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5 **ARDA Proposed Model Timeshare Resale Act**
6 *For Public Comment, March 1, 2010*

7
8 ***Preamble***
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10 This draft ARDA Model Timeshare Resale Act is intended to provide full disclosure by timeshare resale
11 entities acting on behalf of timeshare owners, regardless of the business model used by the resale entity. The Model
12 enumerates prohibited practices and imposes severe penalties for violations.
13

14 The Model does not address the issue of whether or not any particular activity requires a real estate license
15 as each state has different—and long-standing—real estate licensing laws that have been utilized, enforced and
16 interpreted in the courts for more than 75 years in many instances. As stated in the Preamble to ARDA's 1999 Model
17 Resale Addendum and reiterated here ARDA *"urges States to enforce their existing Real Estate Licensing Acts for*
18 *timeshare resale activities conducted in their respective jurisdictions... and to acknowledge that there are consumer*
19 *abuses in today's resale market which should be vigorously prosecuted...."*
20

21 The Model requires resale entities to provide reasonable information to consumers, prior to the consumer
22 paying any "consideration" so that consumers can make informed decisions and compare costs and services.
23 Failure to make the required disclosures is an immediate violation of the Act. The Model also poses certain
24 obligations on resale entities that offer or promise to relieve the consumer of the ownership of his or her timeshare.
25

26 The Model contains a long list of prohibited practices, based on the experiences and reports of consumers
27 as well as various ARDA members. The Model does not include any requirements for consumers, as no one should
28 make it any more difficult for them to buy, sell or rent. ARDA recognizes that the truly fraudulent companies will not
29 follow any law so violations of the Model are intended to be punished through government enforcement actions and
30 consumer lawsuits with serious penalties and consumer redress.
31

32 This Model is submitted for public comment by the ARDA Model Resales Act Task Force, which has spent
33 more than six months vigorously debating the issues and provisions addressed here. This Model does *not* represent
34 unanimous agreement by members of the Task Force on all issues, but was adopted by a majority of the Task Force
35 members.
36

37 *--March 1, 2010 by the ARDA Model Resale Act Task Force*
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39 Comments should be submitted in writing to resales@arda.org no later than Wednesday, March 31,
40 2010. Please include "Model Resale Act Comments" in the subject line of the email. Or comments may be
41 mailed to the ARDA State Government Affairs Office, 4901 Vineland Road, Suite 635, Orlando, FL 32811 for
42 receipt by March 31.
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1 ARDA Proposed Model Timeshare Resale Act
2 For Public Comment, March 1, 2010
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5 **1. Short Title, Purposes.**

6 (a) This Act may be cited as the “Timeshare Resale Act.”

7 (b) The purposes of this Act are to:

8 (i) Give statutory recognition in this state to timeshare resale activity.

9 (ii) Establish procedures for solicitation for, and conduct of, timeshare resale
10 activity.

11 (iii) Ensure fair disclosure to the timeshare owners selling, buying, or solicited
12 to buy or sell, a timeshare interest through timeshare resale activity.

13 (iv) Ensure fulfillment of duties imposed by law in timeshare resale activity
14 and ensure fulfillment of promises, express or implied, from timeshare resale entities to
15 sellers and buyers of timeshare interests through timeshare resale activity.

16 (v) Identify a non-exclusive list of abusive practices and activities associated
17 with timeshare resale activity, deter them, punish those who violate this Act by engaging
18 in them, and compensate those who suffer from them.

19 (vi) Require every timeshare resale entity who engages in timeshare resale
20 activity in, or directed to, this state, to comply with this Act.

21 (vii) Recognize that the timeshare industry in this state is a vital part of the
22 state's economy; that the resale of timeshare interests is an emerging and dynamic
23 segment of industry in this state; that this segment of industry continues to grow, both in
24 volume of sales and in complexity and variety of services offered; and that a uniform and
25 consistent method of regulation is necessary in order to ensure protection of resale
26 timeshare interest sellers and buyers in this state and this state's economic well-being. In
27 order to protect the quality of timeshare resale activity and the consumers who resell
28 timeshare interests and consumers who buy them, the Legislature intends this Act to be
29 interpreted broadly in order to encompass all forms of timeshare resale activity, except
30 for timeshare resale activity specifically identified as exempt under this Act.

