

# SENATE . . . . . No. 2054

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## The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

SECTION 1. Section 2 of chapter 183B of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by inserting after the definition of “business day” the following 2 definitions:-

“Consumer resale time-share”, (i) a time-share owned by a consumer time-share reseller; or (ii) 1 or more reserved occupancy rights relating to a time-share owned by a purchaser.

“Consumer time-share reseller”, a purchaser who acquires a time-share for the purchaser’s own use and occupancy and offers the time-share for resale or rental.

SECTION 2. Said section 2 of said chapter 183B, as so appearing, is hereby further amended by inserting after the definition of “registry of deeds” the following 5 definitions:-

“Resale advertiser”, a 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; provided, however, that “resale advertiser” shall not include: (i) 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; (ii) a developer or managing entity to the extent that either offers resale advertising services to owners of time-shares in the developer’s or managing entity’s own time-share plans; or (iii) a newspaper, periodical or website owner, operator or publisher, unless the newspaper, periodical or website owner, operator or publisher derives more than 10 per cent of its gross revenue from providing resale advertising services; provided, however, that for purposes of this clause, the calculation of gross revenue derived from providing resale advertising services shall include 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”, a 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 the commonwealth, including an offer to advertise or promote the sale or purchase of any such interest.

“Resale broker”, a person or an agent or employee of a person who is licensed pursuant to section 87RR of chapter 112 and who offers or provides 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 the commonwealth, any activity that qualifies one as a real estate broker, as defined in section 87PP of chapter 112.

“Resale service provider”, any resale advertiser or other 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 resale brokerage or resale advertising services to consumer time-share resellers; provided, however, that “resale service provider” shall not include: (i) developers or managing entities to the extent they offer resale brokerage or resale advertising services to owners of time-shares in the developer’s or managing entity’s own time-share plans; (ii) resale brokers to the extent that resale advertising services are offered in connection with resale brokerage services and no fee for the advertising service is collected in advance; or (iii) a consumer time-share reseller who has made 5 or fewer time-shares available for rent or resale in the previous 12 months.

SECTION 3. Said section 2 of said chapter 183B, as so appearing, is hereby further amended by inserting after the definition of “time-share property” the following 3 definitions:-

“Time-share transfer services”, a 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; provided, however, that “time-share transfer services” shall not include resale advertising services.

“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 the services as described in section 56.

“Time-share transfer services provider”, a person or entity, including an 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; provided, however, that “time-share transfer services provider” shall not include developers or managing entities to the extent they offer time-share transfer services to owners of time-shares in the developer’s or managing entity’s own time-share plans.

SECTION 4. Said chapter 183B is hereby further amended by inserting after section 42 the following section:-

Section 42A. (a)(1) Before engaging in resale advertising services, a resale service provider shall 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 to pay to the resale service provider or to any third party; and (ii) a description of when such fees or costs are due.

(2) A resale service provider shall not engage in activities that would qualify the provider as a real estate broker, as defined in section 87PP of chapter 112, without being the holder of a valid and current active license in accordance with said section 87RR.

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

(i) 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;

(ii) state or imply to a consumer time-share reseller that the time-share has a specific resale value;

(iii) 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 time-share reseller; provided, however, that notwithstanding any other general or special law to the contrary, the agreement shall be printed in at least 12-point type and shall contain:

(A) the name, address, telephone number and web address, if any, of the resale advertiser and a mailing address and e-mail address to which an agreement cancellation notice may be delivered at the consumer time-share reseller's election;

(B) 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 that will be used to advertise the consumer resale time-share, the dates or time intervals for such advertising or the minimum number of times advertising will 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; and

(C) 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 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).”;

(iv) 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 clause (iii) and the consumer time-share reseller has agreed to such terms and conditions by mail or electronic transmission;

(v) fail to honor a cancellation notice sent by the consumer time-share reseller within 3 days after the date the consumer time-share reseller signs the agreement for resale advertising services in compliance with subclause (C) of clause (iii); or

(vi) fail to provide a full refund of all money paid by a consumer time-share reseller within 20 days after receipt of notice of cancellation or within 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), the agreement shall be voidable at the option of the consumer time-share reseller for a period of 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 an agent or employee of the resale service provider. A violation of this section that occurs during the offering of resale advertising services by an agent or employee of the resale service provider shall be deemed a violation by the resale service provider, as well as by the agent or employee actually committing the violation.

