

SENATE BILL NO. 269
INTRODUCED BY R. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS REGULATING THE SALE OF TIMESHARES; REVISING DEFINITIONS; REVISING THE BOARD OF REALTY REGULATION'S RULEMAKING AUTHORITY; REVISING REGISTRATION APPLICATION PROCEDURES; SUBSTITUTING "PUBLIC OFFERING STATEMENT" FOR "DISCLOSURE DOCUMENT"; REQUIRING NOTICE TO THE BOARD OF ANY CHANGES IN A TIMESHARE OFFERING; EXPANDING THE EXEMPTIONS FROM REGISTRATION FOR TIMESHARE OFFERINGS; AMENDING SECTIONS 37-53-102, 37-53-104, 37-53-202, 37-53-203, 37-53-204, 37-53-205, 37-53-303, 37-53-304, 37-53-307, AND 37-53-308, MCA; REPEALING SECTIONS 37-53-211, 37-53-212, 37-53-214, 37-53-301, 37-53-302, 37-53-401, 37-53-402, 37-53-403, 37-53-504, AND 37-53-505, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-53-102, MCA, is amended to read:

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

~~(1) "Advertisement" means a written, printed, audio, or visual communication that is published in whole or in part to sell, offer to sell, or solicit an offer for a timeshare.~~

~~(2)~~(1) "Affiliate" means a person who controls, is controlled by, or is under the control of a developer.

~~(3)~~(2) "Association" or "owners' association" means the association of owners created by the timeshare instruments for purposes of managing and maintaining the project for the benefit of all timeshare owners.

~~(4)~~(3) "Board" means the board of realty regulation provided for in 2-15-1757.

~~(5)~~(4) "Developer" means:

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

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

(c) any successor, agent, or assignee of a person referred to in subsection ~~(5)(a)~~ (4)(a) or ~~(5)(b)~~ (4)(b).

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

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

timeshare property; and

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

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

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

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

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

~~(9) "Prize and gift promotional offer" means advertising material stating that a prospective purchaser may receive goods or services other than the timeshare plan itself, either free or at a discount, including but not limited to the use of a prize, gift, award, premium, or lodging or vacation certificate.~~

~~(10)(9) "Project" means the real property or real estate, that which~~ must contain more than one unit, in which timeshares are created by a single instrument or set of instruments.

~~(11)(10) "Promoter" means any person who initiates the inducement, solicitation, or encouragement of~~ induces, solicits, or encourages another person, ~~by any means, of to~~ the review or ~~acquisition~~ acquire of a timeshare interval.

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

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

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

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

~~(15) "Timeshare broker" means a natural person who supervises a timeshare sales operation and one or more timeshare salespersons.~~

~~—— (16) "Timeshare expenses" means expenditures, fees, charges, or liabilities:~~

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

~~—— (b) imposed on the timeshare by the entity governing a project of which the timeshare is a part, together~~

with any allocations to reserve. The term does not include purchase money payable for timeshares:

~~(17)~~(15) "Timeshare instrument" means one or more documents, by whatever name denominated, creating or regulating timeshares.

~~(18)~~(16) "Timeshare interval" or "timeshare interest" means the right, however evidenced or documented, to use and occupy one or more timeshare units on a periodic basis according to an arrangement allocating such use and occupancy rights between similar users.

~~(19)~~(17) "Timeshare owner" means a person, other than a developer, who is an owner or co-owner of a timeshare. If title to a timeshare is held in trust, timeshare owner means the beneficiary of the trust.

~~(20)~~ "Timeshare salesperson" means a person who for a salary, commission, or compensation of any kind is associated, either directly or indirectly, regularly or occasionally, with a timeshare broker to sell, purchase, or negotiate for sale, purchase, lease, or exchange of the timeshare interests in real estate and who, on behalf of a developer, sells or offers to sell a timeshare to a purchaser.

~~(21)~~(18) "Timeshare unit" or "unit" means the real property or portion thereof of the property in which the timeshare interval exists or will exist and that is designated for separate use, including campgrounds, campsites, and outdoor recreation sites with spaces designed or promoted for the purpose of locating a trailer, tent, tent trailer, camper, or similar device for land-based portable housing."

