

Enrolled
Senate Bill 838

Sponsored by COMMITTEE ON BUSINESS AND TRANSPORTATION

CHAPTER

AN ACT

Relating to timeshares; creating new provisions; and amending ORS 94.803, 94.807, 94.826 and 94.873.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 94.803 is amended to read:

94.803. As used in this section and ORS 94.807 to 94.945:

(1) "Agency" means the Real Estate Agency.

(2) "Accommodation" means an apartment, condominium unit, cabin, house, lodge, hotel or motel room or other private or commercial structure situated on real property and designed for residential occupancy.

(3) "Assessment" means the pro rata share assessed from time to time against each owner of a timeshare by the managing entity to pay for common expenses.

(4) "Blanket encumbrance" means a trust deed or mortgage or any other lien or encumbrance, mechanic's lien or otherwise, securing or evidencing the payment of money and affecting more than one timeshare, or an agreement affecting more than one timeshare by which the developer holds the timeshare property under an option, leasehold, contract to sell or trust agreement.

(5) "Commissioner" means the Real Estate Commissioner.

(6) "Common expenses" means:

(a) Expenses of administration, maintenance, repair or replacement of the accommodations and facilities of the timeshare plan;

(b) Expenses agreed upon as common by all the timeshare owners in the timeshare plan; and

(c) Expenses declared common by the timeshare instrument or bylaws of the timeshare plan.

(7) "Developer" means a person [*creating a timeshare plan and a seller of a timeshare plan.*] **that:**

(a) Creates a timeshare plan;

(b) Succeeds to the interest of a person that creates a timeshare plan; or

(c) Purchases a timeshare from a person described in paragraph (a) or (b) of this subsection for the primary purpose of resale.

(8) "Exchange program" means any opportunity for a purchaser to exchange timeshare periods among purchasers in the same or other timeshare plans.

(9) "Facility" means a structure, service, improvement or real property available for the owner's use.

(10) "Fractional interest" means any undivided fractional ownership of real property which gives each and every fractional owner full rights to unlimited use and possession of the real property subject only to such limitation as the fractional owners may agree to among themselves.

(11) "Managing entity" means the person designated in the timeshare instrument or selected by the owners' association board or by the owners to manage all or a portion of the timeshare plan.

(12) "Negotiate" means any activity preliminary to the execution of a binding agreement for the sale of a timeshare, including but not limited to advertising, solicitation and promotion of the sale of the timeshare.

(13) "Offering" means any advertisement, inducement, solicitation or attempt to encourage a person to acquire a timeshare, other than as a security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a timeshare in property located outside this state is not an offering if the advertisement states that the offering is valid only if made in compliance with the law of the jurisdiction in which the offer is disseminated.

(14) "Owner" means a person, other than the developer, to whom a timeshare has been conveyed other than as security for an obligation.

(15) "Project" means real property subject to a timeshare instrument. A project may include accommodations that are not timeshare accommodations.

(16) "Purchaser" means any person, other than a developer, who by voluntary transfer acquires an interest in a timeshare other than as security for an obligation.

(17) "Sale" means a transaction that conveys a timeshare other than as security for an obligation, including, but not limited to a lease or assignment.

[18] "*Seller*" means a person who offers a timeshare for sale to the public. "*Seller*" does not include a person who acquired a timeshare for the person's own use and later offers it for resale.]

[19] (18) "Timeshare" means a timeshare estate or a timeshare license.

[20] (19) "Timeshare agreement" means an agreement conferring the rights and obligations of the timeshare plan on a purchaser including but not limited to a deed, lease and vacation license.

[21] (20) "Timeshare estate" means a right to occupy an accommodation during five or more separated timeshare periods over a period of at least five years, including renewal options, coupled with a freehold estate or an estate for years in the timeshare property.

[22] (21) "Timeshare instrument" means a document creating or regulating timeshares.

[23] (22) "Timeshare license" means a right to occupy an accommodation during five or more separated timeshare periods over a period of more than three years, including renewal options, not coupled with a freehold estate or an estate for years.

[24] (23) "Timeshare period" means the period of time when an owner is entitled to possess and occupy accommodations or facilities of a timeshare plan.