(e) Providing resale advertising services with respect to a consumer resale time-share in a time-share property located or offered within the commonwealth, or in a multi-location plan registered or required to be registered in the commonwealth, including acting as an agent or third-party service provider for a resale service provider, shall constitute operating, conducting,

engaging in or carrying on a business or business venture in the commonwealth for the purposes of chapter 223A.

(f) Notwithstanding the civil penalty in section 4 of chapter 93A, a violation of this section brought pursuant to section 49 shall be subject to a civil penalty of not more than \$15,000 for each such violation.

SECTION 5. Said chapter 183B is hereby further amended by adding the following section:-

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

(i) 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 this section;

(ii) 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;

(iii) fail to comply with the requirements of subsections (b) and (c); or

(iv) fail to fulfill its obligations under the time-share transfer agreement.

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

(i) 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 the time-share transfer services on behalf of the time-share transfer service provider;

(ii) 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);

(iii) a complete description of the time-share transfer services;

(iv) the duration of the contract for time-share transfer services expressed in days, weeks, months or years;

(v) a description of 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;

(vi) 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 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; and

(vii) 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:

#### "YOUR RIGHT OF CANCELLATION

You have an unqualified right to cancel this agreement for any reason within 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 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 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 such purposes and 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. Fees, costs 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 shall be held in such escrow account until the time-share transfer services provider fully complies 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 shall only be released from escrow:

(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 if a manager does not exist, the association, 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 money owed with respect to the consumer resale time-share set forth in the certificate provided for in 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; provided, however, that a managing entity shall accept any funds remitted to it by an escrow agent pursuant to this clause; or

(iii) to the consumer time-share reseller:

(A) upon written request to the escrow agent in the event the time-share transfer services provider fails to provide the time-share transfer services in the written agreement required by subsection (b):

(B) upon written request to the escrow agent in the event the consumer time-share reseller exercises its 3 day right of rescission in clause (vii) of subsection (b); or

(C) 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 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 the commonwealth, or in a multi-location plan offered in the commonwealth, including acting as an agent or third-party service provider for a time-share transfer services provider, shall constitute operating, conducting, engaging in or carrying on a business or business venture in the commonwealth for the purposes of chapter 223A.

(e) No person shall participate in a plan or scheme 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) Notwithstanding the civil penalty provided for in section 4 of chapter 93A, a violation of this section brought pursuant to section 49 shall be subject to a civil penalty of not more than \$15,000 for each such violation.

(g) Subsections (a) to (c), inclusive, shall not apply to:

234 (i) a resale broker who offers time-share transfer services to a consumer time-share  
235 reseller, so long as the resale broker is licensed under the laws of the commonwealth and  
236 complies in all respects with applicable laws and regulations; or

237 (ii) an attorney licensed to practice law in the commonwealth and in good standing, a title  
238 insurer or agent of the title insurer licensed under the laws of the commonwealth and in good  
239 standing or a licensed title agent in good standing, who offers time-share transfer services to a  
240 consumer time-share reseller, so long as the total consideration paid by the consumer time-share  
241 reseller to such person does not exceed \$600 exclusive of any time-share expenses, transfer fees  
242 or monies owed with respect to the time-share as set forth in the certificate provided for in  
243 subsection (a) of section 42, and exclusive of any fees owed to a governmental agency, including  
244 but not limited to, the registry of deeds or registry district of the land court, to complete and  
245 perfect the time-share resale transfer.

246 (h) This section shall not apply to the transfer of ownership of a consumer resale time-  
247 share from a consumer time-share reseller to the developer or managing entity of that time-share  
248 property nor to a consumer time-share reseller who transferred 5 or fewer time-shares in the  
249 previous 12 months.