

# HOUSE . . . . . No. 3613

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Thirteen  
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An Act relative to time share resale and transfer service providers.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Section 2 of Chapter 183B of the General Laws is hereby amended by  
2 inserting the following new definitions:-

3           “Resale service provider”, any resale advertiser, or other person or entity, including any  
4 agent or employee of such person or entity, who offers or uses telemarketing, direct mail, e-mail,  
5 or any other means of communication in connection with the offering of resale brokerage or  
6 resale advertising services to consumer time-share resellers. The term does not include  
7 developers or managing entities to the extent they offer resale brokerage or resale advertising  
8 services to owners of time-shares in their own time-share plans; resale brokers to the extent that  
9 resale advertising services are offered in connection with resale brokerage services and no fee for  
10 the advertising service is collected in advance; or a consumer time-share reseller who later offers  
11 the timeshare or time-shares for rent or offers for resale in a given calendar year five or fewer of  
12 the time-shares that he or she acquired for his or her own use and occupancy.

13           “Consumer resale time-share”, means:

14           (a) A time-share owned by a consumer time-share reseller; or

15           (b) One or more reserved occupancy rights relating to a time-share owned by a purchaser.

16           “Consumer time-share reseller”, a purchaser who acquires a time-share for his or her own  
17 use and occupancy and later offers the time-share for resale or rental.

18           “Resale broker”, any person, or any agent or employee of such person, who is licensed  
19 pursuant to section eighty-seven RR of chapter one hundred twelve and who offers or provides  
20 resale brokerage services to consumer time-share resellers for compensation or valuable

consideration, regardless of whether the offer is made in person, by mail, by telephone, through the Internet, or by any other medium of communication.

“Resale brokerage services”, with respect to a consumer resale time-share in a time-share property located or offered within this commonwealth, any activity that directly or indirectly consists of any of the activities described in sections eighty-seven PP and eighty-seven RR of chapter one hundred twelve.

“Resale advertiser”, any person who offers, personally or through an agent, resale advertising services to consumer time-share resellers for compensation or valuable consideration, regardless of whether the offer is made in person, by mail, by telephone, through the Internet, or by any other medium of communication. The term does not include:

(a) A resale broker to the extent that resale advertising services are offered in connection with time-share resale brokerage services and no fee for the resale advertising service is collected in advance;

(b) A developer or managing entity to the extent that either of them offers resale advertising services to owners of time-shares in their own time-share plans; or

(c) A newspaper, periodical, or website owner, operator, or publisher, unless the newspaper, periodical, or website owner, operator, or publisher derives more than 10 percent of its gross revenue from providing resale advertising services. For purposes of this paragraph, the calculation of gross revenue derived from providing resale advertising services includes revenue of any affiliate, parent, agent, and subsidiary of the newspaper, periodical, or website owner, operator, or publisher, so long as the resulting percentage of gross revenue is not decreased by the inclusion of such affiliate, parent, subsidiary, or agent in the calculation.

“Resale advertising service”, any good or service relating to, or a promise of assistance in connection with, advertising or promoting the resale or rental of a consumer resale time-share located or offered within this Commonwealth of Massachusetts, including any offer to advertise or promote the sale or purchase of any such interest.

Time-share transfer services agreement", a contract or other agreement between a person offering time-share transfer services and a consumer time-share reseller, in which the person offering time-share transfer services agrees to provide such services as described in to G.L. c. 183B, Section 56.

“Time-share transfer services”, any good or service relating to an offer or agreement to transfer ownership of a consumer resale time-share, or assistance with or a promise of assistance in connection with the transfer of ownership of a consumer resale time-share. The term does not include resale advertising services as provided in this chapter.

“Time-share transfer services provider”, any person or entity, including any agent or employee of such person or entity, who offers or uses telemarketing, direct mail, e-mail, or any other means of communication in connection with the offering of time-share transfer services to consumer time-share resellers. The term does not include developers or managing entities to the extent they offer time-share transfer services to owners of time-shares in their own time-share plans.

