

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

As Engrossed: S3/13/13
A Bill

SENATE BILL 897

5 By: Senators D. Johnson, Files
6 By: Representatives Dale, Biviano
7

For An Act To Be Entitled

9 AN ACT TO CLARIFY THE JURISDICTION AND REGULATORY
10 AUTHORITY OF THE ARKANSAS REAL ESTATE COMMISSION; TO
11 REGULATE TRANSACTIONS INVOLVING RESALE TIMESHARE
12 PROPERTY; AND FOR OTHER PURPOSES.
13
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Subtitle

15 TO CLARIFY THE JURISDICTION AND
16 REGULATORY AUTHORITY OF THE ARKANSAS REAL
17 ESTATE COMMISSION; TO REGULATE
18 TRANSACTIONS INVOLVING RESALE TIMESHARE
19 PROPERTY.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code Title 18, Chapter 14, Subchapter 1 is amended
26 to read as follows:
27

28 18-14-101. Title.

29 This chapter shall be known and may be cited as the "Arkansas Time-
30 Share Act".
31

32 18-14-102. Definitions.

33 As used in this chapter:

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



1 (A) Is affixed to real property;

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

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

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

10 ~~(2) "Agency" means the Arkansas Real Estate Commission, which is~~
11 ~~an agency within the meaning of the Arkansas Administrative Procedure Act, §~~
12 ~~25-15-201 et seq.;~~

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

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

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

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

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

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

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

31 ~~(3)(7)(A) "Developer" in the case of any given property, means~~
32 ~~any person or entity which is in the business of creating or which is in the~~
33 ~~business of selling its own time share intervals in any time share program.~~
34 ~~This definition does not include a person acting solely as a sales agent;~~
35 means:

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

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

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

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

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

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

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

15 ~~(5)(8) "Exchange agent" means a person who exchanges or offers~~
16 ~~to exchange time-share intervals in an exchange program with other time-share~~
17 ~~intervals that owns or operates an exchange program;~~

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

20 ~~(6)(10) "Managing agent" means a person who undertakes the~~
21 ~~duties, responsibilities, and obligations of the management of a time-share~~
22 ~~program responsible for operating and maintaining a time-share property or~~
23 ~~time-share plan on behalf of the association;~~

24 ~~(7)(11)(A) "Offering" means any an offer to sell, a~~
25 ~~solicitation, an inducement, or an advertisement made in this state, whether~~
26 ~~directly or indirectly, whether or by radio, television, newspaper, magazine,~~
27 ~~or by mail, or electronic media, whereby in which a person is given an~~
28 ~~opportunity or encouraged to acquire a time-share interval interest.~~

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

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

4 ~~(9)~~(13) "Project instrument" means ~~one (1) a time-share~~
5 instrument or more recordable other applicable documents document that
6 establishes a time-share plan applicable to the whole project by whatever
7 name denominated, containing that contains restrictions or covenants
8 regulating to regulate the use, occupancy, or disposition of ~~an entire~~
9 ~~project~~ a time-share plan, including a declaration, rule, or an amendment
10 thereto, of a condominium, and the articles of incorporation, bylaws, rules
11 of an association, or an amendment thereto any amendments to the document but
12 excluding any law, ordinance, or government regulation;

13 ~~(10)~~(14) "Public offering statement" means ~~that the~~ statement
14 ~~required by~~ under § 18-14-404;

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

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

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

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

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

36 ~~(13)~~(17)(A) "Time-share estate" means an ~~ownership or leasehold~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 ~~(17)(21) "Time-share project property" means any real property~~
 14 ~~that is subject to a time-share program;~~

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

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

19 ~~(18)(22) "Time-share use" means any contractual right of~~
 20 ~~exclusive occupancy which does not fall within the definition of a time-share~~
 21 ~~estate including, without limitation, a vacation license, club membership,~~
 22 ~~limited partnership, or vacation bond pertaining to a time-share program any~~
 23 ~~arrangement under which the purchaser receives a right to occupy a time-share~~
 24 ~~property but does not receive a time-share estate.; and~~

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

27
 28 18-14-103. Applicability.

29 (a) This chapter shall apply applies to any a time-share program
 30 created or commenced plan established after February 25, 1983, and ninety
 31 ~~(90) days thereafter as to any time share program heretofore created or~~
 32 ~~commenced with respect to the requirements of under §§ 18-14-201 et seq., 18-~~
 33 14-401 et seq., and 18-14-501 et seq.

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

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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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15
16 18-14-202. Registration, etc., with agency required.

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

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

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

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

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

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

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

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

1 developer shall be required to furnish to the agency commission:

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

3 (B) and designate The name of its designated responsible
4 managing employee; and

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

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

19 ~~(4)(3) Each acquisition agent shall renew the registration at~~
20 ~~least annually and shall pay a filing fee of fifty dollars (\$50.00) not to~~
21 exceed one hundred fifty dollars (\$150.00) for the registration and each
22 renewal thereof of the registration.