31 (viii) Supplement, not supplant, the [state] Real Estate Licensing Act.
32

33 **2. Definitions.** Unless defined otherwise in this Act below, terms used in this Act have the
34 meanings defined in [enter reference to the state's Timeshare Act]:

35 (a) “**Affiliate**” has the meaning defined in the United States Bankruptcy Code.

36 (b) “**Agency**” means the [enter name of government agency that will have
37 jurisdiction over and enforce this Act].

38 (c) “**Conspicuous type**” means type:

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

42 (ii) Where the use of ten-point type is impractical or impossible with on a
43 particular piece of written material, a different style of type or print may be used, as long
44 as the print remains conspicuous to a reasonable reader under the circumstances; and

45 (iii) Separated on all sides from other type and print.

1 (d) **"Lead dealer"** means any person who sells or otherwise provides a
2 timeshare resale entity or any other person with personal contact information concerning
3 five or more owners of timeshare interests, which information is intended or is used in the
4 conduct of timeshare resale activity. In the event a lead dealer is not a natural person, the
5 term shall also include the natural person providing personal contact information to a
6 timeshare resale entity or other person on behalf of the lead dealer entity. The term does not
7 include developers, managing entities, or exchange companies to the extent they provide
8 others with personal contact information about owners of timeshare interests in their own
9 timeshare plans or members of their own exchange programs.

10 (e) **"Personal contact information"** means any information that can be used
11 to contact the owner of a specific timeshare interest, including, but not limited to, the
12 timeshare owner's name, address, telephone number, email address, and user identity on
13 any electronic social networking service.

14 (f) **"Real Estate Licensing Act"** means the [enter popular name and cite to real
15 estate broker licensing act].

16 (g) **"Subsequent purchaser"** means the buyer or transferee of a timeshare
17 interest previously sold to a timeshare purchaser.

18 (h) **"Timeshare resale activity"** means any activity within this state that
19 directly, or indirectly, for consideration, consists any of the following activities regardless
20 of whether done in person, by mail, telephone, the internet, or any other medium of
21 communication:

22 (i) Selling or offering to sell or list any timeshare interest, wherever located,
23 previously sold to a purchaser.

24 (ii) Buying or offering to buy any timeshare interest, wherever located,
25 previously sold to a purchaser.

26 (iii) Transferring or offering to assist in the transfer of any timeshare interest,
27 wherever located, previously sold to a purchaser to any person.

28 (i) Advertising or soliciting to advertise, list, offer, or promote the sale,
29 purchase or transfer of any timeshare interest, wherever located, previously sold to a
30 purchaser.

31 (j) **"Timeshare resale entity"** means any person who, either directly or
32 indirectly, engages in timeshare resale activity.

33 (k) **"Timeshare resale purchase agreement"** means a contract under which
34 the owner of a timeshare interest becomes legally obligated to sell, and a person becomes
35 legally obligated to buy, that owner's timeshare interest.

36 (l) **"Timeshare resale transfer agreement"** means a contract between a
37 timeshare resale entity and a timeshare owner in which the timeshare resale entity agrees to
38 transfer or offers to assist in the transfer of that owner's timeshare interest.

39 (m) **"Transfer"** means any voluntary conveyance for consideration of a
40 timeshare interest previously sold to a purchaser to a person other than:

41 (i) The managing entity or owners association responsible for the operation,
42 management and maintenance of that timeshare interest;

43 (ii) The developer of the timeshare plan of which the timeshare interest is a
44 part; and

45 (iii) Any person taking ownership on a gratuitous basis or by foreclosure of a
46 lien or by a deed in lieu of foreclosure.