[25] (24) "Timeshare plan" means an arrangement, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement or otherwise, in which an owner receives a timeshare estate or a timeshare license and the right to use accommodations and facilities that are part of the timeshare property. A timeshare plan does not include an exchange program.

[26] (25) "Timeshare property" means one or more accommodations subject to the same timeshare instrument and any other real estate or rights appurtenant to those accommodations.

SECTION 2. ORS 94.807 is amended to read:

94.807. ORS 94.803, 94.806, 94.811 to 94.863 and 94.869 to 94.945 do not apply to:

(1) Any timeshare plan for which the developer has complied with the requirements of ORS 92.305 to 92.495 or 100.005 to 100.910 before July 28, 1983.

(2) Any timeshare plan for which the developer has complied with all applicable local regulations and has submitted a completed filing under ORS 92.305 to 92.495 or 100.005 to 100.910 before July 28, 1983.

(3) Any subsequent phase or stage of a timeshare plan described in subsection (1) or (2) of this section that has complied with the applicable requirements of ORS chapter 92 and this chapter in effect prior to July 28, 1983. However, the developer of the phase or stage must comply with the cancellation provisions of ORS 94.836 and 94.839.

(4) Subdivided land as defined by ORS 92.305, a planned community as defined by ORS 94.550 and a condominium subject to ORS 100.005 to 100.910 that does not involve a timeshare plan.

(5) Subdivided land as defined by ORS 92.305, a planned community as defined by ORS 94.550 and a condominium subject to ORS 100.005 to 100.910, that involves a timeshare plan to the extent of the nontimeshare aspects of the development. The developer of such a development must comply with the applicable requirements of ORS chapter 92 and this chapter in addition to ORS 94.803, 94.806 and 94.811 to 94.945.

(6) Any transaction normal and customary in the hotel and motel business involving the acceptance of advance reservations which are not entered into for the purpose of evading the provisions of ORS 92.325, 94.570, 94.803 to 94.945, 100.005, 100.105, 100.200, 100.450 and 696.490.

(7) The offering, sale or transfer of a fractional interest or a timeshare in a timeshare plan comprised of 12 timeshares or less unless the Real Estate Commissioner determines that the developer is attempting by a common scheme or course of development to evade the provisions of ORS 92.325, 94.570, 94.803 to 94.945, 100.005, 100.105, 100.200, 100.450 and 696.490.

(8) The transfer of a timeshare by: *[reason of a foreclosure action, by deed in lieu of foreclosure, by gift or by devise, descent or distribution or transfer to an inter vivos trust that is not made to evade ORS 94.803 and 94.807 to 94.945.]*

(a) Reason of a foreclosure action;

(b) Deed in lieu of foreclosure;

(c) Gift;

(d) Devise, descent or distribution or transfer to an inter vivos trust that is not made to evade ORS 94.803 and 94.807 to 94.945;

(e) A person, other than a developer, that acquired the timeshare in the manner described in paragraph (a) or (b) of this subsection; or

(f) A person, other than a developer, who previously acquired the timeshare for personal use.

(9) The offering, sale or transfer of a membership or interest in a recreational vehicle park or campground that provides no right to use or occupy a residential dwelling structure in the project overnight.

(10) The offering, sale or transfer of a membership or interest entitling the purchaser to a timeshare in personal property, including but not limited to an airplane, boat or recreational vehicle.

(11) The offering, sale or transfer of a membership or interest entitling the purchaser to use real property and facilities without overnight use for dwelling purposes, including but not limited to commercial office, retail or similar space and golf, tennis or athletic clubs.

SECTION 3. ORS 94.826 is amended to read:

94.826. (1) A *[seller]* **developer** offering an exchange program to a purchaser in conjunction with a timeshare plan shall provide written information to the purchaser about the exchange program.

(2) The exchange program information to be provided to the purchaser shall be established by rule by the Real Estate Commissioner and shall include at least:

(a) The name and address of the exchange company;

(b) Whether or not the purchaser's participation in the exchange program is dependent upon the timeshare plan's continued affiliation with the exchange program;

(c) Whether or not the purchaser's participation in the exchange program is voluntary;

(d) A complete and accurate description of the terms and conditions of the purchaser's contractual relationship with the exchange program, and the procedure for modifying the exchange program contract;

(e) The procedure to qualify for and effectuate an exchange;

(f) A description of any limitation, restriction or priority system employed in the operation of the exchange program;

(g) The circumstances under which a purchaser may lose the use and occupancy of the purchaser's accommodation in any properly applied for exchange through the exchange program;

(h) Any fee for participation in the exchange program; and

(i) Any other information material to the exchange program which, by omission, tends to make the information otherwise disclosed misleading.