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

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

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

31 (B) and designate The name of its designated responsible
32 managing employee; and

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

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

1 ~~furnish~~ evidence that a bond ~~of five thousand dollars (\$5,000)~~ in an amount
2 determined by the commission but not to exceed twenty-five thousand dollars
3 (\$25,000) has been placed with a surety company, corporate bond acceptable to
4 the agency commission, or a cash bond with the agency commission to cover any
5 defalcations of the real estate principal broker and any of its sales agent
6 agents.

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

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

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

17 (A) ~~its~~ Its principal office address and telephone number;
18

19 (B) ~~to designate~~ The name of its designated responsible
20 managing employee;
21

22 (C) ~~to furnish such~~ Any additional information ~~as the~~
23 agency commission may require, requires, including ~~The managing agent shall~~
24 ~~furnish evidence that a bond of five thousand dollars (\$5,000) in an amount~~
25 determined by the commission but not to exceed twenty-five thousand dollars
26 (\$25,000) has been placed with a surety company, corporate bond acceptable to
27 the agency commission, or a cash bond with the agency commission to cover any
28 default of the managing agent of his or her duties and responsibilities.

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

33 (e)(1) ~~In the event that~~ If the acquisition agent, ~~sales agent,~~ real
34 estate principal broker, or management agent is under the control of, a
35 subsidiary of, or affiliate of the developer ~~or any person,~~ the bond ~~as to~~
36 ~~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).

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

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

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

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

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

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

18 (2) Each exchange agent shall renew his or her registration
19 annually and pay a filing fee not to exceed one hundred fifty dollars
20 (\$150.00) for the registration and each renewal thereof of the registration.

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

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

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

34
35 18-14-203. ~~Exemptions from~~ Abbreviated registration ~~— Exemptions~~.

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

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

5 (1) Securities and Exchange Act of 1933;

6 (2) Arkansas Securities Act, § 23-42-101 et seq.;

7 (3) Federal Interstate Land Sales Full Disclosure Act, ~~in which~~
8 if the time-share ~~program plan~~ plan is made a part of the subdivision that is
9 being registered; and

10 (4)(A) Any federal or state act ~~which~~ that requires a federal or
11 state agency to review a public offering statement, or similar disclosure
12 document ~~which is required to~~ that must be distributed to purchasers, if the
13 agency commission determines ~~after review~~ that the federal or state public
14 offering statement is substantially equivalent to that required by this
15 chapter ~~and issues its certificate of exemption.~~

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

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

22 (1) a A filing fee ~~of three hundred dollars (\$300)~~ not to exceed
23 five hundred dollars (\$500); and

24 (2) ~~any~~ Any necessary investigation expenses as ~~set forth~~ stated
25 in § 18-14-204(d); and

26 (3) a A fee ~~of one hundred fifty dollars (\$150)~~ not to exceed
27 three hundred dollars (\$300) for each request for ~~review and~~ recertification
28 ~~pursuant to~~ under subdivision (a)(4)(B) of this section.

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

31 (1) ~~Any A~~ transfer of a time-share ~~interval~~ interest by any
32 time-share ~~interval~~ interest owner other than the developer or ~~his or her~~ its
33 agent unless the transfer is made ~~for the purpose of evading the provisions~~
34 ~~of to evade~~ this chapter;

35 (2) Any disposition ~~pursuant to~~ under a court order;

36 (3) A disposition by a government or governmental agency;

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

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

8 ~~(5)(6)~~ A gratuitous transfer of a time-share ~~interval~~ interest;

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

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

15
16 18-14-204. Application for registration.

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

19 (1) ~~the~~ The public offering statement;

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

21 (3) ~~copies~~ Copies of time-share instruments;

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

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

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

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

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

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

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

10 (c) The application shall be accompanied by a filing fee ~~of three~~
11 ~~hundred dollars (\$300) plus five dollars (\$5.00) for each twenty-five (25)~~
12 ~~time-share intervals or portions thereof~~ not to exceed one thousand dollars
13 (\$1,000). ~~The filing fee shall not exceed the sum of five hundred dollars~~
14 ~~(\$500)~~.

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

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

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

26
27 18-14-205. Material changes.

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

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

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

1 to prospective purchasers.

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

4
5 18-14-206. Effectiveness of registration or amendment.

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

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

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

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

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

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

27
28 18-14-207. Regulation and use of public offering statement.

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

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

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

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

8
9 SECTION 3. Arkansas Code Title 18, Chapter 14, Subchapter 3, is
10 amended to read as follows:

11 18-14-301. Time-share ~~programs~~ plans permitted.

