



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB5503

by Rep. Angelo Saviano

#### SYNOPSIS AS INTRODUCED:

765 ILCS 101/1-15  
765 ILCS 101/5-35  
765 ILCS 101/5-40  
765 ILCS 101/5-45  
765 ILCS 101/5-60  
765 ILCS 101/10-25

Amends the Real Estate Timeshare Act of 1999. Provides that a resale agent means a person who sells, offers to sell, or advertises to sell a timeshare (instead of sells or offers to sell a timeshare). Provides that the minimum requirements of a timeshare sale listing agreement include the use, rental, or exchange of the unit during the listing period; designation of any rental fees recipient; disclosure of any relationship between the resale agent and any person receiving a benefit from the use of the timeshare; any pre-sale fees; the resale agent's prior experience; commissions; the resale agent's real estate license, or the lack of a license; and other matters (instead of requiring only disclosure of the resale agent's compensation, certain terms of the use or rental of the timeshare, and the length of the term of the listing contract). Provides for disclosures, in addition to those already required, to a prospective purchaser of a timeshare that include the status of assessments and real estate taxes and the location of documents about the timeshare. Provides that a timeshare resale agent shall be a licensed real estate broker or, if not, shall disclose that fact and supply a warning. Provides that a developer, exchange company, or resale agent shall renew their registrations at least biennially. Provides that a developer or promoter shall provide the required disclosures to a prospective purchaser in writing or electronically, although not in every ad or communication, at least once before the prospective purchaser leaves for a scheduled sales presentation. Makes other changes. Provides for severability of the provisions of this amendatory Act. Effective immediately.

LRB095 17259 AJO 45956 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Real Estate Timeshare Act of 1999 is amended  
5 by changing Sections 1-15, 5-35, 5-40, 5-45, 5-60, and 10-25 as  
6 follows:

7 (765 ILCS 101/1-15)

8 Sec. 1-15. Definitions. In this Act, unless the context  
9 otherwise requires:

10 "Accommodation" means any apartment, condominium or  
11 cooperative unit, cabin, lodge, hotel or motel room, or other  
12 private or commercial structure containing toilet facilities  
13 therein that is designed and available, pursuant to applicable  
14 law, for use and occupancy as a residence by one or more  
15 individuals, or any unit or berth on a commercial cruise line  
16 ship, which is included in the offering of a timeshare plan.

17 "Acquisition agent" means a person who, directly or through  
18 the person's employees, agents, or independent contractors,  
19 induces or attempts to induce by means of a promotion or an  
20 advertisement any individual located within the State of  
21 Illinois to attend a sales presentation for a timeshare plan.

22 "Advertisement" means any written, oral, or electronic  
23 communication that is directed to or targeted to persons within

1 the State of Illinois and contains a promotion, inducement, or  
2 offer to sell a timeshare plan, including but not limited to  
3 brochures, pamphlets, radio and television scripts, electronic  
4 media, telephone and direct mail solicitations, and other means  
5 of promotion.

6 "Association" means the organized body consisting of the  
7 purchasers of interests in a timeshare plan.

8 "Assessment" means the share of funds required for the  
9 payment of common expenses which is assessed from time to time  
10 against each purchaser by the managing entity.

11 "Commissioner" means the Commissioner of Banks and Real  
12 Estate, or a natural person authorized by the Commissioner, the  
13 Office of Banks and Real Estate Act, or this Act to act in the  
14 Commissioner's stead.

15 "Component site" means a specific geographic location  
16 where accommodations which are part of a multi-site timeshare  
17 plan are located. Separate phases of a single timeshare  
18 property in a specific geographic location and under common  
19 management shall be deemed a single component site.

20 "Developer" means and includes any person or entity, other  
21 than a sales agent, acquisition agent, or resale agent, who  
22 creates a timeshare plan or is in the business of selling  
23 timeshare interests, or employs agents to do the same, or any  
24 person or entity who succeeds to the interest of a developer by  
25 sale, lease, assignment, mortgage, or other transfer, but the  
26 term includes only those persons who offer timeshare interests

1 for disposition in the ordinary course of business.

2 "Dispose" or "disposition" means a voluntary transfer or  
3 assignment of any legal or equitable interest in a timeshare  
4 plan, other than the transfer, assignment, or release of a  
5 security interest.

