

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

A Bill

HOUSE BILL 1834

5 By: Representative Penzo
6 By: Senator J. Dismang
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS TIME-SHARE ACT; AND FOR
10 OTHER PURPOSES.
11

Subtitle

12 TO AMEND THE ARKANSAS TIME-SHARE ACT.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. Arkansas Code § 18-14-102, concerning the definitions of
20 terms used in the Arkansas Time-Share Act, is amended to add additional
21 subdivisions to read as follows:

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

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

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

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

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

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

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



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

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

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

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

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

10 (a) "Time-share exit";

11 (b) "Time-share cancellation";

12 (c) "Time-share liquidation";

13 (d) "Time-share relief";

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

16 (f) Any other similar references; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (B) Furnish to the commission:

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

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

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

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

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

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

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

1 placed with a surety company;

2 (2) Corporate bond acceptable to the
 3 commission; or

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

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

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

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

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

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

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

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

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

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

1 or

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

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

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

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

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

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

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

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

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

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

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

6 18-14-412. Required contents of resale transfer agreements.

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

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

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

16 (b) Each resale transfer agreement shall contain:

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

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

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

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

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

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

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

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

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

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

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

33 (2) The escrow agent shall:

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

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

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

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

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

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

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

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

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

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