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

14
15 18-14-302. Contents of instruments ~~creating~~ establishing time-share
16 estates.

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

20 (1) The name of the county in which the property is situated;

21 (2) The legal description, street address, or other description
22 sufficient to identify the property;

23 (3) Identification of time periods by letter, name, number, or
24 combination thereof;

25 (4) Identification of time-share estates and, ~~where~~ when
26 applicable, the method ~~whereby~~ by which additional time-share estates may be
27 ~~created~~ established;

28 (5) The formula, fraction, or percentage of the common expenses
29 and any voting rights assigned to each time-share estate and, ~~where~~ when
30 applicable, to each ~~unit~~ accommodation in a project that is not subject to
31 the time-share ~~program~~ plan;

32 (6) ~~Any restrictions~~ Restrictions on the use, occupancy,
33 alteration, or alienation of time-share ~~intervals~~ interests;

34 (7) The ownership interest, if any, in personal property and
35 ~~provisions~~ for care and replacement;

36 (8) Any other matters the developer ~~deems~~ considers appropriate;

1 and

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

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

10

11 18-14-303. Provisions for management and operation of time-share estate
12 ~~programs~~ plans.

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

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

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

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

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

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

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

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

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

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

1 ~~(6)~~(7) Adoption of standards and rules of conduct for the use
2 and occupancy of ~~units~~ accommodations by owners;

3 ~~(7)~~(8) Collection of assessments from owners to defray the
4 expenses of management of the time-share ~~program plan~~ or time-share property
5 and maintenance of the ~~units and time-share project~~ accommodation and
6 amenities of the time-share plan or time-share property;

7 ~~(8)~~(9) Comprehensive general liability insurance for death,
8 bodily injury, and property damage arising out of, or in connection with, the
9 use of ~~units~~ the accommodations by owners, their guests, and other users;

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

14 ~~(10)~~(11)(A) Procedures for imposing a monetary penalty or
15 suspension of an owner's rights and privileges in the time-share ~~program plan~~
16 for failure of the owner to comply with ~~provisions of~~ the time-share
17 instruments or the rules of the association ~~with respect to~~ concerning the
18 use of the ~~units~~ accommodations and amenities.

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

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

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

28
29 18-14-304. Developer control period.

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

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

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

3 (1) Termination of the developer control period by action of the
 4 association or by operation of the time-share instruments;

5 (2) Termination of contracts for goods and services for the
 6 time-share ~~program plan~~ or for units accommodations in the time-share ~~program~~
 7 plan entered into during the developer control period; and

8 (3) A regular accounting by the developer to the association ~~as~~
 9 ~~to all~~ concerning matters that significantly affect the interests of owners
 10 in the time-share ~~program plan~~.

11
 12 18-14-305. Instruments ~~creating~~ establishing time-share uses.

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

17 (1) Identification by name of the time-share ~~project plan~~ and
 18 street address where the time-share ~~project plan~~ is situated;

19 (2) Identification of the time periods, type of ~~units~~
 20 accommodations, ~~and the units accommodations~~ that are in the time-share
 21 ~~program plan~~ and the length of time that the units accommodations are
 22 committed to the time-share ~~program plan~~;

23 (3) In case of a time-share ~~project plan~~, identification of
 24 which ~~units accommodations~~ are in the time-share ~~program plan~~ and the method
 25 ~~whereby any other units for adding, deleting, or substituting other~~
 26 accommodations may be added, deleted, or substituted; and

27 (4) Any other matters that the developer ~~deems~~ considers
 28 appropriate.

29
 30 18-14-306. Provisions for management and operation of time-share use
 31 ~~programs plans~~.

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

1 including:

2 (1) Standards and procedures for upkeep, repair, and interior
3 furnishing of ~~units~~ accommodations and for ~~providing~~ of maid, cleaning,
4 linen, and similar services to the ~~units~~ accommodations during use periods;

5 (2) Adoption of standards and rules of conduct governing the use
6 and occupancy of ~~units~~ accommodations by owners;

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

9 (4) Selection of a managing agent;

10 (5) Preparation and dissemination to owners of an annual budget,
11 ~~and of~~ operating statements, and other financial information concerning the
12 time-share ~~program plan~~ or time-share property;

13 (6) Procedures for establishing the rights of owners to the use
14 of ~~units~~ accommodations by prearrangement or under a first-reserved, first-
15 served priority system;

16 (7) Organization of a management advisory board consisting of
17 time-share use owners, including an enumeration of rights and
18 responsibilities of the board;

19 (8) Procedures for imposing and collecting assessments or use
20 fees from time-share use owners as necessary to defray costs of management of
21 the time-share ~~program plan~~ and ~~in~~ providing materials and services to the
22 ~~units~~ accommodations;

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

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

30 (11)(A) Procedures for imposing a monetary penalty or suspension
31 of an owner's rights and privileges in the time-share ~~program plan~~ for
32 failure of the owner to comply with the ~~provisions of the~~ time-share
33 instruments or the rules established by the developer ~~with respect to~~
34 concerning the use of the ~~units~~ accommodations.