SECTION 2. Chapter 183B of the General Laws is hereby further amended by inserting after Section 42 the following:

Section 42A. Resale service providers; disclosure obligations.

(a)(1) Before engaging in resale advertising services, a resale service provider must provide to the consumer time-share reseller:

i. A description of any fees or costs related to such services that the consumer time-share reseller, or any other person, is required pay to the resale service provider or to any third party.

ii. A description of when such fees or costs are due.

(2) A resale service provider may not engage in those activities described in sections eighty-seven PP and eighty-seven RR of chapter one hundred twelve without being the holder of a valid and current active license in accordance with section eighty-seven RR of chapter one hundred twelve.

(b) In the course of offering resale advertising services, a resale advertiser may not:

(1) State or imply that the resale advertiser will provide or assist in providing any type of direct sales or resale brokerage services other than the advertising of the consumer resale time-share for sale or rent by the consumer timeshare reseller.

(2) State or imply to a consumer time-share reseller that the time-share has a specific resale value.

(3) Engage in any resale advertising services for compensation or valuable consideration without first obtaining a written agreement to provide such services signed by the consumer timeshare reseller. Notwithstanding any other law, the agreement must be printed in at least 12-point type and must contain the following information:

i. The name, address, telephone number, and web address, if any, of the resale advertiser and a mailing address and e-mail address to which a agreement cancellation notice may be delivered at the consumer time-share reseller’s election.

ii. A complete description of all resale advertising services to be provided, including, but not limited to, details regarding the publications, Internet sites, and other media in or on which

the consumer resale time-share will be advertised; the dates or time intervals for such advertising or the minimum number of times such advertising will be run in each specific medium; the itemized cost to the consumer time-share reseller of each resale advertising service to be provided; and a statement of the total cost to the consumer time-share reseller of all resale advertising services to be provided.

iii. A statement printed in at least 12-point boldfaced type immediately preceding the space in the agreement provided for the consumer time-share reseller's signature in substantially the following form:

#### TIME-SHARE OWNER'S RIGHT OF CANCELLATION

(Name of resale advertiser) will provide resale advertising services pursuant to this agreement. You have an unqualified right to cancel this agreement for any reason within three (3) business days after the date you sign this agreement. This right to cancel may not be waived. If you decide to cancel this agreement, you must notify (name of resale advertiser) in writing of your intent to cancel. Your notice of cancellation shall be delivered in person or sent by certified or registered United States mail and sent to (resale advertiser's physical address) and shall be effective upon the date sent. Your refund will be made within 20 days after receipt of notice of cancellation or within 5 days after receipt of funds from your cleared check, whichever is later. You are not obligated to pay (name of resale advertiser) any money unless you sign this agreement and return it to (name of resale advertiser).

(4) Make or submit any charge to a consumer time-share reseller's credit card account; make or cause to be made any electronic transfer of consumer time-share reseller funds; or collect any payment from a consumer time-share reseller in an aggregate amount totaling more than \$75 in any 12-month period unless the consumer time-share reseller has been provided a copy of the terms and conditions of the agreement provided for in paragraph (4) and the consumer time-share reseller has agreed to such terms and conditions by mail or electronic transmission.

(5) Fail to honor any cancellation notice sent by the consumer time-share reseller within three (3) days after the date the consumer time-share reseller signs the agreement for resale advertising services in compliance with subparagraph (3)(iii).

(6) Fail to provide a full refund of all money paid by a consumer time-share reseller within twenty (20) days after receipt of notice of cancellation or within five (5) days after receipt of funds from a cleared check, whichever is later.

(c) If a resale service provider uses an agreement for resale advertising services that fails to comply with subsection (b), such agreement shall be voidable at the option of the consumer timeshare reseller for a period of one (1) year after the date it is executed by the consumer time-share reseller.

