent~~ A real estate principal broker shall register with the agency commission the time-share program ~~or programs for which plan that~~ it is selling unless there is an effective registration of the ~~program or programs plan~~ plan filed with the agency commission by the developer.

(2) ~~In any event, the sales agent~~ The real estate principal broker if other than the developer shall be required to furnish to the agency commission:

(A) ~~its~~ Its principal office address and telephone number;
 (B) ~~and designate~~ The name of its designated responsible managing employee; ~~and~~

(C) ~~any~~ Any special escrow accounts set up for the deposit and collection of purchasers' funds; ~~and~~

(D) ~~shall furnish such~~ Any additional information ~~as the agency commission may require,~~ requires, including ~~The sales agent shall~~

~~furnish~~ evidence that a bond ~~of five thousand dollars (\$5,000)~~ in an amount determined by the commission but not to exceed twenty-five thousand dollars (\$25,000) has been placed with a surety company, corporate bond acceptable to the agency commission, or a cash bond with the agency commission to cover any defalcations of the real estate principal broker and any of its sales agent agents.

(3) Each ~~individual sales agent~~ real estate principal broker shall renew ~~his or her~~ its registration annually and shall pay a filing fee ~~of fifty dollars (\$50.00)~~ not to exceed one hundred fifty dollars (\$150.00) for the registration and each renewal ~~thereof~~ of the registration.

(d)(1) A managing agent shall register with the agency commission the time-share ~~program or programs for which~~ plan that it is managing unless there is an effective registration of the ~~program or programs~~ plan filed with the agency commission by the developer.

(2) ~~In any event, the~~ The managing agent shall ~~be required to~~ furnish to the agency commission:

(A) ~~its~~ Its principal office address and telephone number; ~~;~~

(B) ~~to designate~~ The name of its designated responsible managing employee; ~~;~~ and

(C) ~~to furnish such~~ Any additional information ~~as the agency commission may require,~~ requires, including ~~The managing agent shall furnish evidence that a bond of five thousand dollars (\$5,000) in an amount determined by the commission but not to exceed twenty-five thousand dollars (\$25,000) has been placed with a surety company, corporate bond acceptable to the agency commission, or a cash bond with the agency commission to cover any default of the managing agent of his or her duties and responsibilities.~~

(3) Each managing agent shall renew the registration ~~at least~~ annually and shall pay a filing fee ~~of fifty dollars (\$50.00)~~ not to exceed one hundred fifty dollars (\$150.00) ~~with each~~ for the registration and ~~each renewal thereof~~ of the registration.

(e)(1) ~~In the event that~~ If the acquisition agent, ~~sales agent,~~ real estate principal broker, or management agent is under the control of, a subsidiary of, or affiliate of the developer ~~or any person,~~ the bond ~~as to such~~ of the broker or agents, whether one (1) or more, can be consolidated and reduced to ~~fifty thousand dollars (\$50,000)~~ an amount determined by the commission but not to exceed seventy-five thousand dollars (\$75,000); ~~;~~

~~provided that~~ if there is a disclosure of the affiliation to the ~~agency~~ commission.

~~(2) When~~ If the developer registers an additional time-share ~~projects plan~~, including additional phases ~~of existing time-share projects,~~ in the existing time-share plan with the commission, the developer ~~shall not~~ be is not required to furnish an additional bond or increase the existing bond for the additional registration ~~provided if~~ if the initial bond remains in effect.

(f)(1) An exchange agent, ~~including the developer if it is also the~~ exchange agent, shall file a statement with the agency commission containing:

(A) ~~a~~ A list of the time-share ~~program plans~~ or programs ~~properties~~ that it is offering exchange services for;

(B) ~~indicate its~~ Its principal office address and telephone number;

(C) ~~designate who its~~ The name of its designated responsible managing employee ~~is or the~~ or its contact person ~~to whom any~~ contact is to be made.

(2) Each exchange agent shall renew his or her registration annually and pay a filing fee not to exceed one hundred fifty dollars (\$150.00) for the registration and each renewal thereof of the registration.

(g) The acquisition agent and ~~sales agent~~ real estate principal broker shall each maintain their respective records of any employees or independent contractors employed by them, their addresses, and the commissions paid for the immediately preceding two (2) calendar years.

(h) Any interest earned on ~~any~~ a bond or a bond substitute ~~therefor~~, whether cash, certificate of deposit, bank account, security, or other instrument, while on deposit with, or for the benefit of, the ~~agency~~ commission ~~shall become~~ becomes the separate property of the ~~agency~~ commission and ~~shall be~~ is deposited ~~in~~ into the Real Estate Recovery Fund ~~as~~ created in § 17-42-403.

(i) A filing fee may be discounted for an applicant that submits the required filings using the Association of Real Estate License Law Officials' web-based document management program.

18-14-203. ~~Exemptions from~~ Abbreviated registration ~~— Exemptions~~.

(a) ~~No~~ An abbreviated registration with the ~~agency shall be required~~

Arkansas Real Estate Commission may be accepted if the developer is registered and ~~there has been~~ issued a public offering statement or similar disclosure document ~~which~~ that is provided to purchasers under any of the following:

- (1) Securities and Exchange Act of 1933;
- (2) Arkansas Securities Act, § 23-42-101 et seq.;
- (3) Federal Interstate Land Sales Full Disclosure Act, ~~in which~~ if the time-share ~~program plan~~ plan is made a part of the subdivision that is being registered; and
- (4)(A) Any federal or state act ~~which~~ that requires a federal or state agency to review a public offering statement, or similar disclosure document ~~which is required to~~ that must be distributed to purchasers, if the ~~agency~~ commission determines ~~after review~~ that the federal or state public offering statement is substantially equivalent to that required by this chapter ~~and issues its certificate of exemption.~~

~~(B)(b)~~ Whenever Annually or when a public offering statement is amended, ~~and at least annually in any event,~~ the public offering statement shall be submitted to the ~~agency~~ commission for ~~its review and~~ recertification.

~~(C)(c)~~ Applicants for certificates of exemption An applicant filing an abbreviated registration shall pay:

- (1) a A filing fee of three hundred dollars (\$300) not to exceed five hundred dollars (\$500); and
- (2) any Any necessary investigation expenses as ~~set forth~~ stated in § 18-14-204(d); and
- (3) a A fee of one hundred fifty dollars (\$150) not to exceed three hundred dollars (\$300) for each request for ~~review and~~ recertification ~~pursuant to~~ under subdivision (a)(4)(B) of this section.

