

State of Arkansas
93rd General Assembly
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A Bill

HOUSE BILL 1834

By: Representative Penzo
By: Senator J. Dismang

For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS TIME-SHARE ACT; AND FOR
OTHER PURPOSES.

Subtitle

TO AMEND THE ARKANSAS TIME-SHARE ACT.

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

SECTION 1. Arkansas Code § 18-14-102, concerning the definitions of terms used in the Arkansas Time-Share Act, is amended to add additional subdivisions to read as follows:

(23) "Consumer time-share reseller" means a purchaser who acquires a time-share interest for his or her own use and occupancy and later:

(A) Offers the time-share interest, or occupancy rights associated with the time-share interest, for resale or rental; or

(B) Engages a time-share interest transfer services provider to provide time-share interest transfer services;

(24) "Resale transfer agreement" means a contract or other agreement:

(A) Between a time-share interest transfer services provider and a consumer time-share reseller; and

(B) In which a time-share interest transfer services provider agrees to provide time-share interest transfer services;

(25) "Time-share interest transfer services" means any direct contact initiated with an Arkansas resident through telemarketing, mail,



email, or any other means of communication relating to services to:

(A) Transfer ownership of a consumer time-share reseller's time-share interest;

(B) Assist or make a promise to assist with the transfer of ownership of a consumer time-share reseller's time-share interest; or

(C) Assist or make a promise to assist an owner of a time-share interest with a relinquishment or other voluntary disposition of the consumer time-share interest, which assistance:

(i) Has been or may be referred to as:

(a) "Time-share exit";

(b) "Time-share cancellation";

(c) "Time-share liquidation";

(d) "Time-share relief";

(e) "Cancellation of a time-share loan obligation"; or

(f) Any other similar references; and

(ii) Includes a reconveyance or other voluntary transfer to a developer or managing entity in lieu of any unpaid purchase money obligation or delinquent time-share plan assessment obligation; and

(26)(A) "Time-share interest transfer services provider" means a person:

(i) That offers to provide, or arranges for others to provide, time-share interest transfer services; or

(ii) Providing time-share interest transfer services from a location in this state whether on a temporary or ongoing basis and who is subject to the Real Estate License Law, § 17-42-101 et seq.

(B) "Time-share interest transfer services provider" does not include:

(i) An attorney who is licensed to practice in the State of Arkansas;

(ii) A licensed title insurer agent in good standing with the State Insurance Department;

(iii) A developer or managing entity, or an agent or contractor of a developer or managing entity, to the extent that the developer or managing entity, or an agent or contractor of a developer or managing entity offers time-share interest transfer services to purchasers of

time-share interests in his or her own time-share plans; or

(iv) A mortgagee or servicer or lienholder, or agent or contractor of a mortgagee or servicer or lienholder, to the extent that the mortgagee or servicer or lienholder, or agent or contractor of a mortgagee or servicer or lienholder offers time-share interest transfer services to a borrower or debtor related to a mortgage, lien, or encumbrance against the purchaser's time-share interest.

(C) A time-share interest transfer services provider does not qualify for exemptions to licensure listed in § 17-42-104.

SECTION 2. Arkansas Code § 18-14-202, concerning the registering of a time-share plan with the Arkansas Real Estate Commission, is amended to add additional subsections to read as follows:

(j)(1) A time-share interest transfer services provider shall:

(A) Register with the commission on forms prescribed by the commission;

(B) Furnish to the commission:

(i) The time-share interest transfer services provider's principal office address and telephone number;

(ii) The name of the time-share interest transfer services provider's designated responsible managing employee;

(iii) Any special escrow accounts set up for the deposit and collection of funds received from a consumer time-share reseller;

(iv)(a) Unless the time-share interest transfer services provider is a broker with a permanent office in the state, the dates when and locations where the time-share interest transfer services provider plans to meet with a consumer time-share reseller and the names of all the representatives of the time-share interest transfer services provider who will be at the meeting.

