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

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I. Short Title, Purposes.

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

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B. The purposes of this Act are to:

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1. Give statutory recognition in this state to timeshare resale activity.

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2. Establish procedures for solicitation for, and conduct of, timeshare resale activity.

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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.

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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.

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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.

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6. Require every timeshare resale entity that engages in timeshare resale activity in, or directed to, this state, to comply with this Act.

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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.

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8. Supplement, not supplant, the [state] Real Estate Licensing Act.
II. Definitions.

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

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

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

C. “Conspicuous type” means type:

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

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

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

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

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

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

G. “Real Estate Licensing Act” means the [enter popular name and cite to state real estate broker licensing act].
H. “Resale timeshare interest” means a timeshare interest, no matter where located, that has previously been sold to a natural person for personal, family or household use.

I. “Subsequent purchaser” means the buyer or transferee of a resale timeshare interest.

J. “Timeshare owner” means any person who owns a resale timeshare interest.

K. “Timeshare resale activity” means any activity within this state that directly, or indirectly, for consideration, consists of any of the following activities regardless of whether done in person, by mail, telephone, the internet, or any other medium of communication:

1. Selling or offering to sell or list for sale any resale timeshare interest;

2. Buying or offering to buy any resale timeshare interest, wherever located;

3. Transferring or offering to assist in the transfer of any resale timeshare interest;

4. Invalidating or offering to invalidate the purchase or ownership of any resale timeshare interest;

5. Advertising or soliciting to advertise, list for sale, offer, or promote the sale, purchase, transfer or invalidation of any resale timeshare interest.

L. “Timeshare resale entity” means any person who, either directly or indirectly, engages in timeshare resale activity.

M. “Timeshare resale purchase agreement” means a contract under which the timeshare owner becomes legally obligated to sell, and a person becomes legally obligated to buy, that timeshare owner’s resale timeshare interest.

N. “Timeshare resale transfer agreement” means a contract between a timeshare resale entity and a timeshare owner in which the timeshare resale entity agrees to transfer or offers to assist in the transfer of that timeshare owner’s resale timeshare interest.

O. “Transfer” means any voluntary conveyance of a resale timeshare interest to a person other than:

1. The managing entity or owners’ association responsible for the operation, management and maintenance of that resale timeshare interest;

2. The developer of the timeshare plan of which the resale timeshare interest is a part; and
3. Any person taking ownership on a gratuitous basis or by foreclosure of a lien or by a deed in lieu of foreclosure.

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

III. Compliance.

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

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

IV. Exemptions.

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

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

C. Nothing in this Act shall apply to the owner and its agents or employees of a regularly published newspaper, magazine, telephone directory, or other periodical publication of general circulation, or broadcast station, website or billboard, if the activities of the owner or its agents or employees are solely limited to solicitation for the placement of advertisements, the publication of advertisements and the transmission of responses to the persons who place the advertisements. Any person who would otherwise be exempt from this Act pursuant to this Section IV.C., shall not be exempt if such person (i) solicits the placement of the advertisement by representing that it can get cash, a certain price, or a similar type of representation for the timeshare owner’s resale timeshare interest, (ii) makes a recommendation as to the sales price for which to advertise the resale timeshare interest, (iii) makes any representations to the person placing the advertisement regarding the success rate for selling resale timeshare interests advertised with such person, or (vi) makes any misrepresentations described in Section IX. of this Act. This exemption shall not apply to a person who is engaged in other activity that is timeshare resale activity with respect to such other activity, including if such activity requires a real estate license under the [state] Real Estate Licensing Act.
D. Nothing in this Act shall apply to the resale by a developer, or by a third party that it engages, of a resale timeshare interest if it is resold as part of an existing registration by that developer of the timeshare plan in which that resale timeshare interest is included pursuant to [cite state timeshare law].

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

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

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

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

V. Recordkeeping by Persons Engaged in Resale Activities.

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

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

2. A copy of a current government-issued photographic identification of the lead dealer from which the personal contact information was obtained, such as a driver's license, passport, or military identification card.
3. The date, time, and place of the transaction at which the personal contact information was obtained, along with the amount of consideration paid and a signed receipt from the lead dealer or copy of a canceled check.

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

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

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

VI. Timeshare Resale Activity Disclosures.

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

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

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

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

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

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

3. A list of the names and addresses of any other entities affiliated with the timeshare resale entity and the primary website addresses used by or affiliated with the timeshare resale entity, any of which will be used to promote the resale timeshare interest. The timeshare resale entity may provide a link to a website that identifies the website addresses used to promote resale timeshare interests.
4. Whether the timeshare resale entity’s rights are exclusive and, if the timeshare resale entity’s rights are exclusive, the scope of such exclusivity and length of the exclusivity period.

