



ARDA Model Timeshare Resale Act

Version 15 – As adopted November 11, 2010

Preamble

The ARDA Model Timeshare Resale Act is intended to provide full disclosure by timeshare resale entities acting on behalf of timeshare owners or prospective owners, regardless of the business model used by the resale entity. The Model enumerates prohibited practices and imposes tough penalties for violations.

The Model does not address the issue of whether or not any particular activity requires a real estate license as each state has different—and long-standing—real estate licensing laws that have been utilized, enforced and interpreted in the courts for more than 75 years in many instances. As stated in the Preamble to ARDA's 1999 Model Resale Addendum and reiterated here ARDA *"urges States to enforce their existing Real Estate Licensing Acts for timeshare resale activities conducted in their respective jurisdictions... and to acknowledge that there are consumer abuses in today's resale market which should be vigorously prosecuted..."*

The Model requires resale entities to provide reasonable information to consumers, prior to the consumer paying any "consideration" so that consumers can make informed decisions and compare costs and services. Failure to make the required disclosures is an immediate violation of the Act. The Model also poses certain obligations on resale entities that offer or promise to relieve the consumer of the ownership of his or her timeshare or to terminate such ownership.

The Model contains a long list of prohibited practices, based on the experiences and reports of consumers as well as various ARDA members. The Model does not include any requirements for consumers, as it should not be any more difficult for them to buy, sell or rent. ARDA recognizes that the truly fraudulent companies will not follow any law so violations of the Model are intended to be punished through government enforcement actions and consumer lawsuits with serious penalties and consumer redress.

The Model, when considered by any state, may be used to supplement existing law depending on the provisions currently in force. Model legislation may also be adapted to fit the statutory or regulatory framework of each state and may undergo revisions accordingly. Thus, the Model could be enacted in its entirety, in part or, for example, as a rule under a state's Unfair and Deceptive Trade Practices Act.

- *As modified and unanimously adopted by the ARDA Board of Directors on November 11, 2010.*
-

ARDA Model Timeshare Resale Act

I. Short Title, Purposes.

A. This Act may be cited as the “Timeshare Resale Act.”

B. The purposes of this Act are to:

1. Give statutory recognition in this state to timeshare resale activity.
2. Establish procedures for solicitation for, and conduct of, timeshare resale activity.
3. Ensure fair disclosure to the timeshare owners who are selling, buying, or are solicited to buy or sell, a resale timeshare interest through timeshare resale activity.
4. Ensure fulfillment of duties imposed by law in timeshare resale activity and ensure fulfillment of promises, express or implied, from timeshare resale entities to sellers and buyers of resale timeshare interests through timeshare resale activity.
5. Identify a non-exclusive list of abusive practices and activities associated with timeshare resale activity, deter them, punish those who violate this Act by engaging in them, and compensate those who suffer from them.
6. Require every timeshare resale entity that engages in timeshare resale activity in, or directed to, this state, to comply with this Act.
7. Recognize that the timeshare industry in this state is a vital part of the state's economy; that the sale of resale timeshare interests is an emerging and dynamic segment of industry in this state; that this segment of industry continues to grow, both in volume of sales and in complexity and variety of services offered; and that a uniform and consistent method of regulation is necessary in order to ensure protection of resale timeshare interest sellers and buyers in this state and this state's economic well-being. In order to protect the quality of timeshare resale activity and the consumers who sell resale timeshare interests and consumers who buy them, the Legislature intends this Act to be interpreted broadly in order to encompass all forms of timeshare resale activity, except for timeshare resale activity specifically identified as exempt under this Act.
8. Supplement, not supplant, the [state] Real Estate Licensing Act.

34 **II. Definitions.**

35 Unless defined otherwise in this Act below, terms used in this Act have the meanings defined in
36 [enter reference to the state’s Timeshare Act]:

37 A. “Affiliate” has the meaning defined in the United States Bankruptcy Code.

38 B. “Agency” means the [enter name of government agency that will have jurisdiction
39 over and enforce this Act].

40 C. “Conspicuous type” means type:

41 1. In upper and lower case letters two point sizes larger than the largest non-
42 conspicuous type on the page on which it appears, except for headings, but at least
43 ten-point type; or

44 2. Where the use of ten-point type is impractical or impossible within or on a
45 particular piece of written material, a different style of type or print may be used,
46 as long as the print remains conspicuous to a reasonable reader under the
47 circumstances; and

48 3. Separated on all sides from other type and print.