(b) The information required under subdivision (j)(1)(B)(iv)(a) of this section shall be provided no later than fifteen (15) days before the date of the meeting; and

(v)(a) Any additional information the commission requires, including without limitation evidence of a:

(1) Bond in an amount determined by the commission not to exceed twenty-five thousand dollars (\$25,000) has been

placed with a surety company;

(2) Corporate bond acceptable to the commission; or

(3) Cash bond with the commission to cover any misappropriations of funds of the time-share interest transfer services provider and any of the time-share interest transfer service provider's employees or associates.

(b) A broker that provides time-share interest transfer services may provide proof of errors and omissions insurance in lieu of a bond.

(c) This subsection shall not apply to a broker that maintained a place of business inside the state under § 17-42-309 before the enactment of this subsection; and

(C) Pay a filing fee not to exceed one hundred fifty dollars (\$150) to register as required by subdivision (j)(2) of this section and for each annual renewal of the registration.

(2)(A) It is unlawful to perform the activities of a time-share interest transfer services provider individually or as an officer, agent, employee, or member of a firm, corporation, partnership, copartnership, association, limited liability company, or other entity without registering with the commission under this subsection.

(B) A commissioner of the commission, the Executive Director of the Arkansas Real Estate Commission, a commissioner's designee, the executive director's designee, or any licensee residing in the county where the violation occurred may by affidavit institute criminal proceedings for a violation of this subsection without filing a bond for costs.

(C) The prosecuting attorney for each county shall prosecute any violation of this subsection that occurs in his or her county.

(D) A time-share interest transfer services provider, an agent, or a third party services provider for the time-share interest transfer services provider that violates this subsection is guilty of a Class D felony.

(E) This subsection does not apply to the transfer of ownership of a time-share interest from a consumer time-share reseller to:

(i) The developer or managing agent of that time-share plan without the assistance of a time-share interest services provider;

or

(ii) A consumer time-share reseller who acquires a time-share interest or time-share interests for his or her own use and occupancy and who later offers the time-share interest or time-share interests for rent or offers for resale in a given calendar year seven (7) or fewer of the time-share interests that he or she acquired for his or her own use and occupancy.

(F) Only an attorney who is licensed to practice in the State of Arkansas may offer services to a consumer time-share reseller in connection with an involuntary transfer, or proposed involuntary transfer, of a consumer time-share reseller's time-share interest.

(G) The commission, upon learning that an unregistered person or entity has arranged to provide time-share interest transfer services at a location in the state, shall attempt to notify any person that is providing a physical location for the activity that the planned activity may be unlawful and that law enforcement or regulatory officials may appear on-site before or during the event.

(k)(1) A violation of this section shall constitute an unfair or deceptive act or practice under the Deceptive Trade Practices Act, § 4-88-101 et seq.

(2) All remedies, penalties, and authority granted to the Attorney General under the Deceptive Trade Practices Act, § 4-88-101 et seq., are available to the Attorney General for the enforcement of this section.

(3) The prosecuting attorneys of the various districts and counties of this state shall also have full authority to enforce the provisions of this section.

SECTION 3. Arkansas Code § 18-14-411, concerning the duty to keep financial records and make the financial records available for examination, is amended to add an additional subsection to read as follows:

(c)(1) An escrow agent that receives funds related to time-share interest transfer services provided to a consumer time-share reseller shall retain all resale transfer agreements, escrow account records, and affidavits received under this chapter for a period of four (4) years.

(2) An escrow agent who intentionally fails to comply with the provisions of the chapter concerning the establishment of an escrow account,

deposits of funds into escrow, withdrawal therefore, and maintenance of records is guilty of a Class D felony.

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

18-14-412. Required contents of resale transfer agreements.

(a) In the course of offering time-share interest transfer services, a person shall not:

(1) Engage in any time-share interest transfer services for consideration, or the expectation of receiving consideration, without first obtaining a written resale transfer agreement signed by the consumer time-share reseller that complies with this section; or

(2) Fail to provide both the consumer time-share reseller and the escrow agent required by the chapter with an executed copy of the resale transfer agreement.