(3) The exchange program information shall be in addition to the information found in the public report required under ORS 94.828 (1), (2) and (4) and must be provided to the purchaser before a contract may be executed between the purchaser and the company offering the exchange program.

(4) An exchange company offering an exchange program to purchasers in Oregon shall file the information required in subsection (2) of this section annually with the commissioner.

(5) Only a timeshare owner and a developer [*other than a seller*] may participate in an exchange program.

SECTION 4. ORS 94.873 is amended to read:

94.873. (1) All funds, negotiable instruments, purchase money agreements and credit card authorizations and proceeds thereof received in this state by a developer from or on behalf of a purchaser or prospective purchaser in connection with the purchase or reservation of a timeshare must be placed in an escrow account with an escrow agent authorized under ORS 94.881 or the trustee of a lien payment trust established under ORS 94.890.

(2) The establishment of an escrow account under subsection (1) of this section shall be by written agreement between the developer and the escrow agent. The escrow agreement must provide for the handling of a purchaser's funds, negotiable instruments, purchase money agreements and credit card authorizations and proceeds as required by ORS 94.873 to 94.905.

(3) A purchaser's funds, negotiable instruments, purchase money agreements, credit card authorizations and any proceeds may be released from escrow without a closing only as follows:

(a) If the purchaser gives a valid notice of cancellation under ORS 94.836, to the purchaser within 15 days after the notice of cancellation is received.

(b) If the purchaser or developer properly terminates a sales agreement under its terms or terminates a reservation agreement, to the purchaser or developer according to the terms of the sales agreement or reservation agreement.

(c) If the purchaser or developer defaults in performing an obligation under the sales agreement, to the purchaser or developer according to the terms of the sales agreement.

(4) After an escrow closing for the sale of a timeshare, a purchaser's funds, negotiable instruments, purchase money agreements and credit card authorizations and proceeds shall be delivered by the escrow agent:

(a) To the trustee of a lien payment trust established under ORS 94.890 to protect the purchaser from any blanket encumbrance.

(b) As provided by an alternative arrangement approved by the Real Estate Commissioner under ORS 94.900.

(c) To the [*seller*] **developer** if the timeshare is conveyed to the purchaser free and clear of any blanket encumbrance or as provided in ORS 94.876.

(5) Under no circumstances may the escrow agent release a purchaser's funds, negotiable instruments, purchase money agreements or credit card authorizations or proceeds from the escrow account to anyone except the purchaser until:

(a) The five-day cancellation period under ORS 94.836 expires as to the purchaser whose funds, instruments, agreements, authorizations or proceeds are being released;

(b) The escrow agent receives a written statement from the developer that no valid cancellation notice under ORS 94.836 has been received from the purchaser involved or from the purchaser that the purchaser has not given such a notice; and

(c) The escrow agent receives a written statement from the developer that no other cancellation notice was received during the five-day cancellation period from the purchaser involved.

(6) The purpose of any escrow established under this section shall be to protect a purchaser's right to a refund if the purchaser cancels the timeshare sales agreement during the five-day cancellation period under ORS 94.836, or if a prospective purchaser cancels a reservation agreement for the purchase of a timeshare.

(7) As used in this section “reservation agreement” means an agreement relating to the future sale of a timeshare that is not binding on the purchaser which grants the purchaser the right to cancel the agreement for any reason without penalty and to obtain a refund of any funds deposited at any time until the purchaser executes a timeshare sales agreement.

SECTION 5. The amendments to ORS 94.803, 94.807, 94.826 and 94.873 by sections 1 to 4 of this 2017 Act apply to conveyances of title to timeshares completed on or after the effective date of this 2017 Act.

Passed by Senate April 19, 2017

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 1, 2017

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Tina Kotek, Speaker of House

Received by Governor:

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Approved:

.....M.,....., 2017

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2017

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Dennis Richardson, Secretary of State