49 D. “In writing” or “written” means and includes any form of recorded message capable
50 of comprehension in Braille or by ordinary visual means. The terms include hand-
51 written, printed, typed and electronic communications, but do not include oral
52 communications unless requested as a reasonable accommodation under the Americans
53 with Disabilities Act.

54 E. "Lead dealer" means any person who sells or otherwise provides a timeshare resale
55 entity or any other person with personal contact information concerning five or more
56 timeshare owners, which information is intended or is used in the conduct of timeshare
57 resale activity. In the event a lead dealer is not a natural person, the term shall also
58 include the natural person providing personal contact information to a timeshare resale
59 entity or other person on behalf of the lead dealer entity. The term does not include
60 developers, managing entities, or exchange companies to the extent they provide other
61 persons with personal contact information about timeshare owners in their own timeshare
62 plans or members of their own exchange programs.

63 F. “Personal contact information” means any information that can be used to contact a
64 timeshare owner, including, but not limited to, the timeshare owner’s name, address,
65 telephone number, email address, and user identity on any electronic social networking
66 service.

67 G. “Real Estate Licensing Act” means the [enter popular name and cite to state real
68 estate broker licensing act].

- 69 H. “Resale timeshare interest” means a timeshare interest, no matter where located, that
70 has previously been sold to a natural person for personal, family or household use.
- 71 I. “Subsequent purchaser” means the buyer or transferee of a resale timeshare interest.
- 72 J. “Timeshare owner” means any person who owns a resale timeshare interest.
- 73 K. “Timeshare resale activity” means any activity within this state that directly, or
74 indirectly, for consideration, consists of any of the following activities regardless of
75 whether done in person, by mail, telephone, the internet, or any other medium of
76 communication:
- 77 1. Selling or offering to sell or list for sale any resale timeshare interest;
 - 78 2. Buying or offering to buy any resale timeshare interest, wherever located;
 - 79 3. Transferring or offering to assist in the transfer of any resale timeshare
80 interest;
 - 81 4. Invalidating or offering to invalidate the purchase or ownership of any resale
82 timeshare interest;
 - 83 5. Advertising or soliciting to advertise, list for sale, offer, or promote the sale,
84 purchase, transfer or invalidation of any resale timeshare interest.
- 85 L. “Timeshare resale entity” means any person who, either directly or indirectly,
86 engages in timeshare resale activity.
- 87 M. “Timeshare resale purchase agreement” means a contract under which the timeshare
88 owner becomes legally obligated to sell, and a person becomes legally obligated to buy,
89 that timeshare owner’s resale timeshare interest.
- 90 N. “Timeshare resale transfer agreement” means a contract between a timeshare resale
91 entity and a timeshare owner in which the timeshare resale entity agrees to transfer or
92 offers to assist in the transfer of that timeshare owner’s resale timeshare interest.
- 93 O. “Transfer” means any voluntary conveyance of a resale timeshare interest to a person
94 other than:
- 95 1. The managing entity or owners’ association responsible for the operation,
96 management and maintenance of that resale timeshare interest;
 - 97 2. The developer of the timeshare plan of which the resale timeshare interest is a
98 part; and

99 3. Any person taking ownership on a gratuitous basis or by foreclosure of a lien
100 or by a deed in lieu of foreclosure.

101 P. [Recommend any additional definitions thought necessary by the Agency be added
102 from existing state timeshare law for consistency purposes in each state]

103 **III. Compliance.**

104 A. Except as provided in Section IV., each timeshare resale entity must comply with this
105 Act. If a timeshare resale entity has substantially complied with this Act in good faith, a
106 non-material error or omission is not actionable.

107 B. Conspicuous type may be used only where required by this Act or as allowed by the
108 Agency.

109 **IV. Exemptions.**

110 A. A person who is engaged in timeshare resale activity is exempt from the duties
111 imposed by Sections V. through VIII. of this Act if that entity engages in timeshare resale
112 activity with respect to no more than an aggregate total of 12 resale timeshare interests
113 per calendar year as a timeshare resale entity by itself, or in conjunction with any of its
114 affiliates.