(d) Notwithstanding obligations placed upon any other persons by this section, it is the duty of a resale service provider to supervise, manage, and control all aspects of the offering of resale advertising services by any agent or employee of the resale service provider. Any violation of this section that occurs during such offering shall be deemed a violation by the resale service provider as well as by the person actually committing the violation.

(e) Providing resale advertising services with respect to a consumer resale time-share in a timeshare property located or offered within this commonwealth, or in a multi-location plan registered or required to be registered to be offered in this commonwealth, including acting as an agent or third-party service provider for a resale service provider, constitutes operating, conducting, engaging in, or carrying on a business or business venture in this state for the purposes of chapter two hundred twenty-three A.

(f) The use of any unfair or deceptive act or practice by any person in connection with resale advertising services is a violation of this section.

(g) Notwithstanding any other penalties provided for in this section, any violation of this section is subject to a civil penalty of not more than \$15,000 per violation. In addition, a person who violates any provision of this section commits an unfair and deceptive act or practice, under chapter ninety-three A.

SECTION 3. G.L. c. 183B is hereby further amended by inserting at the end thereof after Section 55 the following:

Section 56. Transfer of interest; time-share transfer services agreements, transfer services, penalties, prohibitions

Section 56. (a) In the course of offering time-share transfer services, no time-share transfer service provider shall:

1. Engage in any time-share transfer services for consideration, or the expectation of receiving consideration, without first obtaining a written time-share transfer services agreement signed by the consumer time-share reseller that complies with the provisions of this subsection.

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

3. Fail to comply with the requirements of subsections (b) and (c).

4. Fail to fulfill its obligations under the time-share transfer agreement.

(b) Each time-share transfer services agreement shall contain:

1. The name, physical address, telephone number, and website address, if any, of the time-share transfer service provider and any other agent or third party who will provide any of the time-share transfer services on behalf of the time-share transfer service provider.

2. The name, physical address, telephone number, and email address of the escrow agent, if applicable, that will be used to hold funds or other property pursuant to subsection (c).

3. A complete description of the time-share transfer services.

4. The duration of the contract for time-share transfer services expressed in days, weeks, months or years.

5. A description of any fees, costs, or other consideration to be paid to the time-share transfer services provider and any other agent or third party, including, but not limited to, commissions that are paid upon the transfer of a time-share.

6. A statement that all fees, costs or other compensation paid to a time-share transfer services provider shall be placed in escrow prior to the delivery to the consumer time-share reseller of written notice of the full performance of the time-share transfer services agreement and written evidence that all promised time-share transfer services have been performed, including, but not limited to, delivery to both the consumer time-share reseller and the managing entity of a copy of the recorded instrument or other legal document evidencing the transfer of ownership of or legal title to the consumer resale time-share to the transferee, accompanied by the full name, address and other known contact information for the transferee.

7. A statement in substantially the following form in conspicuous type immediately preceding the space in the time-share transfer services agreement provided for the consumer time-share reseller's signature:

'You have an unqualified right to cancel this agreement for any reason within three (3) business days after the date you sign this agreement. This right to cancel may not be waived. If you decide to cancel this agreement, you must notify (name of time-share transfer services provider) in writing of your intent to cancel. Your notice of cancellation shall be delivered in person or sent by certified or registered United States mail and sent to (time-share transfer services provider's mailing address) and shall be effective upon the date sent. Your refund will be made within twenty (20) days after receipt of notice of cancellation or within five (5) days after receipt of funds from your cleared check, whichever is later. You are not obligated to pay (name of time-share transfer services provider) any money unless you sign this contract and return it to (name of time-share transfer services provider).'

'Before signing this agreement, you should carefully review your original time-share purchase agreement and other project documents to determine whether there are any restrictions or special conditions applicable to the resale or rental of your time-share.