6 "Exchange company" means any person owning or operating, or  
7 both owning and operating, an exchange program.

8 "Exchange program" means any method, arrangement, or  
9 procedure for the voluntary exchange of timeshare interests or  
10 other property interests. The term does not include the  
11 assignment of the right to use and occupy accommodations to  
12 owners of timeshare interests within a single-site timeshare  
13 plan. Any method, arrangement, or procedure that otherwise  
14 meets this definition, wherein the purchaser's total  
15 contractual financial obligation exceeds \$3,000 per any  
16 individual, recurring timeshare period, shall be regulated as a  
17 timeshare plan in accordance with this Act.

18 "Managing entity" means the person who undertakes the  
19 duties, responsibilities, and obligations of the management of  
20 a timeshare plan.

21 "Offer" means any inducement, solicitation, or other  
22 attempt, whether by marketing, advertisement, oral or written  
23 presentation, or any other means, to encourage a person to  
24 acquire a timeshare interest in a timeshare plan, other than as  
25 security for an obligation.

26 "Person" means a natural person, corporation, limited

1 liability company, partnership, joint venture, association,  
2 estate, trust, government, governmental subdivision or agency,  
3 or other legal entity, or any combination thereof.

4 "Promotion" means a plan or device, including one involving  
5 the possibility of a prospective purchaser receiving a  
6 vacation, discount vacation, gift, or prize, used by a  
7 developer, or an agent, independent contractor, or employee of  
8 any of the same on behalf of the developer, in connection with  
9 the offering and sale of timeshare interests in a timeshare  
10 plan.

11 "Purchaser" means any person, other than a developer, who  
12 by means of a voluntary transfer acquires a legal or equitable  
13 interest in a timeshare plan other than as security for an  
14 obligation.

15 "Purchase contract" means a document pursuant to which a  
16 person becomes legally obligated to sell, and a purchaser  
17 becomes legally obligated to buy, a timeshare interest.

18 "Resale agent" means a person who, directly or through the  
19 person's employees or agents, sells, ~~or~~ offers to sell, or  
20 advertises to sell a timeshare interest previously sold to a  
21 purchaser or solicits an owner of a timeshare interest to list  
22 the owner's timeshare interest for sale.

23 "Reservation system" means the method, arrangement, or  
24 procedure by which a purchaser, in order to reserve the use or  
25 occupancy of any accommodation of a multi-site timeshare plan  
26 for one or more timeshare periods, is required to compete with

1 other purchasers in the same multi-site timeshare plan,  
2 regardless of whether the reservation system is operated and  
3 maintained by the multi-site timeshare plan managing entity, an  
4 exchange company, or any other person. In the event that a  
5 purchaser is required to use an exchange program as the  
6 purchaser's principal means of obtaining the right to use and  
7 occupy accommodations, that arrangement shall be deemed a  
8 reservation system. When an exchange company utilizes a  
9 mechanism for the exchange of use of timeshare periods among  
10 members of an exchange program, that utilization is not a  
11 reservation system of a multi-site timeshare plan.

12 "Sales agent" means a person, other than a resale agent,  
13 who, directly or through the person's employees, agents, or  
14 independent contractors, sells or offers to sell timeshare  
15 interests in a timeshare plan to any individual located in the  
16 State of Illinois.

17 "Timeshare instrument" means one or more documents, by  
18 whatever name denominated, creating or governing the operation  
19 of a timeshare plan.

20 "Timeshare interest" means and includes either:

21 (1) a "timeshare estate", which is the right to occupy  
22 a timeshare property, coupled with a freehold estate or an  
23 estate for years with a future interest in a timeshare  
24 property or a specified portion thereof; or

25 (2) a "timeshare use", which is the right to occupy a  
26 timeshare property, which right is neither coupled with a

1 freehold interest, nor coupled with an estate for years  
2 with a future interest, in a timeshare property.

3 "Timeshare period" means the period or periods of time when  
4 the purchaser of a timeshare plan is afforded the opportunity  
5 to use the accommodations of a timeshare plan.