115 B. Nothing in this Act shall apply to a person who owns or acquires by conveyance,
116 assignment, or transfer more than twelve resale timeshare interests and who subsequently
117 transfers all such resale timeshare interests to a single purchaser in a single transaction,
118 which transaction may occur in stages. Such transactions may also occur to multiple
119 single purchasers in multiple single transactions, provided each transaction involves the
120 transfer of more than twelve resale timeshare interests.

121 C. Nothing in this Act shall apply to the owner and its agents or employees of a regularly
122 published newspaper, magazine, telephone directory, or other periodical publication of
123 general circulation, or broadcast station, website or billboard, if the activities of the
124 owner or its agents or employees are solely limited to solicitation for the placement of
125 advertisements, the publication of advertisements and the transmission of responses to the
126 persons who place the advertisements. Any person who would otherwise be exempt from
127 this Act pursuant to this Section IV.C., shall not be exempt if such person (i) solicits the
128 placement of the advertisement by representing that it can get cash, a certain price, or a
129 similar type of representation for the timeshare owner's resale timeshare interest, (ii)
130 makes a recommendation as to the sales price for which to advertise the resale timeshare
131 interest, (iii) makes any representations to the person placing the advertisement regarding
132 the success rate for selling resale timeshare interests advertised with such person, or (vi)
133 makes any misrepresentations described in Section IX. of this Act. This exemption shall
134 not apply to a person who is engaged in other activity that is timeshare resale activity
135 with respect to such other activity, including if such activity requires a real estate license
136 under the [state] Real Estate Licensing Act.

137 D. Nothing in this Act shall apply to the resale by a developer, or by a third party that it
138 engages, of a resale timeshare interest if it is resold as part of an existing registration by
139 that developer of the timeshare plan in which that resale timeshare interest is included
140 pursuant to [cite state timeshare law].

141 E. Nothing in this Act shall apply to the resale by an owners' association of a resale
142 timeshare interest provided that the resale timeshare interest is owned by the owners'
143 association and it complies with Section VIII. of this Act. This exemption shall also
144 apply to a managing entity of the owners' association or a third party it engages provided
145 that the managing entity or third party is acting on behalf of the owners' association in
146 selling the resale timeshare interest owned by that association, and the proceeds of any
147 sale will be used for the benefit of the association.

148 F. Nothing in this Act shall apply to a developer or exchange company [as defined in
149 (cite timeshare law if no registration/filing required)] OR [filed pursuant to timeshare law
150 if registration/filing required] engaged in resale activities so long as they comply with the
151 provisions of Sections VI. through XI. of this Act.

152 G. Nothing in this Act shall apply to attorneys, title agents, title companies or escrow
153 companies providing closing or transaction services in connection with the transfer of a
154 resale timeshare interest such as preparation, delivery, exchange, and release of
155 documents and funds for the completion of the conveyance. This exemption shall not
156 apply to a person who is engaged in other activity that is timeshare resale activity with
157 respect to such other activity, including if such activity requires a real estate license under
158 the [state] Real Estate Licensing Act.

159 H. These exemptions shall not apply to any timeshare resale entity that engages in
160 timeshare resale activity in a manner that is intended to circumvent the provisions of this
161 Act.

162 **V. Recordkeeping by Persons Engaged in Resale Activities.**

163 A. Where personal contact information has been obtained from a lead dealer, timeshare
164 resale entities and lead dealers shall maintain the following records for a period of five
165 years from the date each piece of personal contact information is obtained:

166 1. The name, home address, work address, home telephone number, work
167 telephone number, and cellular telephone number of the lead dealer from which
168 the personal contact information was obtained.

169 2. A copy of a current government-issued photographic identification of the lead
170 dealer from which the personal contact information was obtained, such as a
171 driver's license, passport, or military identification card.

172 3. The date, time, and place of the transaction at which the personal contact
173 information was obtained, along with the amount of consideration paid and a
174 signed receipt from the lead dealer or copy of a canceled check.

175 4. A copy of all pieces of personal contact information obtained in the exact
176 form and media in which they were received.