~~(b)(d)~~ No A registration with the ~~agency shall be~~ commission is not required in the case of:

- (1) Any A transfer of a time-share ~~interval~~ interest by any time-share ~~interval~~ interest owner other than the developer or ~~his or her~~ its agent unless the transfer is made ~~for the purpose of evading the provisions of~~ to evade this chapter;
- (2) Any disposition ~~pursuant to~~ under a court order;
- (3) A disposition by a government or governmental agency;

(4) A disposition by foreclosure or deed in lieu of foreclosure;

~~or~~

(5) A developer's offer of additional time-share interests in a time-share plan located outside this state to owners that have previously purchased from the developer or a developer under common ownership or control with the developer, if the developer has had a registration or amendment approved by the commission within the preceding seven (7) years;

~~(5)(6) A gratuitous transfer of a time-share interval interest;~~

(7) A time-share property that consists of a single accommodation and related amenities for which the developer or a person under the control of, a subsidiary of, or affiliate of the developer operates as the acquisition agent, broker, or exchange agent; or

(8) A disposition of a time-share interest owned by an owners' association of which the time-share interest is a part.

18-14-204. Application for registration.

(a) An application for registration of a time-share plan shall contain:

(1) the The public offering statement;

(2) a A brief description of the time-share property;

(3) copies Copies of time-share instruments;

(4) financial Financial statements prepared in accordance with according to generally accepted accounting principles and fully and fairly disclosing the current financial condition of the developer; and

(5) any Any other documents referred to therein in the registration application; and

(6) such other Other information as may be required by the agency Arkansas Real Estate Commission.

(b)(1) If the ~~dwelling units~~ accommodation in the time-share ~~project~~ are plan is in a condominium development or other common-interest subdivision, the application for registration shall contain evidence that the use of the ~~units~~ accommodation for time-share purposes is not prohibited by the project instruments.

(2) and, if If the project instruments do not expressly authorize time-sharing, the application for registration shall contain evidence that purchasers in the condominium development or other common-interest

subdivision were given written notice at least sixty (60) ~~days' notice in writing prior to~~ days before the application for registration was submitted that the ~~units~~ accommodation would be used for time-share purposes.

(3) ~~In the event~~ If the project instruments contain a prohibition against time-sharing, ~~there must be a certification by the board of directors of the association shall certify that any the amendment~~ procedures ~~specified in the project instruments for the amendment of such instruments, in order to permit time sharing, have been~~ were followed and that the project instruments have been ~~duly~~ amended to permit time-sharing.

(c) The application shall be accompanied by a filing fee ~~of three hundred dollars (\$300) plus five dollars (\$5.00) for each twenty-five (25) time-share intervals or portions thereof~~ not to exceed one thousand dollars (\$1,000). The filing fee shall ~~not exceed the sum of five hundred dollars (\$500)~~.

(d)(1) The agency commission shall thoroughly investigate ~~all~~ matters relating to the application and may require a personal inspection of the ~~real estate~~ time-share property by a person ~~or persons~~ designated by it.

(2) All direct expenses incurred by the agency commission in inspecting the ~~real estate~~ time-share property ~~shall be~~ are borne paid by the applicant, and the agency commission may require a deposit sufficient to cover the direct expenses ~~prior to~~ before incurring them.

(e) ~~All applications~~ An application for registration shall be ~~updated and renewed at least annually~~ annually, and the renewal filing fee shall be ~~accompanied by a filing fee of one half (1/2) the amount of the original filing fee~~ not exceed five hundred dollars (\$500).

18-14-205. Material changes.

(a) A developer shall amend or supplement its registration to report ~~any~~ a material change in the information required by § 18-14-204.

(b)(1) If there is a material change in a registration document, the developer shall file an amendment with the Arkansas Real Estate Commission to report the material change no later than forty-five (45) days after the developer knows or reasonably should have known of the change.

(2) The developer may continue to offer and dispose of time-share interests under the existing registration pending review of the amendments by the commission if the developer discloses the material change

to prospective purchasers.

(3) The commission may charge a fee not to exceed three hundred dollars (\$300) to process an amendment.

18-14-206. Effectiveness of registration or amendment.

(a)(1) Except as ~~hereinafter~~ otherwise provided, the effective date of the registration or any amendment ~~thereto, shall be the forty-fifth~~ is forty-five (45) day days after ~~the~~ its filing ~~thereof,~~ or such earlier date as the agency Arkansas Real Estate Commission may determine, having ~~due~~ regard ~~to~~ for the public interest and the protection of purchasers.

(2) If any an amendment to any a registration is filed prior to before the effective date, the registration shall be deemed to have been is considered to have been filed when the amendment was filed.

(b)(1) If it appears to the agency commission that the application for registration, or ~~any an~~ an amendment ~~thereto~~ to the registration is on its face incomplete or inaccurate in any material respect, the agency commission shall so advise the developer by listing each ~~specific~~ deficiency in writing ~~prior~~ to before the date the registration would otherwise be effective.

(2) The notification shall serve of the deficiency serves to suspend the effective date of the filing until ~~the tenth day~~ ten (10) days after the developer files ~~such the~~ additional information as required by the agency commission ~~shall require~~.

(3)(A) Any developer, upon receipt of the notice of deficiencies, may request a hearing,; and

(B) the The hearing shall be held within thirty (30) days of receipt of the request.

18-14-207. Regulation and use of public offering statement.

(a)(1) The agency Arkansas Real Estate Commission, ~~at any time,~~ may require a developer to alter or supplement the form or substance of a public offering statement to assure adequate and accurate disclosure to prospective purchasers.

(2) In order to ensure adequate protection of the purchaser through disclosure, the agency The commission may require that certain disclosures contained in the public offering statement be ~~placed~~ in boldface type to protect the purchaser.

(b)(1) The public offering statement ~~may not~~ shall not be used for ~~any~~ promotional purposes before registration, and ~~the statement~~ may be used afterwards only ~~if it is used~~ in its entirety.

(2) ~~No~~ A person ~~may~~ shall not advertise ~~or represent~~ that the ~~agency~~ commission has approved or recommended the time-share ~~program~~ plan, the disclosure statement, or any of the documents contained in the application for registration.

SECTION 3. Arkansas Code Title 18, Chapter 14, Subchapter 3, is amended to read as follows:

18-14-301. Time-share ~~programs~~ plans permitted.

A time-share ~~program~~ plan may be ~~created~~ established in any ~~unit~~ accommodation, unless expressly prohibited by the project instruments.

18-14-302. Contents of instruments ~~creating~~ establishing time-share estates.

~~Project instruments and time-share instruments creating~~ A project and time-share instrument that establishes a time-share ~~estates~~ estate located or offered in this state ~~must contain the following~~ shall contain:

- (1) The name of the county in which the property is situated;
- (2) The legal description, street address, or other description sufficient to identify the property;
- (3) Identification of time periods by letter, name, number, or combination thereof;
- (4) Identification of time-share estates and, ~~where~~ when applicable, the method ~~whereby~~ by which additional time-share estates may be ~~created~~ established;
- (5) The formula, fraction, or percentage of the common expenses and any voting rights assigned to each time-share estate and, ~~where~~ when applicable, to each ~~unit~~ accommodation in a project that is not subject to the time-share ~~program~~ plan;
- (6) ~~Any restrictions~~ Restrictions on the use, occupancy, alteration, or alienation of time-share ~~intervals~~ interests;
- (7) The ownership interest, if any, in personal property and ~~provisions~~ for care and replacement;
- (8) Any other matters the developer ~~deems~~ considers appropriate;

and

(9)(A) ~~Any provisions pertaining to~~ Provisions concerning the establishment of a lien against an owner's time-share interest in favor of the association of time-share estate owners to secure payment of common expenses.