(c)(1) All funds or other property which is received from or on behalf of a consumer time-share reseller pursuant to a time-share transfer services agreement shall be placed in escrow in the commonwealth, in an account designated solely for said purpose maintained by an escrow agent which is either a licensed title insurance company, an attorney, a licensed real estate broker, or an institution whose accounts are insured by a governmental agency. Any fee, cost or other compensation that is due or that will be paid to the time-share transfer services provider under the time-share transfer services agreement must be held in such escrow account until the time-share transfer services provider fully complied with all of its obligations under the time-share transfer services agreement and under this subsection.

(2) The funds or other property required to be escrowed pursuant to this subsection may only be released from escrow as follows:

(i) To a time-share transfer services provider upon the presentation of an affidavit by such time-share transfer services provider to the escrow agent that all promised time-share transfer services have been performed, including notification to the consumer time-share reseller that the escrow funds are being requested to be released from escrow, and delivery to both the consumer time-share reseller and the managing entity or association of a copy of the recorded instrument or other legal document evidencing the transfer of ownership or of legal title to the time-share to the transferee.

(ii) To a managing entity to pay any time-share expenses, transfer fees, or other moneys owed with respect to the consumer resale time-share as set forth in the certificate provided for in G.L. c. 183B, Section 42 or to pay a governmental agency, including but not limited to the registry of deeds or registry district of the Land Court, for the purpose of completing and perfecting the transfer. A managing entity shall accept any funds remitted to it by an escrow agent pursuant to this subsection (c)(2)(ii).

(iii) To the consumer time-share reseller:

(1) upon written request to the escrow agent in the event the time-share transfer services provider fails to provide the time-share transfer services as provided for in the written agreement as required in subsection (b) above.

(2) upon written request to the escrow agent in the event the consumer time-share reseller exercises its three (3) day right of rescission as provided for in subsection (b)(7) of this section.

(3) upon the mutual written agreement between the time-share transfer services provider and the consumer time-share reseller.

(3) The escrow agent shall retain all time-share transfer services agreements, escrow account records, and affidavits received pursuant to this subsection for a period of three (3) years.

(d) Providing time-share transfer services with respect to a consumer resale time-share in a time-share property located or offered within this Commonwealth of Massachusetts, or in a multi-location plan offered in this Commonwealth, including acting as an agent or third-party service provider for a time-share transfer services provider, constitutes operating, conducting, engaging in, or carrying on a business or business venture in this commonwealth for the purposes of chapter two hundred twenty-three A.

(e) In addition to the remedies provided in Section 49, it shall be deemed an unfair or deceptive practice or act under chapter ninety-three A for any person to participate in any plan or scheme, a purpose of which is to transfer a consumer resale time-share to a transferee that the person knows or reasonably should have known does not have the ability, means or intent to pay all time-share expenses and taxes associated with the consumer resale time-share.

(f) The managing entity, the consumer time-share reseller, or the attorney general of the commonwealth may bring an action to enforce the provisions of subsection (e). In any such action, the managing entity or the consumer time-share reseller may recover its actual damages, and the prevailing party may recover its reasonable attorney's fees and court costs.

(g) The provisions of subsections (a) – (c) shall not apply to:

(1) Any resale broker who offers time-share transfer services to a consumer time-share reseller, so long as the resale broker is a licensed real estate broker under the laws of the commonwealth and complies in all respects with such laws and any regulations promulgated thereto.

(2) Any licensed Massachusetts attorney in good standing or licensed Massachusetts title insurer or licensed title agent in good standing who offers time-share transfer services to a consumer time-share reseller, so long as the total consideration paid by the consumer time-share reseller to such person does not exceed \$600.00, exclusive of any time-share expenses, transfer fees or monies owed with respect to the time-share as set forth in the certificate provided for in G.L. c. 183B, Section 42(a), and exclusive of any fees owed to a governmental agency, including but not limited to the registry of deeds or registry district of the Land Court, for the purpose of completing and perfecting the time-share resale transfer.

(h) The provisions of this Section shall not apply to the transfer of ownership of a consumer resale time-share from a consumer time-share reseller to the developer or managing entity of that time-share property or to a consumer time-share reseller who later transfers five or fewer time-share or time-shares in a given calendar year.