177 B. If personal contact information was directly researched and assembled by the
178 timeshare resale entity or lead dealer and not obtained from another lead dealer, the
179 timeshare resale entity and the lead dealer shall maintain for a period of five years from
180 the date each piece of personal contact information is obtained a complete written
181 description of the sources from which the personal contact information was obtained, the
182 methodologies used for researching and assembling it, the items set forth in subsections
183 A.1. and A.2. for the individuals who performed the work and the date such work was
184 done.

185 C. A timeshare resale entity must maintain records for at least five years after each
186 transaction involving timeshare resale activity, including but not limited to any
187 acknowledgements of receipt, transfer agreements and resale purchase agreements.

188 **VI. Timeshare Resale Activity Disclosures.**

189 A. Before receiving any consideration or the promise of future consideration from a
190 timeshare owner in return for providing or offering to provide timeshare resale activity,
191 the timeshare resale entity must:

192 1. Provide each of the disclosures in writing identified in this Section VI.; and

193 2. Obtain a written receipt from the timeshare owner acknowledging receipt of
194 the disclosures required under this Section VI.

195 B. Each timeshare resale entity shall make the following disclosures:

196 1. The name and permanent business address of the timeshare resale entity.

197 2. The length of time, including the beginning and ending date, during which the
198 timeshare resale activities will be provided.

199 3. A list of the names and addresses of any other entities affiliated with the
200 timeshare resale entity and the primary website addresses used by or affiliated
201 with the timeshare resale entity, any of which will be used to promote the resale
202 timeshare interest. The timeshare resale entity may provide a link to a website that
203 identifies the website addresses used to promote resale timeshare interests.

204 4. Whether the timeshare resale entity’s rights are exclusive and, if the timeshare
205 resale entity’s rights are exclusive, the scope of such exclusivity and length of the
206 exclusivity period.

207 5. Whether any person, other than the timeshare owner, may occupy, rent,
208 exchange or otherwise exercise any form of use of the resale timeshare interest
209 during the term of the timeshare resale activity.

210 6. The name of any person other than the timeshare owner, who will receive any
211 rents, profits, or other consideration or thing of value, if any, generated from the
212 use of the timeshare owner’s resale timeshare interest during the term of the
213 timeshare resale activity.

214 7. A complete description of the timeshare resale activities to be provided by the
215 timeshare resale entity, the fees and costs for each, including any commissions.

216 8. A description sufficient to identify the resale timeshare interest.

217 9. If the fees, costs or commissions paid or to be paid for timeshare resale
218 activities include the services of a licensed real estate broker or salesperson, list
219 the state or states where such real estate licenses are held.

220 10. If more than \$500, to be adjusted annually according to the Consumer Price
221 Index, is paid by a timeshare owner to a timeshare resale entity in furtherance of
222 the performance of timeshare resale activity in advance of the performance of
223 such timeshare resale activity, disclose the following in conspicuous type:

224 a) The ratio or percentage of the number of (i) listings of resale timeshare
225 interests for sale compared to the number of resale timeshare interests
226 actually sold by the timeshare resale entity for each of the past two
227 calendar years, or (ii) the total amount of advance fees collected compared
228 to the total amount of fees and commissions received for the sale of resale
229 timeshare interests by the timeshare resale entity for each of the past two
230 calendar years, in either case followed with this statement in conspicuous
231 type: “Do not rely on past performance as an indicator of the likelihood of
232 successfully selling your timeshare interest.”

233
234 b) If the timeshare resale activities described in VI.B.7. are limited to the
235 placement and publication of advertisements, the timeshare resale entity
236 may elect to make the following disclosure in conspicuous type in lieu of
237 the disclosure described in VI.B.10.a): “There is no guarantee that you
238 will sell your timeshare interest at all or within any period of time by
239 purchasing this advertisement. Our only obligation to you in connection
240 with your purchase of an advertisement is to post your advertisement on
241 our website for the agreed length of time and to forward you all inquiries
242 we receive on your behalf.”

243

244 c) For purposes of the above disclosures in VI.B.10.a) and b) made on
245 any website, “conspicuous type” shall mean that the disclosures are
246 directly accessible from the first page of the website.