1 (n) *[Recommend any additional definitions thought necessary by the Agency be*
2 *added from existing state timeshare law for consistency purposes in each state]*
3

4 **3. Compliance.**

5 (a) Except as provided in Section 4, each timeshare resale entity must comply
6 with this Act. If a timeshare resale entity has substantially complied with this Act in good
7 faith, a non-material error or omission is not actionable.

8 (b) Conspicuous type may be used only where required by this Act or as
9 allowed by the Agency.

10
11 **4. Exemptions.**

12 (a) A person who is otherwise engaged in timeshare resale activity is exempt
13 from the duties imposed by Sections 5 through 8 of this Act if that entity engages in
14 timeshare resale activity with respect to no more than 12 timeshare interests per calendar
15 year as a timeshare resale entity by itself, or in conjunction with any of its affiliates.

16 (b) Nothing in this Act shall apply to the owner and its agents or employees of a
17 regularly published newspaper, magazine, telephone directory, or other periodical
18 publication of general circulation, or broadcast station, website or billboard, if the owner
19 and its agents or employees perform no other timeshare resale activity for the timeshare
20 owner and make no representations and take no actions beyond the advertising of the
21 timeshare interest.

22 (c) Nothing in this Act shall apply to the resale by a developer of a timeshare
23 interest previously sold to an owner and resold as part of an existing registration by that
24 developer of the timeshare plan in which that timeshare interest is a part under [cite state
25 timeshare law].

26 (d) Nothing in this Act shall apply to the resale by an owners association or
27 managing entity, or a third party that it engages, of timeshare interests previously sold to
28 owners in the timeshare plan that it governs or manages.

29 (e) Nothing in this Act shall apply to developers or exchange companies [as
30 defined in (cite timeshare law if no registration/filing required)] OR [filed pursuant to
31 timeshare law if registration/filing required] so long as they comply with the provisions of
32 Sections 6 through 9 of this Act.

33 (f) These exemptions shall not apply to any timeshare resale entity that engages
34 in timeshare resale activity in a manner that is intended to circumvent the provisions of this
35 Act.

36
37 **5. Recordkeeping by Persons Engaged in Resale Activities.**

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

41 (i) The name, home address, work address, home telephone number, work
42 telephone number, and cellular telephone number of the lead dealer from which the
43 personal contact information was obtained.

44 (ii) A copy of a current government-issued photographic identification of the
45 lead dealer from which the personal contact information was obtained, such as a driver's
46 license, passport, or military identification card.

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

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

6 (b) If personal contact information was directly researched and assembled by
7 the timeshare resale entity or lead dealer and not obtained from another lead dealer, the
8 timeshare resale entity and the lead dealer shall maintain for a period of five years from the
9 date each piece of personal contact information is obtained a complete written description
10 of the sources from which the personal contact information was obtained, the
11 methodologies used for researching and assembling it, the items set forth in subsections
12 (a)(i) and (a)(ii) for the individuals who performed the work, and the date such work was
13 done.

14 (c) A timeshare resale entity must maintain records for at least five years after
15 each transaction involving timeshare resale activity, including but not limited to any
16 acknowledgements of receipt, transfer agreements and resale purchase agreements.
17

18 **6. Timeshare Resale Activity Disclosures.**

19 (a) Before receiving any consideration or the promise of future consideration
20 from a timeshare interest owner in return for providing or offering to provide timeshare
21 resale activity, the timeshare resale entity must:

22 (i) Provide each of the disclosures in writing identified in this Section 6; and

23 (ii) Obtain a written receipt from the timeshare interest owner acknowledging
24 receipt of the disclosures required under this Section 6.:

25 (b) Each timeshare resale entity shall make the following disclosures:

26 (i) The name and permanent business address of the timeshare resale entity.

27 (ii) The length of time, including the beginning and ending date, during which
28 the timeshare resale activities will be provided.