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

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

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

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

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

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

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

   b) If the timeshare resale activities described in VI.B.7. are limited to the placement and publication of advertisements, the timeshare resale entity may elect to make the following disclosure in conspicuous type in lieu of the disclosure described in VI.B.10.a): “There is no guarantee that you will sell your timeshare interest at all or within any period of time by purchasing this advertisement. Our only obligation to you in connection with your purchase of an advertisement is to post your advertisement on our website for the agreed length of time and to forward you all inquiries we receive on your behalf.”
c) For purposes of the above disclosures in VI.B.10.a) and b) made on any website, “conspicuous type” shall mean that the disclosures are directly accessible from the first page of the website.

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

VII. Timeshare Transfer Agreements.

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

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

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

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

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

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

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

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

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

6. If ownership of the resale timeshare interest will be transferred to any entity prior to the completion of the timeshare resale entity’s obligations under the
timeshare transfer agreement, an explanation of the purpose of such transfer and the name and address of the entity to which the transfer will be made.

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

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

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

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

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

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

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

1. Complete all acts sufficient to transfer ownership of the resale timeshare interest from the timeshare owner to the timeshare resale entity, a third person or a subsequent purchaser no more than 180 days after the date all parties have signed the timeshare transfer agreement or pay all costs of ownership associated
with the timeshare owner’s resale timeshare interest if the timeshare owner’s resale timeshare interest is not transferred as required by this Section VII.C.1.

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

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

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

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

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

VIII. Timeshare Resale Purchase Agreements.

A. 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 a buyer of a resale timeshare interest all of the following:

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

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

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

4. The amount of the most recent assessment for the common expenses allocated to the resale timeshare interest including the time period to which the assessment
relates (e.g., monthly, quarterly, yearly) and the date on which any unpaid
assessment is due;

5. A statement that any real or personal property taxes allocated to the resale
timeshare interest are included in the applicable common expense assessment or,
if not included, the amount of any real or personal property taxes allocated to the
resale timeshare interest;

6. Whether all assessments and real or personal property taxes for the resale
timeshare interest are paid in full and, if not, the amount owed and the
consequences of failure to pay timely any assessment and real or personal
property taxes;

7. A statement that the buyer shall be responsible for providing notification to
the managing entity of the timeshare plan and the applicable exchange company,
if any, regarding the change in the ownership of the resale timeshare interest or, if
not the buyer, the name and address of the person who shall have such
responsibility;

8. A statement of the first year in which the buyer is entitled to receive the actual
use rights and occupancy of the resale timeshare interest;

9. The name, address, and telephone number of the managing entity, and the
website address or other location where the governing documents of the managing
entity or owners’ association, if any, and the timeshare instrument for the resale
timeshare interest may be obtained, together with the following disclosure in
conspicuous type in substantially the following form:

There are many important documents relating to the timeshare plan that
you should review before purchasing a timeshare interest. These may
include, but are not limited to, (1) the declaration of condominium, (2) the
declaration of timeshare plan, (3) the reciprocal easement and cost sharing
agreement, (4) the declaration of restrictions, covenants, and conditions,
(5) the owners’ association articles and bylaws, (6) the current year’s
operating budget and reserve budget, if any, for the owners’ association,
and (7) any rules and regulations affecting the reservation and use of the
timeshare property or other facilities available for use by timeshare
owners.

10. Whether the timeshare resale entity will be responsible for the recording of the
purchase documents in the case of the resale of a timeshare estate; and if not, who
will be responsible for this function and the payment of any costs;

11. Such other information and disclosures as may be required by law.
B. In making the disclosures required by this Section VIII., the timeshare resale entity may rely upon information provided in writing by the seller, owners’ association or managing entity responsible for the operation, management and maintenance of the timeshare interest.

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

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

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

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

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

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

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

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

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

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

J. Misrepresenting that the timeshare resale entity or its affiliates, employees or agents have specialized education, professional affiliations, expertise, licenses, certifications or other specialized knowledge or qualifications.
K. Making false or misleading statements concerning the conditions under which a timeshare owner, seller or buyer may exchange or occupy the resale timeshare interest.

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

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

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

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

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

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

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

X. Remedies, Penalties and Restitution.

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

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

C. Whenever the Agency has reason to believe that any person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this Act, the Agency may bring an administrative action or an action in the name of the state against the person to restrain by temporary restraining order, temporary injunction, or
permanent injunction the use of such method, act, or practice. The Agency may also
sequester or attach assets, order restitution or appoint a receiver to compensate persons
damaged by violations of this Act.

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

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

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

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

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

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

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

I. Any person who establishes that a timeshare resale entity or lead dealer wrongfully
obtained or wrongfully used personal contact information with respect to timeshare
owners or members of an exchange program shall, in addition to any other remedies that
may be available in law or equity, be entitled to recover from such timeshare resale entity
or lead dealer an amount equal to $1,000 for each timeshare owner or member about
whom personal contact information was wrongfully obtained or used. The prevailing
person in any such action shall also be entitled to recover reasonable attorney’s fees and
costs.

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

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

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

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

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

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

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

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

XI. No Effect on Licenses.

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