247 11. Such other information and disclosures as may be required by law.

248 **VII. Timeshare Transfer Agreements.**

249 A. Before receiving any consideration or the promise of future consideration from a
250 timeshare owner in return for a timeshare resale entity’s offer or agreement to transfer, or
251 offer to assist in the transfer of, a timeshare owner’s resale timeshare interest, such
252 timeshare resale entity shall:

253 1. Provide each of the disclosures in a timeshare transfer agreement identified in
254 Section VII.B.;

255 2. Obtain a written receipt from the timeshare owner acknowledging receipt of
256 the timeshare transfer agreement with the disclosures required under Section
257 VII.B.;

258 B. Each timeshare transfer agreement must include but shall not be limited to the
259 following:

260 1. The disclosures enumerated in Section VI.B.1-7.

261 2. A description legally sufficient for recording or other legal transfer of the
262 resale timeshare interest that is the subject of the agreement.

263 3. A description of the method or documentation by which the timeshare owner
264 is to relinquish the resale timeshare interest to the timeshare resale entity, or any
265 subsequent purchaser, including whether the timeshare owner must grant a power
266 of attorney or sign a similar document to the timeshare resale entity, any of the
267 timeshare resale entity’s affiliates, or any other person.

268 4. Any fees or costs that the timeshare owner must pay or reimburse to the
269 timeshare resale entity not included in Section VII.B.1. above.

270 5. The date by which all acts sufficient to transfer the resale timeshare interest
271 from the timeshare owner to the timeshare resale entity, a third person or a
272 subsequent purchaser will be completed, which in no case may exceed 180 days
273 after the date the timeshare transfer agreement becomes effective.

274 6. If ownership of the resale timeshare interest will be transferred to any entity
275 prior to the completion of the timeshare resale entity’s obligations under the

276 timeshare transfer agreement, an explanation of the purpose of such transfer and
277 the name and address of the entity to which the transfer will be made.

278 7. The timeshare resale entity's promise to provide the owner of the resale
279 timeshare interest with written evidence of the transfer of ownership of the resale
280 timeshare interest, including a copy of the recorded instrument, if applicable,
281 transferring ownership of the resale timeshare interest to a subsequent purchaser
282 within 30 days after the date of such transfer.

283 8. A statement that the timeshare resale entity will notify the following of
284 transfer of ownership of the resale timeshare interest:

285 a) The managing entity or owners' association of the timeshare plan
286 under which the transferred resale timeshare interest is established; and

287 b) If applicable, the exchange company operating any exchange program
288 in which the timeshare owner was enrolled.

289 9. The following statement in conspicuous type in substantially the following
290 form: "We [name of timeshare resale entity] promise that no later than 180 days
291 from the date of this agreement, we will transfer ownership of your timeshare
292 interest to another person. If we fail to accomplish this transfer within 180 days,
293 we are required by law to pay all costs of ownership associated with your
294 timeshare interest. If we fail to follow the law and our agreement, you, the
295 timeshare owner, will continue to be responsible for the payment of all costs of
296 ownership associated with your timeshare interest (including but not limited to
297 regular assessments, special assessments, and real and personal property taxes
298 imposed on your timeshare interest, and any other fees related to your timeshare
299 interest)."

300 10. A notice in conspicuous type that the timeshare owner's resale timeshare
301 interest may be resold by the timeshare resale entity or other third party at any
302 price set by the timeshare resale entity or other third party without the approval of
303 the timeshare owner, even for a price in excess of the consideration, if any, paid
304 by the relinquishing timeshare owner to the timeshare resale entity and, if sold for
305 a price in excess of the consideration, whether or not the timeshare owner will
306 receive any proceeds.

307 C. If the timeshare resale entity offers or agrees to transfer or offers to assist in the
308 transfer of a timeshare owner's resale timeshare interest, it shall be a violation of this Act
309 for the timeshare resale entity to fail to do any of the following:

310 1. Complete all acts sufficient to transfer ownership of the resale timeshare
311 interest from the timeshare owner to the timeshare resale entity, a third person or
312 a subsequent purchaser no more than 180 days after the date all parties have
313 signed the timeshare transfer agreement or pay all costs of ownership associated

314 with the timeshare owner’s resale timeshare interest if the timeshare owner’s
315 resale timeshare interest is not transferred as required by this Section VII.C.1.