29 (iii) A list of the names and addresses of any other entities affiliated with the
30 timeshare resale entity and all website addresses used by or affiliated with the timeshare
31 resale entity, any of which will be used to promote the timeshare interest. The timeshare
32 resale entity may provide a link to a website that identifies each web address used to
33 promote timeshare interests.

34 (iv) Whether the timeshare resale entity's rights are exclusive and, if the resale
35 entity's rights are exclusive, the scope of such exclusivity and length of the exclusivity
36 period.

37 (v) Whether any person, other than the timeshare owner, may occupy, rent,
38 exchange or otherwise exercise any form of use of the timeshare interest during the term
39 of the timeshare resale activity.

40 (vi) The name of any person other than the timeshare owner, who will receive
41 any rents, profits, or other consideration or thing of value, if any, generated from the use
42 of the owner's timeshare interest during the term of the timeshare resale activity.

43 (vii) A complete description of the timeshare resale activities to be provided by
44 the timeshare resale entity, the fees and costs for each, including any commissions.

45 (viii) A description sufficient to identify the timeshare interest that is the subject
46 of the timeshare resale activity.

1 (ix) If the timeshare resale activities to be provided are limited to advertising
2 the timeshare interest, include the following statement in conspicuous type:

3 We, [name of resale entity], only assist timeshare buyers, renters and
4 sellers by providing a method or platform through which individuals can
5 advertise timeshare interests for sale or rent. We provide no assistance in
6 negotiating, showing, providing details about the property, arranging any
7 rental, contracting, escrowing funds or closing the sale. We are not
8 responsible for, nor can we perform any services other than advertising
9 your timeshare interest for sale.

10 (x) If the fees, costs or commissions paid or to be paid for timeshare resale
11 activities include the services of a licensed real estate broker or salesperson, list the state
12 or states where such real estate licenses, are held and the following statement in
13 conspicuous type: Do not rely on past performance as an indicator of the likelihood of
14 successfully selling your timeshare interest.
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18 **7. Timeshare Transfer Agreements.**

19 (a) Before receiving any consideration or the promise of future consideration
20 from a timeshare interest owner in return for a timeshare resale entity's offer or agreement
21 to transfer, or offer to assist in the transfer of, an owner's timeshare interest, such timeshare
22 resale entity shall:

23 (i) Provide each of the disclosures in a timeshare transfer agreement
24 identified in Section 7(b);

25 (ii) Obtain a written receipt from the timeshare interest owner acknowledging
26 receipt of the timeshare transfer agreement with the disclosures required under Section
27 7(b);

28 (b) Each timeshare transfer agreement must include but shall not be limited to
29 the following disclosures:

30 (i) The disclosures enumerated in Section 6(b) (i)-(vii).

31 (ii) A description legally sufficient for recording or other legal transfer of the
32 timeshare interest that is the subject of the agreement.

33 (iii) A description of the method or documentation by which the timeshare
34 owner is to relinquish the timeshare interest to the timeshare resale entity, or any
35 subsequent purchaser, including whether the timeshare owner must grant a power of
36 attorney or sign a similar document to the timeshare resale entity, any of the timeshare
37 resale entity's affiliates, or any other person.

38 (iv) Any costs that the timeshare owner must pay or reimburse to the timeshare
39 resale entity.

40 (v) The date by which all acts sufficient to transfer the timeshare interest from
41 the timeshare interest owner to the timeshare resale entity, a third person or a subsequent
42 purchaser will be completed, which in no case may exceed 90 days after the date the
43 timeshare transfer agreement becomes effective.

44 (vi) The name and address of each person that is an affiliate or agent of the
45 timeshare resale entity if the timeshare resale entity will transfer ownership of the
46 timeshare interest to one or more affiliates or other person as an interim step before the

1 resale or transfer of the timeshare interest to a *bona fide* subsequent purchaser that is not
2 an affiliate or agent of the timeshare resale entity.