6 "Timeshare plan" means any arrangement, plan, scheme, or  
7 similar device, other than an exchange program, whether by  
8 membership agreement, sale, lease, deed, license, or  
9 right-to-use agreement or by any other means, whereby a  
10 purchaser, in exchange for consideration, receives ownership  
11 rights in or the right to use accommodations for a period of  
12 time less than a full year during any given year, but not  
13 necessarily for consecutive years. A timeshare plan may be:

14 (1) a "single-site timeshare plan", which is the right  
15 to use accommodations at a single timeshare property; or

16 (2) a "multi-site timeshare plan", which includes:

17 (A) a "specific timeshare interest", which is the  
18 right to use accommodations at a specific timeshare  
19 property, together with use rights in accommodations  
20 at one or more other component sites created by or  
21 acquired through the timeshare plan's reservation  
22 system; or

23 (B) a "non-specific timeshare interest", which is  
24 the right to use accommodations at more than one  
25 component site created by or acquired through the  
26 timeshare plan's reservation system, but including no

1           specific right to use any particular accommodations.

2           "Timeshare property" means one or more accommodations  
3 subject to the same timeshare instrument, together with any  
4 other property or rights to property appurtenant to those  
5 accommodations.

6           (Source: P.A. 91-585, eff. 1-1-00.)

7           (765 ILCS 101/5-35)

8           Sec. 5-35. Resale agent registration requirements.

9           (a) Every resale agent as defined in this Act shall  
10 register with the Office of Banks and Real Estate.

11           (b) Every resale agent shall be responsible for registering  
12 the following information with the Office of Banks and Real  
13 Estate on forms provided by the Office of Banks and Real  
14 Estate:

15           (1) A description of the resale program offered by the  
16 resale agent.

17           (2) The legal name, any assumed names, and the mailing  
18 address, street address, contact person, and telephone  
19 number of the resale agent.

20           (3) A properly executed consent-to-audit form, which  
21 allows the Office of Banks and Real Estate to audit any  
22 escrow accounts held by the resale agent.

23           (4) Any other information required by the Office of  
24 Banks and Real Estate to be filed by resale agents, as  
25 established by rule.

1 (c) The following shall be exempt from registration under  
2 this Section:

3 (1) Any developer, exchange company, sales agent,  
4 acquisition agent, or managing entity that is currently  
5 registered pursuant to this Act.

6 (2) Any purchaser that sells or offers to sell his or  
7 her own timeshare interest.

8 (3) Any homeowners' association that sells or offers to  
9 sell its own timeshare interests acquired through  
10 foreclosure, deed in lieu of foreclosure, or gratuitous  
11 transfer.

12 (4) Any person who is licensed under the Real Estate  
13 License Act of 2000 ~~1983~~ or its successor Act.

14 (Source: P.A. 91-585, eff. 1-1-00.)

15 (765 ILCS 101/5-40)

16 Sec. 5-40. Resale agent duties. Whether registered or  
17 exempt from registration under Section 5-35, a resale agent  
18 shall comply with all of the following:

19 (a) Prior to engaging in any resale activities on behalf of  
20 any owner of a timeshare interest or accepting anything of  
21 value from any owner of a timeshare interest, a resale agent  
22 shall enter into a listing agreement with that owner. Every  
23 listing agreement shall be in writing and signed by both the  
24 resale agent and the timeshare interest owner. The requirements  
25 of the written listing agreement shall be established by rule,

1 but at a minimum the listing agreement shall disclose the  
2 following:

3 (1) Whether any person other than the timeshare  
4 interest owner may use the timeshare interest during the  
5 period before the timeshare interest is resold.

6 (2) Whether any person other than the timeshare  
7 interest owner may rent or exchange the use of the  
8 timeshare interest during the period before the timeshare  
9 interest is resold.

10 (3) The name of any person who will receive any rents,  
11 profits, or other consideration generated from the use of  
12 the timeshare interest during the period before the  
13 timeshare interest is resold.

14 (4) A detailed description of any relationship between  
15 the resale agent and any other person who receives any  
16 benefit from the use of the timeshare interest.

17 (5) A description of any fee, including the amount, to  
18 be paid by the timeshare interest owner to the resale agent  
19 prior to the sale of the timeshare interest. If any such  
20 fee is charged by the resale agent prior to the sale of the  
21 timeshare interest, then a statement must be included  
22 disclosing either (A) the number of timeshare interests  
23 sold by the resale agent for each of the past 3 years or  
24 (B) the ratio or percentage of the number of listings  
25 versus the number of timeshare interests sold by the resale  
26 agent for each of the past 3 years.