316 2. Provide the timeshare owner with written evidence of the transfer of
317 ownership of that resale timeshare interest, including a copy of the recorded
318 instrument, if applicable, that transfers such resale timeshare interest to a
319 subsequent purchaser, certified by the applicable recording official, within 30
320 days after the date of such transfer.

321 3. Notify the following of transfer of ownership of the resale timeshare interest
322 within 30 days after the date of such transfer:

323 a) The managing entity of the timeshare plan under which the transferred
324 resale timeshare interest is established; and

325 b) If applicable, the exchange company operating any exchange program
326 in which the timeshare owner was enrolled.

327

328 D. For purposes of this section VII., “all costs of ownership” means any expenses of the
329 timeshare owner relating to the resale timeshare interest that come due and payable
330 between the date of the transfer agreement and the date that ownership of the resale
331 timeshare interest is legally transferred from that timeshare owner to the timeshare resale
332 entity, a third person or a subsequent purchaser.

333

334 **VIII. Timeshare Resale Purchase Agreements.**

335 A. In any transfer of a resale timeshare interest except for a transfer from a timeshare
336 owner to a timeshare resale entity, the timeshare resale entity shall use a purchase
337 agreement that discloses to a buyer of a resale timeshare interest all of the following:

338 1. A description legally sufficient for recording or other legal transfer of the
339 resale timeshare interest;

340 2. The name and address of the managing entity of the timeshare property;

341 3. As applicable, the name and address of the timeshare property where the
342 resale timeshare interest is located or the name and address of the timeshare plan
343 of which the resale timeshare interest is a part;

344 4. The amount of the most recent assessment for the common expenses allocated
345 to the resale timeshare interest including the time period to which the assessment

- 346 relates (e.g., monthly, quarterly, yearly) and the date on which any unpaid
347 assessment is due;
- 348 5. A statement that any real or personal property taxes allocated to the resale
349 timeshare interest are included in the applicable common expense assessment or,
350 if not included, the amount of any real or personal property taxes allocated to the
351 resale timeshare interest;
- 352 6. Whether all assessments and real or personal property taxes for the resale
353 timeshare interest are paid in full and, if not, the amount owed and the
354 consequences of failure to pay timely any assessment and real or personal
355 property taxes;
- 356 7. A statement that the buyer shall be responsible for providing notification to
357 the managing entity of the timeshare plan and the applicable exchange company,
358 if any, regarding the change in the ownership of the resale timeshare interest or, if
359 not the buyer, the name and address of the person who shall have such
360 responsibility;
- 361 8. A statement of the first year in which the buyer is entitled to receive the actual
362 use rights and occupancy of the resale timeshare interest;
- 363 9. The name, address, and telephone number of the managing entity, and the
364 website address or other location where the governing documents of the managing
365 entity or owners' association, if any, and the timeshare instrument for the resale
366 timeshare interest may be obtained, together with the following disclosure in
367 conspicuous type in substantially the following form:
- 368 There are many important documents relating to the timeshare plan that
369 you should review before purchasing a timeshare interest. These may
370 include, but are not limited to, (1) the declaration of condominium, (2) the
371 declaration of timeshare plan, (3) the reciprocal easement and cost sharing
372 agreement, (4) the declaration of restrictions, covenants, and conditions,
373 (5) the owners' association articles and bylaws, (6) the current year's
374 operating budget and reserve budget, if any, for the owners' association,
375 and (7) any rules and regulations affecting the reservation and use of the
376 timeshare property or other facilities available for use by timeshare
377 owners.
- 378 10. Whether the timeshare resale entity will be responsible for the recording of the
379 purchase documents in the case of the resale of a timeshare estate; and if not, who
380 will be responsible for this function and the payment of any costs;
- 381 11. Such other information and disclosures as may be required by law.

382 B. In making the disclosures required by this Section VIII., the timeshare resale entity
383 may rely upon information provided in writing by the seller, owners' association or
384 managing entity responsible for the operation, management and maintenance of the
385 timeshare interest.

