

BILL ANALYSIS

Senate Research Center

S.B. 1036
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Business & Commerce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A major rewrite of the Texas Timeshare Act was adopted by the 79th Legislature, Regular Session, 2005. All interested stakeholders came together to adopt model legislation related to the timeshare industry.

Since the passage of that legislation in 2005, other states have adopted this model and implemented it. After passage and during implementation of the Timeshare Act, it was discovered that there was a need for modification of the Act.

S.B. 1036 authorizes the Texas Real Estate Commission (TREC) to accept an abbreviated registration for any out-of-state timeshare accommodations for purposes of administrative efficiency. The bill also incorporates a Sunset Advisory Commission recommendation that all TREC hearings be conducted at the State Office of Administrative Hearings. S.B. 1036 prohibits a timeshare developer from accepting a purchaser's money out of escrow until the developer can show, to the satisfaction of TREC, that the timeshare interest will be conveyed to the purchaser and consumer free and clear of all liens and encumbrances. This bill also requires alternate consumer protection provisions in the instance a timeshare property is mortgaged, such as the use of a nondisturbance instrument so that the purchaser's or consumer's timeshare interest will be delivered and available as promised, and defines the term "vacation ownership."

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 221.022(c), Property Code, to authorize the Texas Real Estate Commission (TREC) to accept an abbreviated registration application from a developer of a timeshare plan for any accommodations in the plan located outside this state, rather than if all accommodations in the plan are located outside this state.

SECTION 2. Amends Sections 221.032(b) and (d), Property Code, as follows:

(b) Deletes existing text requiring the timeshare disclosure statement for a single-site timeshare plan or a multisite timeshare plan that includes a specific timeshare interest to include, in the current annual budget, if available, or the projected annual budget for the timeshare plan or timeshare properties managed by the same managing entity if assessments are deposited in a common account, the name and address of the person who prepared the operating budget.

(d) Makes a conforming change.

SECTION 3. Amends Subchapter D, Chapter 221, Property Code, by adding Section 221.037, as follows:

Sec. 221.037. ALTERNATIVE TERMINOLOGY OR NAME. (a) Provides that in providing the disclosures required by this chapter, the use of the terms "vacation ownership interest" or "vacation ownership plan" to refer to the timeshare interest or plan offered by the developer, or the use of other terms that are substantially similar and that

are regularly used by the developer to denote a timeshare interest or plan, is sufficient and complies with the requirements of this chapter.

(b) Provides that in providing the full name of a developer or a marketing company as required by this chapter, the disclosure of an assumed name of the developer or the marketing company, if the entity has complied with the requirements of the applicable assumed business names statutes or other laws regarding the use of the assumed name, is sufficient and complies with this chapter.

SECTION 4. Amends Section 221.043(c), Property Code, as follows:

(c) Deletes existing text requiring the purchase contract to also include a statement disclosing that the timeshare common properties are not mortgaged, unless the mortgage contains a nondisturbance clause which fully protects the use and enjoyment rights of each timeshare owner in the event of foreclosure; and in the event such timeshare interests are sold under a lease, right to use, or membership agreement where free and clear title to the accommodation is not passed to the purchaser, then the purchase contract is required to contain a statement that the timeshare is free and clear, or if subject to a mortgage, the mortgage must contain a nondisturbance clause which fully protects the use and enjoyment rights of each timeshare owner in the event of foreclosure. Makes nonsubstantive changes.

SECTION 5. Amends Section 221.062, Property Code, by adding Subsection (h), as follows:

(h) Provides that excluding any encumbrance placed against the purchaser's timeshare interest that secures the purchaser's payment of purchase money financing for the purchase, the developer is not entitled to the release of any funds escrowed with respect to each timeshare interest until the developer has provided TREC with satisfactory evidence that certain conditions have been met and certain actions have been taken.

SECTION 6. Makes application of this Act prospective to January 15, 2010.

SECTION 7. Effective date: September 1, 2009.