3 (vii) The timeshare resale entity's promise to provide the current purchaser
4 with written evidence of the transfer of ownership of the timeshare interest, including a
5 copy of the recorded instrument, if applicable, transferring ownership of the timeshare
6 interest to a subsequent purchaser, certified by the applicable recording official, within 30
7 days after the date of such transfer.

8 (viii) A statement that the timeshare resale entity will notify the following of
9 transfer of ownership of the timeshare interest:

10 (A) The managing entity of the timeshare plan under which the
11 transferred timeshare interest is established.

12 (ix) If applicable, the exchange company operating any exchange program in
13 which the timeshare owner was enrolled.

14 (x) The following statement in conspicuous type: "We [name of resale entity]
15 promise that no later than 90 days from the date of this agreement, we will transfer
16 ownership of your timeshare interest to another person. If we fail to accomplish this
17 transfer within 90 days, we are required by law to pay all costs of ownership associated
18 with your timeshare interest. If we fail to follow the law and our agreement, you, the
19 timeshare owner, will continue to be responsible for the payment of all costs of
20 ownership associated with your timeshare interest.(including but not limited to regular
21 assessments, special assessments, and real and personal property taxes imposed on your
22 timeshare interest, and any other fees related to your timeshare interest). You should also
23 notify the managing entity and your exchange company, if any, of the change in
24 ownership of your timeshare interest."

25 (xi) A notice in conspicuous type that the owner's timeshare interest may be
26 resold by the resale entity or other third party for a price in excess of the consideration, if
27 any, paid by the relinquishing owner to the timeshare resale entity and whether or not the
28 timeshare owner will or will not receive any proceeds in excess of the consideration paid
29 to the timeshare resale entity or other party.

30 (c) If the timeshare resale entity offers or agrees to transfer or offers to assist in
31 the transfer of an owner's timeshare interest, it shall be a violation of this Act for the
32 timeshare resale entity to fail to do any of the following:

33 (i) Complete all acts sufficient to transfer ownership of the timeshare interest
34 from the timeshare interest owner to the timeshare resale entity, a third person or a
35 subsequent purchaser no more than 90 days after the date all parties have signed the
36 timeshare transfer agreement.

37 (ii) Pay all costs of ownership associated with the owner's timeshare interest
38 if the owner's timeshare interest is not transferred as required in Section 7(c) (i).

39 (iii) Provide the timeshare owner with written evidence of the transfer of
40 ownership of that timeshare interest, including a copy of the recorded instrument, if
41 applicable, that transfers such timeshare interest to a subsequent purchaser, certified by
42 the applicable recording official, within 30 days after the date of such transfer.

43 (iv) Notify the following of transfer of ownership of the timeshare interest
44 within 30 days after the date of such transfer:

45 (A) The managing entity of the timeshare plan under which the
46 transferred timeshare interest is established.

1 (B) If applicable, the exchange company operating any exchange
2 program in which the timeshare owner was enrolled.

3 (d) For purposes of this Section 7, consideration does not include any fees or
4 costs normally and customarily charged for the transfer or recording of property by any
5 government agency.
6

7 **8. Timeshare Resale Purchase Agreements.**

8 (a) In any transfer of a timeshare interest except for a transfer from a timeshare
9 owner to a timeshare resale entity, the timeshare resale entity shall utilize a purchase
10 agreement that discloses to a buyer of a resale timeshare interest all of the following:

11 (i) A description legally sufficient for recording or other legal transfer of the
12 timeshare interest being purchased;

13 (ii) The name and address of the managing entity of the timeshare property;

14 (iii) The name and address of the timeshare property where the timeshare
15 interest is located;

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

20 (v) A statement that any real or personal property taxes allocated to the
21 timeshare interest being purchased are included in the applicable common expense
22 assessment or, if not included, the amount of any real or personal property taxes allocated
23 to the timeshare interest being purchased;

24 (vi) Whether all assessments and real or personal property taxes for the
25 timeshare interest are paid in full and, if not, the amount owed and the consequences of
26 failure to pay timely any assessment and real or personal property taxes;