(B) This lien when provided for in the time-share instrument ~~shall be~~ is enforceable and foreclosable in the ~~same manner in which~~ way other statutory liens are enforceable and foreclosable under the laws of this state.

18-14-303. Provisions for management and operation of time-share estate ~~programs~~ plans.

The time-share instruments for a time-share estate ~~program~~ plan offered in this state shall prescribe reasonable arrangements for management and operation of the time-share ~~program~~ plan or time-share property and for the maintenance, repair, and furnishing of ~~units, which shall ordinarily include,~~ but need not be limited to, provisions for the following accommodations including:

(1) ~~Creation~~ Establishment of an association of time-share estate owners;

(2) Adoption of bylaws for organizing and operating the association;

(3) Payment of costs and expenses of operating the time-share ~~program~~ plan or time-share property and owning and maintaining the ~~units~~ accommodations;

(4) Employment and termination of employment of the managing agent for the association;

(5) Preparation and dissemination to owners of information concerning the time-share plan or property, including:

(A) ~~of an~~ An annual budget; ~~and of~~

(B) ~~operating~~ Operating statements; and

(C) ~~other~~ Other financial information ~~concerning the time-share program~~;

(6) Procedures for establishing the rights of owners for the use of accommodations by prearrangement or under a first-reserved, first-served system;

~~(6)~~(7) Adoption of standards and rules of conduct for the use and occupancy of ~~units~~ accommodations by owners;

~~(7)~~(8) Collection of assessments from owners to defray the expenses of management of the time-share ~~program plan~~ or time-share property and maintenance of the ~~units and time-share project~~ accommodation and amenities of the time-share plan or time-share property;

~~(8)~~(9) Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use of ~~units~~ the accommodations by owners, their guests, and other users;

~~(9)~~(10) Methods for providing compensating use periods or monetary compensation to an owner if ~~a unit~~ an accommodation cannot be made available for the period to which the owner is entitled by schedule or by confirmed reservation; and

~~(10)~~(11)(A) Procedures for imposing a monetary penalty or suspension of an owner's rights and privileges in the time-share ~~program plan~~ for failure of the owner to comply with ~~provisions of~~ the time-share instruments or the rules of the association ~~with respect to~~ concerning the use of the ~~units~~ accommodations and amenities.

(B) Under these procedures an owner ~~must~~ shall be given notice and the opportunity to refute or explain the charges against him or her in person or in writing to the governing body of the association before a decision to impose discipline is rendered.

(C) ~~Any~~ A monetary penalty may be secured by the lien ~~provided for~~ in § 18-14-302, ~~and~~

~~(11) Employment of attorneys, accountants, and other professional persons as necessary to assist in the management of the time-share program and the units.~~

18-14-304. Developer control period.

(a) The time-share instruments for a time-share estate ~~program plan~~ may provide for a period length of time, hereafter referred to as the "developer control period", during which the developer, or a managing agent selected by the developer, may manage the time-share ~~program plan~~ and the ~~units~~ accommodations in the time-share ~~program plan~~.

(b) If the time-share instruments for a time-share estate ~~program plan~~ provide for the establishment of a developer control period, ~~they shall~~

~~ordinarily include provisions for the following~~ the procedure shall ordinarily include:

- (1) Termination of the developer control period by action of the association or by operation of the time-share instruments;
- (2) Termination of contracts for goods and services for the time-share ~~program plan~~ or for units accommodations in the time-share ~~program plan~~ entered into during the developer control period; and
- (3) A regular accounting by the developer to the association ~~as to all~~ concerning matters that significantly affect the interests of owners in the time-share ~~program plan~~.

18-14-305. Instruments ~~creating~~ establishing time-share uses.

~~Project instruments and time-share instruments creating~~ A project instrument or time-share instrument that establishes time-share uses containing accommodations located or offered in this state ~~must contain the following~~ shall contain:

- (1) Identification by name of the time-share ~~project plan~~ and street address where the time-share ~~project plan~~ is situated;
- (2) Identification of the time periods, type of ~~units accommodations~~, and the units accommodations that are in the time-share ~~program plan~~ and the length of time that the ~~units accommodations~~ are committed to the time-share ~~program plan~~;
- (3) In case of a time-share ~~project plan~~, identification of which ~~units accommodations~~ are in the time-share ~~program plan~~ and the method ~~whereby any other units for adding, deleting, or substituting other accommodations may be added, deleted, or substituted;~~ and
- (4) Any other matters that the developer ~~deems~~ considers appropriate.

18-14-306. Provisions for management and operation of time-share use ~~programs plans~~.

The time-share instruments for a time-share use ~~program plan~~ containing accommodations offered in this state shall prescribe reasonable arrangements for the management and operation of the time-share ~~program plan~~ and for the maintenance, repair, and furnishing of ~~units which shall ordinarily include,~~ but need not be limited to, provisions for the following accommodations

including:

- (1) Standards and procedures for upkeep, repair, and interior furnishing of units accommodations and for ~~providing~~ of maid, cleaning, linen, and similar services to the units accommodations during use periods;
 - (2) Adoption of standards and rules of conduct governing the use and occupancy of units accommodations by owners;
 - (3) Payment of the costs and expenses of operating the time-share ~~program~~ plan and owning and maintaining the units accommodations;
 - (4) Selection of a managing agent;
 - (5) Preparation and dissemination to owners of an annual budget, ~~and of~~ operating statements, and other financial information concerning the time-share ~~program~~ plan or time-share property;
 - (6) Procedures for establishing the rights of owners to the use of units accommodations by prearrangement or under a first-reserved, first-served priority system;
 - (7) Organization of a management advisory board consisting of time-share use owners, including an enumeration of rights and responsibilities of the board;
 - (8) Procedures for imposing and collecting assessments or use fees from time-share use owners as necessary to defray costs of management of the time-share ~~program~~ plan and ~~in~~ providing materials and services to the units accommodations;
 - (9) Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use of units accommodations by time-share use owners, their guests, and other users;
 - (10) Methods for providing compensating use periods or monetary compensation to an owner if ~~a unit~~ an accommodation cannot be made available for the period to which the owner is entitled by schedule or by a confirmed reservation; and
 - (11)(A) Procedures for imposing a monetary penalty or suspension of an owner's rights and privileges in the time-share ~~program~~ plan for failure of the owner to comply with the ~~provisions of the~~ time-share instruments or the rules established by the developer ~~with respect to~~ concerning the use of the units accommodations.
- (B) The owner shall be given notice and the opportunity to refute or explain the charges, in person or in writing, to the management

advisory board before a decision to impose discipline is rendered; ~~and.~~

~~(12) Annual dissemination to all time share use owners by the developer, or by the managing agent, of a list of the names and mailing addresses of all current time share use owners in the time share program.~~

18-14-307. Partition of ~~units~~ accommodations.