35 (B) The owner shall be given notice and the opportunity to
36 refute or explain the charges, in person or in writing, to the management

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

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

5
6 18-14-307. Partition of ~~units~~ accommodations.

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

9
10 18-14-308. Records.

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

14 (b) The list shall:

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

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

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

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

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

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

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

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

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

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

7
8 18-14-309. Supervisory authority.

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

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

15
16 18-14-310. Out-of-state time-share plan.

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

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

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

30
31 SECTION 4. Arkansas Code Title 18, Chapter 14, Subchapter 4 is amended
32 to read as follows:

33 18-14-401. Penalties.

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

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

5
6 18-14-402. Civil remedies.

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

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

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

19
20 18-14-403. Statute of limitations.

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

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

33
34 18-14-404. Required contents of public offering statements for time-
35 share ~~intervals~~ interests.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 ~~(3)(C)~~ (C) Whether the exchange program, or any of its
34 officers or directors, has ~~any a~~ legal or beneficial interest in any
35 developer or managing agent for ~~any time-sharing~~ a time share plan
36 participating in the exchange program and, if so, the name and location of

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

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

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

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

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

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

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

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

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

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

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

1 last annual review or audit;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23
24 18-14-405. Material changes.

25 (a) The developer shall amend or supplement the public offering
26 statement to report any material change in the information required by § 18-
27 14-404.

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

32
33 18-14-406. Other statutes not applicable.

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

1 (1) Arkansas Securities Act, § 23-42-101 et seq.; or
2 (2) Any other Arkansas statute ~~which~~ that requires the
3 ~~preparation of~~ a public offering statement or substantially similar document
4 for distribution to purchasers.

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

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

12

13 18-14-407. Escrow accounts ~~or - other~~ Other financial assurances.

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

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

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

25 (3) Refunded to the purchaser.

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

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

35

36 18-14-408. Guarantees for completion of time-share ~~projects~~ properties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25
26 18-14-409. Mutual rights of cancellation.

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

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

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

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

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

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

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

16
17 18-14-410. Liens.

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

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

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

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

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

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

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

10
11 18-14-411. Financial records -- Examination.

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

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

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

21 18-14-501. Filing of advertising materials.

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

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

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

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

34 (2) Transcripts of all radio and television advertisements;

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

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

7 18-14-502. False advertising declared unlawful.

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

16 (b) ~~Nothing in this~~ This section ~~shall not be construed to~~ does not
 17 hold the publisher or employee of ~~any a~~ a newspaper, ~~any a~~ a job printer, ~~any a~~ a
 18 broadcaster or telecaster, or ~~any a~~ a magazine publisher, or ~~any of the~~
 19 ~~employees~~ an employee thereof, liable for ~~any the~~ the publication ~~herein~~ referred
 20 to in this section unless the publisher, employee, or printer has actual
 21 knowledge of ~~the falsity thereof~~ its falsity or has an interest ~~either~~ as an
 22 owner or agent in the time-share ~~project so~~ plan advertised.
 23

24 18-14-503. Prohibited advertising.

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

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

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

36 (3) Contain a statement concerning the investment merit or

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

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

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

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

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

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

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

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

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

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

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

7
8 18-14-504. Unfair acts or practices.

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

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

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

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

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

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

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

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

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

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

3
4 18-14-505. Enforcement.

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

10
11 SECTION 6. Arkansas Code Title 18, Chapter 14, Subchapter 6 is amended
12 to read as follows:

13 18-14-601. Financing of time-share ~~programs~~ plans.

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

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

24
25 18-14-602. Protection of purchasers from subsequent underlying lien.

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

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

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

35
36 SECTION 7. Arkansas Code Title 18, Chapter 14, Subchapter 7 is amended

1 to read as follows:

2 18-14-701. Definition.

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

5
6 18-14-702. Camping site – Buyer’s right to cancel.

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

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

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

18
19 18-14-703. Seller to provide notice of cancellation -- Form.

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

27 NOTICE OF CANCELLATION _____

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

1 TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS
2 CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE TO _____
3 (Name of seller)

4 ~~AT~~ _____
5 (Address of seller's place of business)

6 NOT LATER THAN MIDNIGHT OF _____
7 (Date)

8 I HEREBY CANCEL THIS TRANSACTION _____
9 (Date)
10 _____
11 (Buyer's signature)."

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

15
16 /s/D. Johnson

17
18
19 **APPROVED: 04/04/2013**

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