1           (6) A description of the amount or percentage and  
2           procedures for paying any commissions due to the resale  
3           agent upon resale of the timeshare interest.

4           (7) Whether or not the resale agent holds a real estate  
5           license and:

6                   (A) if licensed, state the name, address, and  
7                   telephone number of the State agency that issued the  
8                   real estate license; or

9                   (B) if not licensed, provide the following  
10                  disclosure:

11                   "WARNING: This resale agent DOES NOT have a real  
12                   estate license and cannot perform many of the duties  
13                   and services that may be conducted only by real estate  
14                   licensees. The duties and services that only those  
15                   holding a real estate license are typically permitted  
16                   to conduct include listing, negotiating for purchase  
17                   or sale, buying, offering for sale, selling, renting,  
18                   and exchanging, among other actions reserved to  
19                   licensees by State laws." ~~the method of compensation, a~~  
20                   ~~definite date of termination, whether any fees are~~  
21                   ~~non-refundable, and whether the agreement permits the~~  
22                   ~~timeshare resale agent or any other person to make any~~  
23                   ~~use whatsoever of the owner's timeshare interest or~~  
24                   ~~receive any rents or profits generated from such use of~~  
25                   ~~the timeshare interest.~~

26           (b) A resale agent shall maintain records as required by

1 rule. The records required to be maintained include, but are  
2 not limited to, all listing agreements, copies of disbursement  
3 authorizations in accordance with subsection (c), and resale  
4 contracts.

5 (c) A resale agent who collects any fees prior to a  
6 transfer of an interest from any owner shall deposit the fees  
7 in an escrow account. Any fees that are to be paid to the  
8 resale agent prior to closing may be disbursed from the escrow  
9 account only upon receipt of a disbursement authorization,  
10 signed by the owner, in the following form:

11 "I, (name of owner), am the owner of a timeshare  
12 interest in (name of timeshare plan). I understand that for  
13 my protection I can require the entire fee to be held in  
14 escrow until the closing on the resale of my timeshare  
15 interest, but I am authorizing a release before the  
16 transfer in the following amount: (amount written in words)  
17 (\$ (amount in numbers)), for the following purpose or  
18 purposes (description of purpose or purposes). I  
19 understand that the resale agent is regulated by the Office  
20 of Banks and Real Estate under the Real Estate Timeshare  
21 Act of 1999. The Office of Banks and Real Estate requires  
22 the resale agent to obtain this disbursement authorization  
23 with my signature before disbursement of my funds."

24 (d) A resale agent shall utilize a purchase agreement that  
25 discloses to a purchaser of a timeshare interest all of the  
26 following:

1 (1) A legally sufficient description of the timeshare  
2 interest being purchased.

3 (2) The name and address of the managing entity of the  
4 timeshare property.

5 (3) The current year's assessment for the common  
6 expenses allocated to the timeshare interest being  
7 purchased including the time period to which the assessment  
8 relates and the date on which it is due. If not included in  
9 the applicable common expense assessment, the amount of any  
10 real or personal property taxes allocated to the timeshare  
11 interest being purchased.

12 (3.5) Whether all assessments and real property taxes  
13 against the timeshare interest are paid in full and, if  
14 not, the amount owed and the consequences of failure to pay  
15 any assessment or real property taxes.

16 (4) A complete and accurate disclosure of the terms and  
17 conditions of the purchase and closing, including the  
18 obligations of the owner, the purchaser, or both for  
19 closing costs and the title insurance.

20 (5) The entity responsible for providing notification  
21 to the managing entity of the timeshare plan and the  
22 applicable exchange company regarding any change in the  
23 ownership of the timeshare interest.

24 (6) A statement of the first year in which the  
25 purchaser is entitled to receive the actual use rights and  
26 occupancy of the timeshare interest, as determined by the

1 managing entity of the timeshare plan and any exchange  
2 company.