27 (vii) A statement that the buyer shall be responsible for providing notification
28 to the managing entity of the timeshare plan and the applicable exchange company, if
29 any, regarding the change in the ownership of the timeshare interest or, if not the buyer,
30 the name and address of the person who shall have such responsibility;

31 (viii) A statement of the first year in which the buyer is entitled to receive the
32 actual use rights and occupancy of the timeshare interest, as determined by the managing
33 entity of the timeshare plan and any exchange company;

34 (ix) The name, address, and telephone number of the managing entity, and the
35 website address or other location where the governing documents of the managing entity
36 or owners association, if any, and the timeshare instrument for the timeshare interest
37 being purchased may be obtained, together with the following disclosure in conspicuous
38 type:

39 There are many important documents relating to the timeshare plan that
40 you should review before purchasing a timeshare interest. These may
41 include, but are not limited to, (a) the declaration of condominium, (b) the
42 declaration of timeshare plan, (c) the reciprocal easement and cost sharing
43 agreement, (d) the declaration of restrictions, covenants, and conditions,
44 (e) the owners association articles and bylaws, (f) the current year's
45 operating and reserve budgets, if any, for the owners association, and (g)

1 any rules and regulations affecting the reservation and use of the timeshare
2 property or other facilities available for use by timeshare owners.

3 (x) Whether the timeshare resale entity will be responsible for the recording
4 of the purchase documents in the case of the resale of a timeshare estate; and if not, who
5 will be responsible for this function and the estimated costs;

6 (xi) Such other information and disclosures as may be required by law.

7 (b) In making the disclosures required by this Section 8, the timeshare resale
8 entity may rely upon information provided in writing by the owners association or
9 managing entity responsible for the operation, management and maintenance of the
10 timeshare interest.

11
12 **9. Prohibited Practices.** A person violates this Act by engaging in any of the following:

13 (a) Failing to comply with any of the provisions contained in this Act.

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

17 (c) Making false or misleading statements of fact concerning the pricing,
18 timing, availability or numbers of sellers, renters or buyers when engaged in timeshare
19 resale activities.

20 (d) Misrepresenting the method by or source from which the timeshare resale
21 entity or lead dealer obtained the personal contact information of any owner of a timeshare
22 interest.

23 (e) Misrepresenting price or value increases or decreases, assessments, special
24 assessments, maintenance fees or taxes or guaranteeing sales or rentals in order to obtain
25 money or property.

26 (f) Making false or misleading statements of fact concerning the timeshare
27 resale entity's experience, performance, guarantees, services, fees or commissions,
28 availability of refunds, length of time in business or endorsements by or affiliations with
29 developers, management companies or any other third parties.

30 (g) Misrepresenting whether or not the timeshare resale entity or its affiliates,
31 employees or agents hold, in any state or jurisdiction, a current real estate sales or broker's
32 license or other government required license.

33 (h) Misrepresenting how funds will be utilized in any timeshare resale activity
34 conducted by the timeshare resale entity.

35 (i) Misrepresenting that the timeshare resale entity or its affiliates, employees
36 or agents have specialized education, professional affiliations, expertise, licenses,
37 certifications or other specialized knowledge or qualifications.

38 (j) Making false or misleading statements of fact concerning the conditions
39 under which a timeshare owner, seller or buyer may exchange or occupy the timeshare
40 interest.

41 (k) Representing that any gift, prize, membership or other benefit or service will
42 be provided to any timeshare owner, seller or buyer without providing such gift, prize,
43 membership or other benefit or service in the manner represented.

44 (l) Materially misrepresenting the nature of any timeshare interest.

1 (m) Failing to pay the proceeds of any rental or resale of a timeshare interest as
2 represented to the timeshare owner who offered such timeshare interest for sale or rental
3 through the timeshare resale entity;

4 (n) Failing to transfer any timeshare interests as represented and required by this
5 Act or to provide written evidence to the timeshare owner of the recording or transfer of
6 such owner's timeshare interest as required by this Act.