~~No~~ An action for partition of ~~a unit~~ an accommodation ~~may~~ shall not be maintained ~~except as~~ unless permitted by the time-share instrument.

18-14-308. Records.

(a) The association or managing agent shall maintain among its records a list of the names and post office addresses of the owners of time-share interests in the time-share plan.

(b) The list shall:

(1) Be updated every six (6) months; and

(2) Not be published or provided to owners or a third person to use or sell the list for commercial purposes.

(c)(1) If an owner of a time-share interest in the time-share plan provides a written request to the association to communicate with its membership, the association shall determine within thirty (30) days of the date of the request whether the communication advances legitimate association business and if so, provide a method to grant the request without disclosing the association membership list to the requesting owner.

(2)(A) The association shall notify the requesting owner of the costs to make the communication before the communication is made to the owners.

(B) The requesting owner shall pay the costs to the association before the association makes the communication.

(3) An alternative method that accomplishes the original purpose of the request made under subdivision (c)(1) of this section is a reasonable alternative.

(4)(A) If the association determines that a communication does not advance legitimate association business, the association shall notify the requesting owner in writing within thirty (30) days of the reasons for the rejection.

(B) An owner that is denied a request for information

under subdivision (b)(4) of this section may appeal the denial to the court in whose jurisdiction the association lies.

(C) If the court determines that the communication does advance legitimate association business, the court may order the association to pay the requesting owner's costs, including attorney's fees reasonably incurred to enforce the requesting owner's rights.

18-14-309. Supervisory authority.

(a) Notwithstanding the obligations imposed on other persons by this chapter, the developer shall supervise, manage, and control the aspects of the offering of a time-share plan, including the promotion, advertising, contracting, and closing.

(b) A violation of this section during the offering is a violation by the developer and the person that committed the violation.

18-14-310. Out-of-state time-share plan.

(a) A single site time-share plan and component sites of a multisite time-share plan that are located outside the state are to be established and governed by the applicable laws of the state in which the time-share property or component site is located.

(b) If there is a conflict between the affirmative standards stated in the laws of the state or jurisdiction that governs an out of state time-share plan and this subchapter, the law of the state or jurisdiction in which the time-share property is located controls.

(c) If the association and the time-share instruments provide for the matters contained in §§ 18-14-302 – 18-14-306, as applicable, the developer or association is considered to be in compliance with these sections and is not required to revise the time-share instruments to comply with this subchapter.

SECTION 4. Arkansas Code Title 18, Chapter 14, Subchapter 4 is amended to read as follows:

18-14-401. Penalties.

(a) Any A developer or any other person subject to this chapter ~~who~~ that offers or disposes of a time-share ~~interval~~ interest without ~~having~~ complied complying with this chapter or ~~who~~ that violates ~~any provision of~~

this chapter ~~shall be~~ is guilty of a misdemeanor punishable by a fine not ~~exceeding to exceed~~ five thousand dollars (\$5,000) per occurrence or by imprisonment ~~in the state prison or in the county jail not exceeding~~ not to exceed one (1) year, or by both ~~fine and imprisonment~~.

18-14-402. Civil remedies.

(a)(1) If a developer or any other person subject to this chapter violates ~~any provision thereof or any provision of the project instruments,~~ any this chapter or a project instrument, a person or class of persons adversely affected by the violation ~~or violations~~ has a claim for appropriate relief.

(2) Punitive damages or attorney's fees, or both, may be awarded for willful violation of this chapter.

(b) ~~The provisions of Arkansas Code § 17-42-401 et seq. pertaining to the Real Estate Recovery Fund shall~~ does not apply to any claims arising from or damages caused by a violation ~~or violations~~ of this chapter, ~~or of the~~ Real Estate License Law, § 17-42-101 et seq., or ~~regulations~~ rules by ~~any a~~ licensee while engaged in ~~any a time-share activities~~ activity.

18-14-403. Statute of limitations.

(a) A judicial proceeding in which the accuracy of the public offering statement or validity of ~~any a~~ contract of purchase is in issue and a rescission of the contract or damages is sought ~~must~~ shall be commenced ~~with~~ not later than four (4) years after the date of the contract of purchase, notwithstanding that the purchaser's terms of payment may extend beyond the period of limitation.

(b) ~~However, with respect to~~ If the enforcement of provisions in the contract of purchase ~~which require~~ requires the continued furnishing of services and the reciprocal payments to be made by the purchaser, the period of bringing a judicial proceeding will continue for a period of four (4) years for each breach, but the parties may agree to reduce the period of limitation to not less than two (2) years.

18-14-404. Required contents of public offering statements for time-share ~~intervals~~ interests.

(a) A public offering statement ~~must~~ shall be provided to each

purchaser of a time-share ~~interval interest~~ and may be delivered by hard copy or electronically, including a CD, DVD, thumb drive, or other electronic media agreeable to the purchaser. The public offering statement shall ~~must~~ contain or fully and accurately disclose:

(1) The name of the developer, its and the principal address, ~~of the developer~~ and the time-share ~~intervals~~ plan offered in the statement;

(2) A general description of the ~~units~~ accommodations, including, without limitation, the developer's schedule of commencement and completion of all buildings, ~~units~~ accommodations, and amenities or, if completed, that ~~they~~ the buildings, accommodations, and amenities have been completed;

(3) As to ~~all units~~ the accommodations offered by the developer in the ~~same time-share project~~ time-share plan:

(A) The types and number of ~~units~~ accommodations by location, if applicable;

(B) Identification of ~~units~~ accommodations that are subject to time-share ~~intervals~~ interests; and

(C) The estimated number of ~~units~~ accommodations that may become subject to time-share ~~intervals~~ interests;

(4) A brief description of the ~~project~~ time-share plan;

(5)(A) If applicable, ~~any~~ the current budget and a projected budget for the time-share ~~intervals~~ interests for one (1) year after the date of the first transfer to a purchaser.

(B) The budget ~~must~~ shall include, without limitation:

~~(A)(i)~~ A statement of the amount included in the budget as a reserve for repairs and replacement;

~~(B)(ii)~~ The projected common expense liability, if any, by category or expenditures for the time-share ~~intervals~~ interests;

~~(C)(iii)~~ The total annual projected common expense liability for all time-share ~~intervals~~ interests in the time-share plan; and

~~(D)(iv)~~ A statement of any services not ~~reflected~~ shown in the budget that the developer provides or expenses that it pays;

(6) Any initial or special fee due from the purchaser at closing, ~~together~~ with a description of the purpose and method of calculating the fee;

(7) A description of any liens, defects, or encumbrances on, or

affecting, the title to any of the time-share intervals interests;

(8) A description of any financing offered by the developer;

(9) A statement that, within five (5) days after execution of a contract of purchase, a purchaser may cancel any contract for purchase of a time-share ~~intervals interests~~ from a the developer;

(10) A statement of any pending suits material to the time-share ~~intervals interests~~ of which a the developer has actual knowledge;

(11) Any restraints on alienation of any number or ~~portion~~ part of any of the time-share intervals interests;

(12) A description of the insurance coverage ~~which shall be provided that is~~ for the benefit of the owners of time-share intervals interests owners;

(13) Any current or expected fees or charges to be paid by time-share ~~interval interest~~ owners for the use of any facilities related to any of the time-share property;

(14) The extent to which financial arrangements have been provided for completion of ~~all the~~ promised improvements; and

(15) The extent to which a time-share ~~unit~~ accommodation may become subject to a tax or other lien arising out of claims against other owners of the ~~same unit accommodation~~.