(b) Each resale transfer agreement shall contain:

(1) A statement that no fee, cost, or other compensation may be paid to the time-share interest transfer services provider before the delivery to the consumer time-share reseller of written evidence that all promised time-share interest transfer services have been performed, including without limitation the delivery to:

(A) Both the consumer time-share reseller and the time-share plan managing agent of a copy of the recorded instrument or other legal document evidencing the transfer of ownership of or legal title to the consumer time-share reseller's time-share interest to the transferee, accompanied by the full name, address, and other known contact information of the transferee;

(B) Both the consumer time-share reseller and the time-share plan managing agent of a copy of the certification or other legal documents documenting the transfer or assignment of the time-share interest contract of membership evidencing the use rights and other privileges and obligations associated with the consumer time-share reseller's time-share interest, accompanied by the full name, address, and other known contact information of the transferee; or

(C) The consumer time-share reseller of a copy of the legal document executed by the vendor or obligor evidencing the cancellation

of the time-share interest contract or time-share loan obligation relating to the consumer time-share reseller's time-share interest;

(2) The name, address, current phone number, and current email address of the escrow agent required by § 18-14-408;

(3) A specific, detailed description of the time-share interest transfer services to be provided and a statement that the time-share interest transfer services provider will provide the consumer time-share reseller with written notice of the full performance of the time-share interest transfer services, together with a copy of the recorded instrument or other legal document evidencing the transfer of ownership of or legal title to the time-share interest from the consumer time-share reseller to a transferee; and

(4) A statement in substantially the following form in conspicuous type immediately preceding the space in the resale transfer agreement provided for the consumer time-share reseller's signature.

"(Name) has agreed to provide you with time-share interest transfer services under this resale transfer agreement. After those services have been fully performed, (Name) is obligated to provide you with written notice of the full performance and a copy of the recorded instruments or other legal document evidencing the transfer, assignment, or cancellation of the consumer time-share reseller's time-share interest. Any fee or other compensation paid by you under this agreement before the full performance by (Name) must be held in escrow by the escrow agent specified in this agreement, and (Name) is prohibited from receiving any fee or other compensation until all promised time-share interest transfer services have been performed."

(c)(1)(A) Before entering into a resale transfer agreement, a time-share interest services provider shall establish an escrow account with an escrow agent for the purpose of protecting the funds or other property of consumer time-share resellers required to be escrowed by this chapter.

(B) An attorney who is licensed to practice in the State of Arkansas, a broker in good standing, or a title insurer or agent in good standing, that also provides time-share interest transfer services as described in this chapter, may serve as escrow agent under this section.

(2) The escrow agent shall:

(A) Maintain the escrow account in a manner as to be under the direct supervision and control of the escrow agent; and

(B) Have a fiduciary duty to each consumer time-share

reseller to maintain the escrow account in accordance with good accounting practices and to release the consumer time-share reseller's fund or other property from escrow only in accordance with this section.

(3)(A) All funds or other property that are received from or on behalf of a consumer time-share reseller under a resale transfer agreement shall be deposited into an escrow account required under this section.

(B) A fee, cost, or other compensation that is due or that will be paid to the time-share interest transfer services provider shall be held in the escrow account until the time-share interest transfer services provider has fully complied with all of his or her obligations under the resale transfer agreement and under this section.

(4) The funds or other property required to be escrowed under this section may only be released from escrow as follows:

(A) On the order of the time-share interest transfer services provider, upon presentation of an affidavit by the time-share interest transfer services provider that all promised time-share interest transfer services have been performed, including delivery to both the consumer time-share reseller and the time-share plan managing agent of a copy of the recorded instrument or other legal document evidencing the transfer of ownership of or legal title to the consumer resale time-share interest to the transferee; or

(B)(i) To a managing agent to pay any assessments, transfer fees, or other money owed with respect to the time-share interest or to pay a governmental agency for the purpose of completing and perfecting the transfer.

(ii) A managing agent shall accept any funds remitted to it by an escrow agent under this section.