7 (o) Failing to pay any annual assessments, special assessments, personal
8 property or real estate taxes or any other fees as represented and required by this Act.

9 (p) Misrepresenting or misusing the intended purpose of a power of attorney or
10 similar document to the detriment of any grantor of such power of attorney.

11 (q) Using any scheme, artifice or subterfuge for the purpose of evading any
12 provision of this act, including but not limited to such schemes, artifices or subterfuges
13 involving the advertising of rental or the rental of an owner's timeshare interest.

14 (r) Using any scheme, artifice or subterfuge to circumvent the provisions of this
15 Act.

16 17 **10. Remedies, Penalties and Restitution.**

18 (a) The provisions of this Act are not exclusive. The remedies provided in this
19 Act are in addition to any other procedures or remedies provided for in any other law;
20 provided, however, that there shall be no recovery of damages and penalties under both
21 this Act and another law for the same act or practice, except as provided in Section 10(i)
22 below.

23 (b) A violation of this Act is also a violation of the [State] Unfair and Deceptive
24 Practices Act.

25 (c) Whenever the Agency has reason to believe that any person is engaging in,
26 has engaged in, or is about to engage in any act or practice declared to be unlawful by this
27 Act, and that proceedings would be in the public interest, the Agency may bring an
28 administrative action or an action in the name of the state against the person to restrain by
29 temporary restraining order, temporary injunction, or permanent injunction the use of such
30 method, act, or practice. The agency may also *ex parte* summarily sequester or attach
31 assets, order restitution or appoint a receiver to compensate persons damaged by violations
32 of this Act.

33 (d) No bond or other financial assurance is required of the Agency as a
34 condition of a sequestration or attachment of assets, or for a temporary restraining order or
35 preliminary injunction to become effective.

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

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

44 (i) not more than \$20,000 per violation; and

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

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

12 (h) In any civil or criminal action based on a violation of Section 5, there shall
13 be a presumption that personal contact information was wrongfully obtained if a timeshare
14 resale entity or lead dealer fails to produce the records required by Sections 5(a) or (b).

15 (i) Any person who establishes that a timeshare resale entity or lead dealer
16 wrongfully obtained or wrongfully used personal contact information with respect to
17 owners of a timeshare plan or members of an exchange program shall, in addition to any
18 other remedies that may be available in law or equity, be entitled to recover from such
19 timeshare resale entity or lead dealer an amount equal to \$1,000 for each owner about
20 whom personal contact information was wrongfully obtained or used. The prevailing
21 person in any such action shall also be entitled to recover reasonable attorney's fees and
22 costs.

23 (j) Any person who violates the terms of an injunction under this section shall
24 forfeit and pay to the state a civil penalty of not more than \$20,000 per violation, not to
25 exceed \$50,000. In determining whether or not an injunction has been violated the court
26 shall take into consideration the maintenance of procedures reasonably adapted to insure
27 compliance with the injunction.

28 (k) . In a suit filed under this section, each person who prevails may obtain:

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

32 (ii) An order enjoining such acts or failure to act;

33 (iii) Orders necessary to restore to any party to the suit any money or property,
34 real or personal, which may have been acquired in violation of this Act; and

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

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

43 (m) Each person who prevails shall be awarded court costs and reasonable and
44 necessary attorneys' fees.
45

1 **11. No Effect on Licenses.** This Act does not affect whether any timeshare resale activity
2 requires a license under the [state] Real Estate Licensing Act. This Act does not excuse or
3 exempt any person engaging in timeshare resale activity from the requirement of licensure under
4 the Real Estate Licensing Act if the applicable timeshare resale activity they engage in requires a
5 license under the [state] Real Estate Licensing Act and another statute of this state (e.g., the
6 Timeshare Act) does not exempt the applicable person from licensure under the Real Estate
7 Licensing Act.

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