

Overview of Regulation of Resale Activity in Version 13 of
ARDA's Proposed Model Resale Act (the "Act")
June 25, 2010

Key Concepts:

- **What is it?** "Timeshare resale activity" is defined as selling, offering to sell, buying, offering to buy, transferring, assisting with the transfer, advertising, soliciting to advertise, listing, offering or promoting the sale, purchase or transfer of a timeshare interest that is owned by a timeshare owner.
- **Who is covered?** Anyone who engages in timeshare resale activity including: (1) companies that provide information about timeshare owners (commonly referred to as a "lead dealer"); (2) timeshare resale entities that advertise timeshare interests for sale; (3) timeshare resale entities that provide brokerage activities for timeshare owners or resale buyers; and (4) timeshare resale entities that offer to takeover ownership from a timeshare owner (commonly referred to as a "timeshare transfer company").
- **Who is exempt?** Exemptions include: (1) activity involving less than 12 timeshare interests annually; (2) bulk resales to a single buyer; (3) "pure" advertising with no additional timeshare resale activity (such as representations regarding available buyers or likelihood of success); (4) timeshare developers who are taking back timeshare interests and reselling them as part of their existing registrations; (5) owners associations with respect to inventory in their project and if they provide buyers with certain information; (6) developers and exchange companies otherwise engaged in timeshare resale activity if they provide certain information and avoid prohibited practices; and (7) persons who are performing ministerial functions in connection with transfers (*e.g.*, title companies or attorneys).

Issues: In formulating the Act, the following issues have been raised:

- Is the Act necessary at all when there are other laws that govern the same activity, such as real estate licensure laws or deceptive trade practice acts?
- Is the Act too broad in its scope since it regulates activity no matter where it occurs (*i.e.*, no matter where the consumer, timeshare interest or timeshare resale entity is located)?
- Should licensed real estate brokers be exempt since real estate licensure laws cover many of the same activities?
- How far can the Act go in restricting resale advertising without violating the protections afforded the freedom of speech and the freedom of the press under the United States Constitution?
- Should the Act continue to include a requirement that timeshare resale entities provide a disclosure giving the consumer information on the timeshare resale entity's prior success rate if more than \$500 in advance consideration is charged? Should this disclosure only be provided for brokerage activity and not for advertisements? Should the Act prohibit advance fees of any amount?
- Is the Act's requirement that timeshare transfer companies complete the transfer of the timeshare owner's timeshare interest within 90 days of contract too restrictive? Should it be 180 days?

Summary of Regulations on Resale Activity:

- Generally: All non-exempt persons must not violate the prohibited practices portions of the Act (*e.g.*, misrepresentations, fraud, etc.) and are subject to the penalty provisions of the Act.
- Owner Information: Lead dealers and timeshare resale entities must maintain records for 5 years concerning timeshare owner personal contact information including how it was obtained and from whom it was obtained, and timeshare resale entities must maintain records for 5 years concerning any transactions involving timeshare resale activity.
- Resale Activity:
 1. These provisions apply to all defined resale entities that are not otherwise exempt, including licensed brokers, resale advertisers, and timeshare transfer companies.
 2. Prior to accepting any consideration (*e.g.*, advance fees) for any resale activity including advertising and broker activities, non-exempt persons must provide to the timeshare owner the disclosures specified under the Act (such as name and information of timeshare resale entity, fees and costs to be charged, nature of activity to be performed, etc.).
 3. If more than \$500 is paid by a timeshare owner, then the timeshare resale entity must provide a disclosure that the consumer should not rely on past performance as an indicator of success, *and* a disclosure of either: (i) the ratio of or percentage of the number of listings compared to sales for each of the past two years; or (ii) the ratio or percentage of the amount of advance fees collected compared to the total amount of fees and commissions received for sales for each of the past two calendar years.
 4. The timeshare resale entity must obtain a written receipt from the timeshare owner acknowledging receipt of the disclosures.
- Timeshare Transfers:
 1. Timeshare transfer agreements must include the disclosures previously outlined plus additional ones related to transfer activity, including the date upon which the transfer must be completed, information regarding any intermediary who is involved in the transfer, and a disclosure that the ultimate price that is obtained is set by the transfer company and may be in excess of any consideration paid by the timeshare owner.
 2. Timeshare transfer companies must complete the transfer within 90 days after the date of contract or pay the timeshare owner's cost of ownership (*e.g.*, maintenance fees).
 3. Timeshare transfer companies must notify the timeshare owner, the owners association and the exchange company once the transfer occurs.
- Timeshare Resales: In any transfer of a resale timeshare interest (except for a transfer from a timeshare owner to a timeshare resale entity), the timeshare resale entity shall use a purchase agreement that discloses to the buyer certain information, including information concerning the property, information concerning maintenance fees and taxes, and a date of first occupancy.