(b)(1) If a purchaser is offered the opportunity to subscribe to any program that provides exchanges of time-shares among purchasers in either the same time-sharing ~~project plan~~ or other time-sharing ~~projects plans~~, or both, the developer shall deliver to the purchaser, ~~prior to~~ before the execution of ~~any a~~ contract between the purchaser and the company offering the exchange program, written information ~~regarding such~~ concerning the exchange program, which information may be delivered by hard copy or electronically.

(2) The purchaser shall certify in writing to the receipt of ~~the written the~~ information, ~~which information shall include, but is not limited to, the following~~ that includes:

~~(1)(A)~~ (A) The name and address of the exchange program;

~~(2)(B)~~ (B) The names of ~~all the~~ officers and directors;

~~(3)(C)~~ (C) Whether the exchange program, or any of its

officers or directors, has ~~any a~~ legal or beneficial interest in any developer or managing agent for ~~any time-sharing~~ a time share plan participating in the exchange program and, if so, the name and location of

the ~~time-sharing~~ time-share plan and the nature of the interest;

~~(4)~~(D) Unless otherwise stated, a statement that the purchaser's contract with the exchange program is a contract separate and distinct from the purchaser's contract with the developer;

~~(5)~~(E) Whether the purchaser's participation in the exchange program is dependent upon the continued affiliation of the ~~time-sharing~~ time share project with the exchange program;

~~(6)~~(F) Whether the purchaser's membership or participation, or both, in the exchange program is voluntary or mandatory;

~~(7)~~(G) A complete and accurate description of the terms and conditions of the purchaser's contractual relationship with the exchange program and the procedure by which changes ~~thereto~~ may be made;

~~(8)~~(H) A complete and accurate description of the procedure to qualify for and ~~effectuate~~ carry out exchanges;

~~(9)~~(I) A complete and accurate description of ~~all the~~ limitations, restrictions, or priorities employed used in the operation of the exchange program, ~~including, but not limited to,~~ limitations on exchanges based on seasonality, ~~unit~~ accommodation size, or levels of occupancy, that are expressed in bold-faced type and, in the event that such if limitations, restrictions, or priorities are not uniformly applied by the exchange program, a clear description of the ~~manner~~ way in which they are applied;

~~(10)~~(J) Whether exchanges are arranged on a space-available basis and whether any guarantees of fulfillment of specific requests for exchanges are made by the exchange program;

~~(11)~~(K) Whether and under what circumstances, a purchaser, in dealing with the exchange program, may lose the use and occupancy of his or her time-share in any ~~properly applied for~~ exchange properly applied for without his or her being provided with substitute accommodations by the exchange program;

~~(12)~~(L) The fees or range of fees for participation by purchasers in the exchange program, a statement whether ~~any~~ such fees may be altered by the exchange company, and the circumstances under which alterations may be made;

~~(13)~~(M) The name and address of the site of each accommodation or facility included in the ~~time-sharing projects~~ time-share properties ~~which that~~ are participating in the exchange program as of the

last annual review or audit;

~~(14)~~(N) The number of time-share ~~units~~ accommodations in each ~~time-sharing~~ time-share ~~project which~~ property that are available for occupancy, ~~pursuant to~~ under the last annual review or audit, and ~~which~~ qualify that qualify for participation in the exchange program, expressed ~~within the following~~ in numerical groupings: 1-5, 6-10, 11-20, 21-50, and 51 and over;

~~(15)~~(O) The number of purchasers enrolled for each ~~time-sharing project~~ time-share plan participating in the exchange program, ~~pursuant to~~ under the last annual review or audit, expressed ~~within the following~~ in numerical groupings: 1-100, 101-249, 250-499, 500-999, and 1,000 and over, and a statement of the criteria used to determine those purchasers ~~who~~ that are ~~currently~~ enrolled with the exchange program;

~~(16)~~(P) The disposition made by the exchange company of time-shares deposited with the exchange program by purchasers enrolled in the exchange program and not used by the exchange company in ~~effecting~~ making changes;

~~(17)~~(Q) The ~~following~~ information required in this subdivision, ~~which~~ shall be independently reviewed or audited by a certified public accountant or accounting firm ~~in accordance with~~ according to the standards of the Financial Accounting Standards Board of the American Institute of Certified Public Accountants and annually reported ~~on an annual basis~~:

~~(A)~~(i) The number of purchasers currently enrolled in the exchange program;

~~(B)~~(ii) The number of accommodations and facilities that have current written affiliation agreements with the exchange program;

~~(C)~~(iii) The percentage of confirmed exchanges, ~~which shall be~~ that are the number of exchanges confirmed by the exchange program divided by the number of exchanges properly applied for, together with a complete and accurate statement of the criteria used to determine whether an exchange request was properly applied for;

~~(D)~~(iv) The number of time-share periods for which the exchange program has an outstanding obligation to provide an exchange to a purchaser who relinquished a time-share during the year in exchange for a time-share in any future year;

~~(E)(v)~~ The number of exchanges confirmed by the exchange program during the year; and

~~(18)(R)(i)~~ A statement in ~~bold faced~~ boldface type to the effect that the percentage described in subdivision ~~(b)(17)(G)~~ (b)(2)(Q)(iii) of this section is a summary of the exchange requests entered with the exchange program in the period reported.

~~(ii) and that the~~ The percentage does not indicate a purchaser's probabilities of being confirmed to ~~any~~ a specific choice or range of choices, since availability at individual locations may vary.

(c) Each exchange company offering an exchange program to purchasers in this state ~~must~~ shall include the statement ~~set forth~~ in subdivision ~~(b)(18)~~ (b)(2)(R) of this section on all promotional brochures, pamphlets, advertisements, or other materials ~~disseminated~~ distributed by the exchange company ~~which also contain~~ that contains the percentage ~~of confirmed exchanges described~~ in subdivision ~~(b)(17)(G)~~ (b)(2)(Q)(iii) of this section.

~~(d)(1)~~ A developer may satisfy the requirements of this section by delivery to purchasers of materials furnished to the developer by the exchange program, ~~provided if~~ if the exchange program has certified to the developer that the materials satisfy the requirements of this section.

~~(2)~~ A developer ~~shall have~~ has no liability to ~~any~~ a person if the materials furnished by the exchange program fail to comply with this section.