386 **IX. Prohibited Practices.** A person violates this Act by engaging in any of the following:

387 A. Failing to comply with any of the provisions contained in this Act.

388 B. Failing to disclose information in writing concerning the marketing, sale or transfer of
389 a resale timeshare interest required by this Act prior to accepting any consideration or
390 with the expectation of receiving consideration from any timeshare owner, seller or
391 buyer.

392 C. Making false or misleading statements concerning offers to buy or rent, the value,
393 pricing, timing, availability or numbers of sellers, renters or buyers when engaged in
394 timeshare resale activities.

395 D. Misrepresenting the likelihood of selling a resale timeshare interest.

396 E. Misrepresenting the method by or source from which the timeshare resale entity or
397 lead dealer obtained the personal contact information of any timeshare owner.

398 F. Misrepresenting price or value increases or decreases, assessments, special
399 assessments, maintenance fees or taxes or guaranteeing sales or rentals in order to obtain
400 money or property.

401 G. Making false or misleading statements concerning the identity of the timeshare resale
402 entity or any of its affiliates or the timeshare resale entity's or any of its affiliate's
403 experience, performance, guarantees, services, fees or commissions, availability of
404 refunds, length of time in business or endorsements by or affiliations with developers,
405 management companies or any other third parties.

406 H. Misrepresenting whether or not the timeshare resale entity or its affiliates, employees
407 or agents hold, in any state or jurisdiction, a current real estate sales' or broker's license
408 or other government required license.

409 I. Misrepresenting how funds will be utilized in any timeshare resale activity conducted
410 by the timeshare resale entity.

411 J. Misrepresenting that the timeshare resale entity or its affiliates, employees or agents
412 have specialized education, professional affiliations, expertise, licenses, certifications or
413 other specialized knowledge or qualifications.

414 K. Making false or misleading statements concerning the conditions under which a
415 timeshare owner, seller or buyer may exchange or occupy the resale timeshare interest.

416 L. Representing that any gift, prize, membership or other benefit or service will be
417 provided to any timeshare owner, seller or buyer without providing such gift, prize,
418 membership or other benefit or service in the manner represented.

419 M. Misrepresenting the nature of any resale timeshare interest or the related timeshare
420 plan.

421 N. Misrepresenting the amount of the proceeds, or failing to pay the proceeds, of any
422 rental or sale of a resale timeshare interest as offered by a potential renter or buyer to the
423 timeshare owner who made such resale timeshare interest available for rental or sale
424 through the timeshare resale entity.

425 O. Failing to transfer any resale timeshare interests as represented and required by this
426 Act or to provide written evidence to the timeshare owner of the recording or transfer of
427 such timeshare owner's resale timeshare interest as required by this Act.

428 P. Failing to pay any annual assessments, special assessments, personal property or real
429 estate taxes or any other fees relating to an owner's resale timeshare interest as
430 represented or required by this Act.

431 Q. Misrepresenting or misusing the intended purpose of a power of attorney or similar
432 document to the detriment of any grantor of such power of attorney.

433 R. Using any scheme, artifice or subterfuge for the purpose of evading any provision of
434 this Act, including, but not limited to, such schemes, artifices or subterfuges involving
435 the advertising of rental or the rental of a timeshare owner's resale timeshare interest.

436
437

438 X. Remedies, Penalties and Restitution.

439 A. The provisions of this Act are not exclusive. The remedies provided in this Act are in
440 addition to any other procedures or remedies provided for in any other law; provided,
441 however, that there shall be no recovery of damages and penalties under both this Act and
442 another law for the same act or practice, except as provided in Section X.I. below.

443 B. A violation of this Act is also a violation of the [State] Unfair and Deceptive Practices
444 Act.

445 C. Whenever the Agency has reason to believe that any person is engaging in, has
446 engaged in, or is about to engage in any act or practice declared to be unlawful by this
447 Act, the Agency may bring an administrative action or an action in the name of the state
448 against the person to restrain by temporary restraining order, temporary injunction, or

449 permanent injunction the use of such method, act, or practice. The Agency may also
450 sequester or attach assets, order restitution or appoint a receiver to compensate persons
451 damaged by violations of this Act.