Section 2. Section 37-53-104, MCA, is amended to read:

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

- (1) ~~qualifications for applicants and any additional applicant~~ registration information that must be supplied;
- (2) documents acceptable in lieu of registration documents under 37-53-204;
- ~~(3) conditions that may be placed upon registration under 37-53-212;~~
- ~~(4) the subject matter of the examination or continuing education requirement for license as a timeshare salesperson or timeshare broker;~~
- ~~(5)~~(3) additional information included in a ~~disclosure document~~ public offering statement; and
- ~~(6)~~(4) fees established pursuant to 37-1-134."

Section 3. Section 37-53-202, MCA, is amended to read:

"37-53-202. Application for registration. An application for registration of a timeshare offering must

be in a form developed by the board in conjunction with input from the timeshare industry. The application must be signed by the applicant developer and accompanied by the registration fee. A timeshare offering may not be registered unless the developer has filed a complete application as determined by the board or the board's designee. Except as provided in 37-53-204, the application must contain:

(1) ~~audited financial statements showing the financial condition of the developer and any affiliate, including:~~

~~—— (a) a balance sheet dated within 4 months before the filing of the application for registration; and~~

~~—— (b) statements of income, shareholders' equity, and material changes in financial position as of the end of the prior fiscal year and for any period between the end of the prior fiscal year and the date of the last balance sheet;~~

~~—— (2) a projected budget for the timeshare project for 2 years after the offering being made, including but not limited to source of revenues and expenses of construction, development, management, maintenance, advertisement, operating reserves, interest, and any other necessary reserves;~~

~~—— (3) a description of the background of the developer for the previous 10 years, including information about the business experience of the developer and any relevant criminal convictions, civil lawsuits, or administrative actions related to any offering during that period financial statements prepared in accordance with generally accepted accounting principles that fully and fairly disclose the current financial condition of the developer;~~

~~(4)(2)~~ a statement disclosing any fees in excess of the stated price per unit to be charged to the purchasers, a description of their purpose, and the method of calculation;

~~(5) a statement disclosing when and where the developer or an affiliate has previously sold timeshares;~~

~~—— (6) a statement of any liens, defects, or encumbrances on or affecting the title to the timeshare units;~~

~~(7)(3)~~ copies of all timeshare instruments;

~~(8)(4)~~ a copy of the ~~disclosure document~~ public offering statement provided for in 37-53-303, signed by the applicant;

~~(9)(5)~~ an irrevocable consent to service of process signed by the applicant developer; and

~~(10)(6)~~ any other information that the board may require by rule ~~require in the protection of the public interest or necessary to describe the risks involved."~~

Section 4. Section 37-53-203, MCA, is amended to read:

"37-53-203. ~~Registration period -- renewal~~ Notice of changes in timeshare offering. (1) A timeshare

offering registration is effective for 1 year from the date of approval of the registration application.

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

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

~~(4) This section may not be interpreted to conflict with 37-1-138."~~

Section 5. Section 37-53-204, MCA, is amended to read:

"37-53-204. Alternative filing documents. (1) In lieu of the documents required to be filed with an application under 37-53-202, the board may accept:

~~———(a) a disclosure document public offering statement filed with an agency of the United States or any other state, ~~or~~~~

~~———(b) a disclosure document compiled in accordance with a rule of an agency of the United States or any other state.~~

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

Section 6. Section 37-53-205, MCA, is amended to read:

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

(1) an offer, sale, or transfer of not more than two timeshare interests by a timeshare owner in a 12-month period;

(2) a gratuitous transfer of a timeshare interest;

(3) a sale under court order;

(4) a sale by any government or a governmental agency;

(5) a sale by forfeiture, foreclosure, or deed in lieu of foreclosure; ~~or~~

(6) a sale of a ~~project~~ timeshare offering already registered in Montana or a sale of all timeshare units or timeshare intervals therein in the timeshare offering to any one purchaser; or

(7) a transfer of a timeshare interest by a timeshare owner other than the developer or the developer's

agent unless the transfer is made for the purpose of avoiding the provisions of this chapter."