18-14-405. Material changes.

(a) The developer shall amend or supplement the public offering statement to report any material change in the information required by § 18-14-404.

~~(b) As to any exchange program, the~~ The developer shall use the ~~current~~ written materials that are supplied to it by an exchange program for distribution to the time-share ~~interval~~ interest owners as ~~it is the~~ materials are received.

18-14-406. Other statutes not applicable.

~~(a) Any~~ a time-share ~~program plan~~ plan in which a public offering statement ~~has been~~ is prepared ~~pursuant to~~ under this chapter does not require registration under any of the following:

(1) Arkansas Securities Act, § 23-42-101 et seq.; or

(2) Any other Arkansas statute ~~which~~ that requires the preparation of a public offering statement or substantially similar document for distribution to purchasers.

(b)(1) ~~Any~~ A time-share ~~program plan~~ plan that fails to restrict the price at which an owner may sell or exchange his or her time-share ~~interval shall not by virtue of such~~ interest does not by that failure cause the time-share ~~interval~~ interest to become a security under the Arkansas Securities Act.

(2) An exchange agent offering ~~such~~ a time-share ~~interval~~ interest for exchange ~~shall not be construed~~ is not considered to be offering a security under ~~such act~~ the Arkansas Securities Act, § 23-42-101 et seq.

18-14-407. Escrow accounts ~~or - other~~ Other financial assurances.

(a) Any deposit made ~~in connection~~ with the purchase or reservation of a time-share ~~interval~~ interest from a developer ~~must~~ shall be placed in a noninterest-bearing escrow account and held in this state, or other jurisdiction that is acceptable to the Arkansas Real Estate Commission, in ~~an~~ a designated account ~~designated solely for the purpose~~, by an independent bonded escrow company, or in an institution whose accounts are insured by a governmental agency or instrumentality until:

(1) Delivered to the developer at the ~~expiration~~ end of the time for rescission or ~~any~~ a later time specified in ~~any~~ a contract or sale;

(2) Delivered to the developer because of the purchaser's default under a contract to purchase the time-share ~~interval~~ interest; or

(3) Refunded to the purchaser.

(b)(1) In lieu of any escrows required by this section, the ~~agency shall have~~ commission has the discretion to accept other financial assurances, including, ~~but not limited to~~, a surety bond, ~~an irrevocable letter of credit~~, or a cash deposit in an amount equal to the escrow requirements of this section.

(2) Interest earned on ~~any such bond~~ a surety bond or other deposit while deposited with, or for the benefit of, the ~~agency shall become~~ commission becomes the property of the ~~agency~~ commission and ~~shall be~~ is deposited ~~in~~ into the Real Estate Recovery Fund ~~created~~ in § 17-42-403.

18-14-408. Guarantees for completion of time-share ~~projects~~ properties.

(a) If a developer contracts to sell a time-share ~~interval interest~~ interval interest and the construction, furnishings, and landscaping of the time-share ~~project~~ project ~~have property have~~ not been substantially completed ~~in accordance with~~ according to the representations made by the developer in the disclosures ~~required by~~ under this chapter, the developer shall:

(1)(A) Pay into an escrow account established and held in this state, in an account designated solely for the purpose, by an independent bonded escrow company, or in an institution whose accounts are insured by a governmental agency or instrumentality, ~~all payments~~ a payment received by the developer from the purchaser towards the sale price until the ~~project~~ time-share property is substantially complete.

(B) The escrow agent may invest the escrow funds in securities for the United States, ~~or~~ any agency thereof, or in savings or time deposits in institutions insured by an agency of the United States.

(C) Funds ~~shall be~~ are released from escrow as follows:

~~(A)(i)~~ (i) If a purchaser properly terminates the contract ~~pursuant to~~ under its terms or ~~pursuant to~~ this chapter, the funds shall be paid to the purchaser, together with any interest earned;

~~(B)(ii)~~ (ii) If the purchaser defaults in the performance of his or her obligations under the contract of purchase and sale, the funds shall be paid to the developer, together with any interest earned; or

~~(C)(iii)~~ (iii) If the funds of a purchaser have not been previously disbursed ~~in accordance with the provisions of this subsection~~ under subdivision (a)(1) of this section, they may be disbursed to the developer by the escrow agent upon substantial completion of the time-share ~~project~~ property;

(2) The developer ~~shall not be~~ is not required to comply with subdivision (a)(1) of this section ~~when~~ if the agency commission ~~has been furnished and~~ is satisfied that all of the following ~~provisions have been~~ conditions are met:

(A) ~~That the~~ The developer is an Arkansas corporation or a foreign corporation qualified to do business in Arkansas;

(B) ~~That the~~ The corporation has been in existence and operated in this state for ~~not less than~~ at least three (3) years ~~within the State of Arkansas~~;

(C) ~~That the~~ The corporation has net assets within this

state ~~of an amount not less than~~ of at least three (3) times the cost to complete the time-share ~~project property~~; and

(D) ~~The agency shall have commission the discretion to may~~ require ~~such~~ other assurances as may reasonably be required either to assure completion of the time-share ~~project property~~ or to reimburse the purchaser ~~all the~~ funds paid to the developer, together with any interest earned; and

(3)(A) In lieu of ~~any escrows~~ the escrow required by subdivision (a)(1) of this section, the ~~agency shall have commission the discretion to may~~ accept other financial assurances, including, ~~but not limited to,~~ a performance bond ~~or an irrevocable letter of credit in an amount~~ equal to the cost to ~~complete~~ finish the time-share ~~project property~~.

(B) Interest earned on ~~any such~~ the performance bond under subdivision (a)(3)(A) of this section ~~bond, letter of credit, deposit, or~~ other instrument while deposited with, or for the benefit of, the ~~agency commission~~ shall become the separate property of the ~~agency commission~~ and ~~shall be deposited in~~ into the Real Estate Recovery Fund ~~created in~~ under § 17-42-403.

(b) For the purpose of this section, "substantially completed" means that ~~all the~~ amenities, furnishings, appliances, and structural components and mechanical systems of buildings on ~~all the~~ real property dedicated to the ~~project time-share plan~~ and subject to the project instruments are completed and provided as represented in the public offering statement, that the premises are ready for occupancy, and that the proper governmental authority has ~~caused to be~~ issued a certificate of occupancy or its equivalent.

18-14-409. Mutual rights of cancellation.

(a)(1) Before transfer of a time-share ~~interval interest~~, and no later than the date of ~~any~~ the sales contract, the developer shall provide the intended ~~transferee purchaser~~ with a copy of the public offering statement and any amendments and supplements ~~thereto~~ to the statement.

(2) The contract is voidable by the purchaser until he or she has received the public offering statement.

(3) ~~In addition, the~~ The contract is voidable by the purchaser for five (5) days after execution of the contract of sale.

(4) Cancellation is without penalty, and all payments made by the purchaser before cancellation ~~must~~ shall be refunded within a reasonable

time after receipt of the notice of cancellation ~~as provided in~~ under subsection (c) of this section.