452 D. If ordered by the court or otherwise provided by law, a bond or other financial
453 assurance may be required of the Agency as a condition of a sequestration or attachment
454 of assets, or for a temporary restraining order or temporary injunction to become
455 effective.

456 E. An action brought under this Act which alleges a claim to relief under this section
457 may be commenced in the district court of the county in which the person against whom
458 it is brought resides, has his principal place of business, has done business, or in the
459 district court of the county where the transaction occurred, or, on the consent of the
460 parties, in a district court of [the county where the state capitol is located] County.

461 F. In addition to the request for a temporary restraining order, temporary injunction or
462 permanent injunction in a proceeding brought under this Act, the Agency may request,
463 and the court may award, a civil penalty to be paid to the state in an amount of:

464 1. not more than \$10,000 per violation; and

465 2. if the act or practice that is the subject of the proceeding was calculated to
466 acquire or deprive money or other property from a person who was 65 years of
467 age or older when the act or practice occurred, an additional amount of not more
468 than \$250,000.

469 G. The court may make such additional orders or judgments as are necessary to
470 compensate identifiable persons for actual damages or to restore money or property, real
471 or personal, which may have been acquired by means of any unlawful act or practice.
472 Damages may not include any damages incurred beyond a point two years prior to the
473 institution of the action by the Agency. Orders of the court may also include the
474 appointment of a receiver or a sequestration of assets if a person who has been ordered by
475 a court to make restitution under this section has failed to do so within three months after
476 the order to make restitution has become final and not subject to appeal.

477 H. In any civil or criminal action based on a violation of Section V., there shall be a
478 presumption that personal contact information was wrongfully obtained if a timeshare
479 resale entity or lead dealer fails to produce the records required by Section V.A. or B.

480 I. Any person who establishes that a timeshare resale entity or lead dealer wrongfully
481 obtained or wrongfully used personal contact information with respect to timeshare
482 owners or members of an exchange program shall, in addition to any other remedies that
483 may be available in law or equity, be entitled to recover from such timeshare resale entity
484 or lead dealer an amount equal to \$1,000 for each timeshare owner or member about
485 whom personal contact information was wrongfully obtained or used. The prevailing

486 person in any such action shall also be entitled to recover reasonable attorney's fees and
487 costs.

488 J. Any person who violates the terms of an injunction under this section shall forfeit and
489 pay to the state a civil penalty of not more than \$10,000 per violation, not to exceed
490 \$50,000. In determining whether or not an injunction has been violated the court shall
491 take into consideration the maintenance of procedures reasonably adapted to insure
492 compliance with the injunction.

493 K. Any person may maintain an action for violations of this Act. In a suit filed under
494 this section, each person who prevails may obtain:

495 1. The amount of damages found by the court. If the court finds that the conduct
496 of the defendant was committed knowingly or intentionally, the person may also
497 recover damages of not more than three times the amount of damages;

498 2. An order enjoining such acts or failure to act;

499 3. Orders necessary to restore to any party to the suit any money or property, real
500 or personal, which may have been acquired in violation of this Act; and

501 4. Any other relief which the court deems proper, including the appointment of a
502 receiver or the revocation of a license or certificate authorizing a person to engage
503 in business in this state if the judgment has not been satisfied within three months
504 of the date of the final judgment. Costs and fees of such receivership or other
505 relief shall be assessed against the defendant.

506 L. On a finding by the court that an action under this section was groundless in fact or
507 law or brought in bad faith, or brought for the purpose of harassment, the court shall
508 award to the defendant reasonable and necessary attorneys' fees and court costs.

509 M. Each person who prevails shall be awarded court costs and reasonable and necessary
510 attorneys' fees.

511

512 **XI. No Effect on Licenses.**

513 This Act does not affect whether any timeshare resale activity requires a license under the [state]
514 Real Estate Licensing Act. This Act does not excuse or exempt any person engaging in
515 timeshare resale activity from the requirement of licensure under the [state] Real Estate
516 Licensing Act if the applicable timeshare resale activity they engage in requires a license under
517 the [state] Real Estate Licensing Act and another statute of this state (e.g., the Timeshare Act)
518 does not exempt the applicable person from licensure under the [state] Real Estate Licensing
519 Act.

520