Section 7. Section 37-53-303, MCA, is amended to read:

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

(1) the official name and address of the developer, its parent or affiliates, and the names and addresses of the director and officers of each;

(2) the location of the timeshare property;

(3) a general description of the ~~timeshare property and the timeshare units~~ and associated real property, including but not limited to the developer's schedule of commencement and completion of all buildings, units, and amenities or, if completed, a statement that they have been completed;

(4) a list of all timeshare units and timeshare intervals offered by the developer or promoter in the same project, including:

(a) the types, current prices, and number of units;

(b) the types and durations of the ~~timeshares~~ timeshare intervals;

(c) the maximum number of units that may become part of the timeshare property;

(d) a statement of the maximum number of ~~timeshares~~ timeshare units and timeshare intervals that may be created or a statement that there is ~~no~~ not a maximum;

(5) a description of the types of financing offered by the promoter or developer;

(6) a statement of ownership of all properties included in the timeshare offering, including any liens or encumbrances affecting the property;

(7) copies of any agreements or leases to be signed by purchasers at closing and a copy of the timeshare instrument or instruments;

(8) the identity of the managing entity and the name, address, and telephone number of the person or persons in charge; and the manner, if any, whereby the developer may change the managing entity;

(9) a ~~true~~ copy of the current budget and ~~or~~ projected budget for the timeshare offering. ~~of the owners' association along with a description of the nature and purpose of all charges, dues, maintenance fees, and other expenses that may be assessed, including the formula for payment of charges if all timeshares are not sold and a statement of who pays additional costs;~~ The budget must include:

(a) a statement of the amount included in the budget as a reserve for repairs, maintenance, and replacement of the timeshare units;

(b) a detailed list of projected common expenses, liabilities, and expenditures for the timeshare units and timeshare intervals; and

(c) a statement of any services or expenses not reflected in the budget that the developer provides or pays.

(10) a statement in boldface type on the cover page of the ~~disclosure document~~ public offering statement that, within ~~3~~ 7 days after receipt of a ~~disclosure document~~ the public offering statement or the signing of the timeshare purchase agreement, whichever is later, a purchaser may cancel any agreement for the purchase of a timeshare interval ~~from a developer or salesperson~~ and that the cancellation must be in writing and be delivered either in person or by certified mail to the developer or the developer's agent;

(11) a prepared legal document that once executed will effectively cancel the agreement between the purchaser and the developer;

~~(11)~~(12) any restrictions on transfers of a timeshare interval or portion ~~thereof~~ of the timeshare interval;

~~(12)~~(13) a description of any insurance coverage provided for the benefit of timeshare interval owners by the managing entity or the timeshare interval owners' association;

~~(13)~~(14) a full and accurate disclosure of whether the timeshare interval owners are permitted or required to become members of or participate in any program for the exchange of property rights among themselves or with the timeshare interval owners of other timeshare units, or both, and a complete description of the program; and

~~(14)~~(15) any additional information the board finds necessary to fully inform prospective purchasers, including but not limited to the financial ~~and background~~ information required by 37-53-202."

Section 8. Section 37-53-304, MCA, is amended to read:

"37-53-304. Disclosure to purchaser -- cancellation of agreement. The developer or any person offering a timeshare interval shall provide a prospective purchaser with a copy of the ~~disclosure document~~ public offering statement described in 37-53-303 before the execution of any agreement for the purchase of a timeshare interval. ~~A purchaser may, within 3~~ Within 7 days following receipt of a ~~disclosure document~~ public offering statement or signing of a timeshare purchase agreement, whichever is later, a purchaser may cancel the agreement and receive a refund of any consideration paid by providing written notice of the cancellation to the ~~promoter or promoter's~~ developer or developer's agent either by certified mail or personal delivery. If the

purchaser does not receive the ~~disclosure document~~ public offering statement, the agreement is voidable by the purchaser until the purchaser receives the ~~document~~ public offering statement and for ~~3~~ 7 days ~~thereafter~~ after receipt. The provisions of this section may not be waived."

Section 9. Section 37-53-307, MCA, is amended to read:

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

- (a) make any false or misleading statement of a material fact or to omit a material fact;
 - (b) employ any device, scheme, or artifice to defraud;
 - (c) engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person;
 - (d) file or cause to be filed with the board any document that contains false or misleading information;
- or
- (e) violate any provision of this chapter or a rule adopted under this chapter ~~or any applicable provision of Title 37, chapter 51.~~

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

Section 10. Section 37-53-308, MCA, is amended to read:

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

NEW SECTION. **Section 11. Repealer.** Sections 37-53-211, 37-53-212, 37-53-214, 37-53-301, 37-53-302, 37-53-401, 37-53-402, 37-53-403, 37-53-504, and 37-53-505, MCA, are repealed.

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