(b) Up to five (5) days after execution of the contract of sale, the developer may cancel the contract of purchase without penalty to either party. ~~The developer and~~ shall return all payments made within a reasonable time and ~~the purchaser shall return all materials received in good condition, reasonable wear and tear excepted. If the materials are not returned, the developer may deduct the cost of them and return the balance to the purchaser.~~

(c) If either party elects to cancel a contract ~~pursuant to~~ under ~~subsections~~ subsection (a) or (b) of this section, he or she may do so by hand-delivering the notice ~~thereof~~ to the other party or by mailing the notice ~~thereof~~ by ~~prepaid United States~~ regular mail to the other party or to his or her agent for service of process, which notice ~~shall be deemed~~ is considered given when deposited in the ~~United States~~ mail.

18-14-410. Liens.

(a)(1) ~~Prior to the~~ Before a transfer of a time-share ~~interval interest~~, the developer shall record, or furnish to the purchaser, releases of all liens affecting that time-share ~~interval interest~~ or shall provide a surety bond or other insurance against the lien from a company acceptable to the agency Arkansas Real Estate Commission ~~as provided for liens on real estate in this state; or~~

(2) ~~such~~ An underlying lien ~~document~~ shall contain a provision ~~wherein in which~~ the lienholder subordinates its rights to that of a time-share purchaser who fully complies with ~~all of the provisions and terms of~~ the contract of sale.

(b)(1) ~~Unless a time share interval owner or his or her predecessor in title agrees otherwise with the lienor, if~~ If a lien other than a mortgage or deed of trust becomes effective against more than one (1) time-share ~~interval interest~~ in a time-share ~~project property~~, ~~any a~~ a time-share ~~interval interest~~ owner ~~is entitled to~~ may get a release of his or her time-share ~~interval interest~~ from the lien upon payment of the amount of the lien attributable to his or her time-share ~~interval interest unless a time-share interest owner or his or her predecessor in title agrees otherwise with the lienor.~~

(2) ~~The amount of the payment must~~ shall be proportionate to the

ratio that the time-share ~~interval~~ interest owner's liability bears to the liabilities of all time-share ~~interval~~ interest owners whose interests are subject to the lien.

(3) Upon receipt of payment, the lienholder shall promptly deliver to the time-share ~~interval~~ interest owner a release of the lien covering that time-share ~~interval~~ interest.

(4) After payment, the managing entity ~~may not~~ shall not assess or have a lien against that time-share ~~interval~~ interest for any ~~portion~~ part of the expenses incurred ~~in connection~~ with that lien.

18-14-411. Financial records -- Examination.

(a) The person or entity responsible for making or collecting common expense assessments or maintenance assessments shall keep detailed financial records.

(b) All financial and other records shall be made reasonably available for examination by any time-share ~~interval~~ interest owner and his or her authorized agents.

SECTION 5. Arkansas Code Title 18, Chapter 14, Subchapter 5 is amended to read as follows:

18-14-501. Filing of advertising materials.

(a) All advertising materials proposed for use or used in this state by ~~any a~~ a person ~~in connection~~ with the offer or sale of ~~time-shares shall be filed with the agency within ten (10) days of their use~~ a time-share property are subject to the review of the Arkansas Real Estate Commission upon its request.

~~(b) Each separate filing of advertising materials shall be accompanied by a filing fee of ten dollars (\$10.00).~~

~~(c)~~(b) Advertising materials ~~include, but are not limited to, the following~~ include:

(1) Promotional brochures, pamphlets, advertisements, or other materials to be ~~disseminated~~ distributed to the public ~~in connection with~~ concerning the sale of time-shares;

(2) Transcripts of all radio and television advertisements;

(3) Offers of travel, accommodations, meals, or entertainment at no cost or reduced cost;

- (4) Direct mail solicitation;
- (5) Advertising, including testimonials or endorsements; ~~and~~
- (6) Scripts or standardized narrative for use in making telephone solicitations~~;~~ and
- (7) Websites or other electronic media.

18-14-502. False advertising declared unlawful.

(a) It ~~shall be~~ is unlawful for ~~any a~~ a person with intent, directly or indirectly, to offer for sale or sell time-shares in this state or to authorize, use, direct, or aid in the publication, distribution, or circulation of ~~any an~~ an advertisement, radio broadcast, ~~or~~ telecast, or other electronic media concerning the time-share ~~project plan~~ plan in which the ~~time-shares~~ time-share properties are offered ~~which contains any that contains a~~ statement, pictorial representation, or sketch ~~which that~~ that is false or misleading.

(b) ~~Nothing in this~~ This section ~~shall not be construed to~~ does not hold the publisher or employee of ~~any a~~ a newspaper, ~~any a~~ a job printer, ~~any a~~ a broadcaster or telecaster, or ~~any a~~ a magazine publisher, or ~~any of the employees~~ an employee thereof, liable for ~~any the~~ the publication ~~herein~~ referred to in this section unless the publisher, employee, or printer has actual knowledge of ~~the falsity thereof~~ its falsity or has an interest ~~either~~ as an owner or agent in the time-share ~~project so~~ plan advertised.

18-14-503. Prohibited advertising.

~~No advertising~~ An advertisement for the offer or sale of time-shares shall not:

(1) Contain ~~any a~~ a representation ~~as to~~ concerning the availability of a resale program or rental program offered by~~,~~ or on behalf of~~,~~ the developer or its affiliate~~,~~ unless the resale program or rental program has been made a part of the offering and submitted to the ~~agency~~ Arkansas Real Estate Commission;

(2) Contain an offer or inducement to purchase ~~which purports to be limited as to~~ that limits the quantity or ~~restricted as to~~ time of availability, unless the numerical quantity or time applicable to the offer or inducement is clearly and conspicuously disclosed;

(3) Contain a statement concerning the investment merit or

profit potential of the time-share, unless the ~~agency~~ commission has determined ~~from evidence submitted on behalf of the developer~~ that the representation is neither false nor misleading;

(4) Make a prediction of or imply specific or immediate increases in the price or value of the ~~time-shares~~ time-share property, nor shall a price increase of a time-share property be promoted unless the developer has authorized and announced the price increase ~~announced more than sixty (60) days prior to the date that the increase will be placed into effect~~;

(5) Contain statements concerning the availability of ~~time-shares~~ time-share interests at a particular minimum price if the number of ~~time-shares~~ time-share interests available at that price comprises less than ten percent (10%) of the unsold inventory of the developer, unless the number of ~~time-shares~~ time-share interests then for sale at the minimum price is ~~set forth~~ stated in the advertisement;

(6) Contain ~~any~~ a statement that the time-share interest being offered for sale can be further divided, unless a full disclosure is included ~~as to~~ concerning the legal requirements for further division of the time-share interest;

(7) Contain ~~any~~ an asterisk or other reference symbol as a means of contradicting or changing the ordinary meaning of ~~any~~ a previously made statement in the advertisement;

(8) Misrepresent the size, nature, extent, qualities, or characteristics of the accommodations or facilities ~~which~~ that comprise the time-share ~~project~~ plan;

(9) Misrepresent the nature or extent of ~~any services~~ a service incident to the time-share project;

(10) Misrepresent or imply that a facility or service is available for the exclusive use of purchasers or owners if a public right of access or of use of the facility or service exists;

(11) Make ~~any~~ a misleading or deceptive representation ~~with respect to~~ concerning the contents of the time-share permit, the purchase contract, the purchaser's rights, privileges, benefits, or obligations under the purchase contract or this chapter;

(12) Misrepresent the conditions under which a purchaser or owner may participate in an exchange program; or

(13) Describe ~~any a~~ a proposed or ~~uncompleted unfinished~~ private ~~facilities~~ facility over which the developer has no control, unless the estimated date of completion is ~~set forth~~ stated and evidence has been presented to the ~~agency~~ commission that the completion and operation of the facilities are reasonably assured within the time represented in the advertisement.

18-14-504. Unfair acts or practices.

(a) It is unlawful for ~~any a~~ a person to offer, by mail, ~~by~~ telephone, electronic media, or in person, a prize or gift, with the intent to offer a sales presentation for a time-share ~~project~~ plan, without also disclosing in a clear and unequivocal way that there will be a sales presentation at the time of when making the offer of the prize or gift, ~~in a clear and unequivocal manner, the intent to offer the sales presentation.~~

(b) The following unfair acts or practices undertaken by, or omissions of, ~~any a~~ a person in the operation of ~~any a~~ a prize or gift promotional offer for a time-share ~~project~~ plan are prohibited:

(1) Failing to clearly and conspicuously ~~to~~ disclose the rules, ~~regulations~~, terms, and conditions of the promotional program, a description of the prizes offered, if any, and the date ~~on or before which~~ that the prize or gift offer will terminate or expire;

(2)(A) Failing to disclose the retail value of the gift or prize and the odds of winning.

(B) The person making the offer ~~must~~ shall maintain a sufficient inventory of the gift or prize ~~so as~~ to be able to equal the reasonable response to the offer;

(3) Failing to obtain the express written or oral consent of individuals before their names are used for a promotional purpose ~~in connection~~ with a mailing to a third person;

(4)(A) Failing to award and distribute at least one (1) of each prize or gift of the value and type represented in the promotional program by the day and year specified in the promotion.

(B) ~~When~~ If a promotion promises the award of a prescribed number of each prize, this number of prizes shall be awarded by the date and year specified in the promotion; or

(5) Misrepresenting in ~~any manner~~ any way the odds of receiving

~~any~~ a prize or gifts or the rules, terms, or conditions of participation in the promotional program.

18-14-505. Enforcement.

~~Whenever the agency~~ If the Arkansas Real Estate Commission determines ~~from evidence available to it~~ that a person is violating or failing to comply with the requirements of this subchapter, the ~~agency~~ commission may order the person to cease and desist and refrain from ~~such~~ the violations and may take enforcement action under ~~the provisions of~~ § 18-14-201 et seq.

SECTION 6. Arkansas Code Title 18, Chapter 14, Subchapter 6 is amended to read as follows:

18-14-601. Financing of time-share ~~programs~~ plans.

(a) In the financing of a time-share ~~program~~ plan, the developer and its successors in interest shall retain financial records of the schedule of payments required to be made and the payments made to ~~any~~ a person or entity ~~which~~ that is the lienholder of ~~any~~ an underlying blanket mortgage, deed of trust, contract of sale, or other lien or encumbrance.

(b) Any transfer of the developer's interest in the time-share ~~program~~ plan to ~~any~~ a third person ~~shall be~~ is subject to the obligations of the developer to the extent the obligations were originally established in written documents recorded in the real estate records and not existing solely from the offering of materials or filings with a governmental authority.

18-14-602. Protection of purchasers from subsequent underlying lien.

The developer whose project is subjected to an underlying blanket lien or encumbrance subsequent to the transfer of a time-share ~~interval~~ interest shall protect ~~non-defaulting~~ nondefaulting purchasers from foreclosure by:

(1) ~~the lien holder by obtaining~~ Obtaining from the lien holder a ~~non-disturbance~~ nondisturbance clause, subordination agreement, or partial release of the lien ~~as to~~ for those time-share ~~intervals~~ interests sold; or

(2) ~~shall provide~~ Providing a surety bond or insurance against the lien from a company acceptable to the ~~agency~~ Arkansas Real Estate Commission.

SECTION 7. Arkansas Code Title 18, Chapter 14, Subchapter 7 is amended

to read as follows:

18-14-701. Definition.

As used in this subchapter, "time-share ~~program plan~~ plan" shall have the same meaning as ~~provided~~ used in § 18-14-102.

18-14-702. Camping site – Buyer’s right to cancel.

(a) In addition to any other right to revoke an offer, the buyer has the absolute right to cancel a contract or offer for the purchase of a camping site under a time-share ~~program plan~~ plan until midnight of the fifth calendar day, ~~excluding Sundays and holidays as declared in § 1-5-101,~~ after the day ~~on which~~ that the buyer signs an agreement, ~~excluding Sundays and the holidays under § 1-5-101.~~

(b) Cancellation occurs ~~when~~ if the buyer returns to the seller the notice of cancellation, ~~the notice having been provided for the buyer by the seller.~~

(c) ~~To further protect the consumer, it is suggested that the~~ The notice of cancellation may be sent by registered mail.

18-14-703. Seller to provide notice of cancellation -- Form.

(a) The seller of a camping site under a time-share ~~program must~~ plan shall furnish to the buyer at the time the buyer signs the sales contract or otherwise agrees to buy the ~~campsite~~ camping site a complete form in duplicate captioned "NOTICE OF CANCELLATION", which ~~shall be~~ is attached to the contract or receipt, ~~and is~~ is easily detachable, ~~and which shall contain~~ contains in 10-point bold-face type, the following information and statements:

NOTICE OF CANCELLATION _____

Enter date of transaction

You are entitled to cancel the agreement or offer ~~referred to above~~ at any time ~~prior to~~ before midnight of the fifth day, excluding Sundays and holidays, after the day you signed the agreement or offer. ~~In the event~~ If you cancel, the seller must return to you (1) any payments made; (2) any goods or other property (or a sum equal to the amount of the trade-in allowance given therefore); and (3) any note or other evidence of indebtedness, given by you to the seller ~~pursuant to or in connection~~ under or with the agreement or offer.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE TO _____

(Name of seller)

AT _____

(Address of seller's place of business)

NOT LATER THAN MIDNIGHT OF _____

(Date)

I HEREBY CANCEL THIS TRANSACTION _____

(Date)

(Buyer's signature)."

(b) If seller fails to give both oral and written notice of the buyer's right to cancellation, the cooling-off period does not begin to run until actual notice is given.

/s/D. Johnson