3 (6.5) The place where the documents of formation of the  
4 association, if any, and the timeshare instrument may be  
5 obtained, together with the following disclosure:

6 "There are many important documents relating to the  
7 timeshare plan that you should review prior to purchasing a  
8 timeshare interest, which may include the declaration of  
9 restrictions, covenants, and conditions; the owners'  
10 association articles and bylaws; the current year's  
11 operating and reserve budgets; and any rules and  
12 regulations affecting the use of the timeshare plan  
13 accommodations and amenities."

14 (7) In making the disclosures required by this  
15 subsection (d), the timeshare resale agent may rely upon  
16 information provided in writing by the owner or managing  
17 entity of the timeshare plan.

18 (8) The purchaser's 5-day cancellation period as  
19 required by Section 10-10.

20 (9) Any other information determined by the Office of  
21 Banks and Real Estate and established by rule.

22 (e) A resale agent:

23 (1) shall be licensed as a real estate broker or  
24 salesperson pursuant to the provisions of the Real Estate  
25 License Act of 2000 or its successor Act or pursuant to the  
26 real estate laws of the state in which the resale agent has

1           its principal place of business; or  
2           (2) shall provide the disclosure required by  
3           subdivision (a) (7) (B) of this Section.

4           (Source: P.A. 91-585, eff. 1-1-00.)

5           (765 ILCS 101/5-45)

6           Sec. 5-45. Amendment to registration information or public  
7 offering statement. The developer, resale agent, and exchange  
8 company shall amend or supplement their disclosure documents  
9 and registration information to reflect any material change in  
10 any information required by this Act or the rules implementing  
11 this Act. All such amendments, supplements, and changes shall  
12 be filed with the Office of Banks and Real Estate within 30 ~~20~~  
13 calendar days of the material change.

14           (Source: P.A. 91-585, eff. 1-1-00.)

15           (765 ILCS 101/5-60)

16           Sec. 5-60. Registration; offer or disposal of interest.

17           (a) A developer, exchange company, or resale agent, or any  
18 of their agents, shall not sell, offer, or dispose of a  
19 timeshare interest unless all necessary registrations are  
20 filed and approved by the Office of Banks and Real Estate, or  
21 while an order revoking or suspending a registration is in  
22 effect.

23           (b) An applicant for registration under this Act shall  
24 submit the necessary information to complete the application,

1 as required by the Office of Banks and Real Estate, within 6  
2 months from the date the initial registration application was  
3 received by the Office of Banks and Real Estate. If the  
4 applicant fails to submit the information necessary to complete  
5 the application as required by the Office of Banks and Real  
6 Estate within the six month period, said application shall be  
7 voided, and a new registration application with applicable fees  
8 must be submitted.

9 (c) A developer, exchange company, or resale agent shall  
10 renew any registrations required by this Act no less frequently  
11 than on a biennial basis.

12 (Source: P.A. 91-585, eff. 1-1-00.)

13 (765 ILCS 101/10-25)

14 Sec. 10-25. Liability; material misrepresentation.

15 (a) A developer or other person offering a timeshare plan  
16 may not do any of the following:

17 (1) Misrepresent a fact material to a purchaser's  
18 decision to buy a timeshare interest.

19 (2) Predict specific or immediate increases in the  
20 value of a timeshare interest represented over a period of  
21 time, excluding bona fide pending price increases by the  
22 developer.

23 (3) Materially misrepresent the qualities or  
24 characteristics of accommodations or the amenities  
25 available to the occupant of those accommodations.

1           (4) Misrepresent the length of time accommodations or  
2 amenities will be available to the purchaser of a timeshare  
3 interest.

4           (5) Misrepresent the conditions under which a  
5 purchaser of a timeshare interest may exchange the right of  
6 his or her occupancy for the right to occupy other  
7 accommodations.

8           (b) A developer or other person using a promotion in  
9 connection with the offering of a timeshare interest shall  
10 clearly disclose all of the following:

11           (1) That the purpose of the promotion is to sell  
12 timeshare interests, which shall appear in bold face or  
13 other conspicuous type.

14           (2) That any person whose name or address is obtained  
15 during the promotion may be solicited to purchase a  
16 timeshare interest.

17           (3) The name of each developer or other person trying  
18 to sell a timeshare interest through the promotion, and the  
19 name of each person paying for the promotion.

20           (4) The complete rules of the promotion.

21           (5) The method of awarding prizes, gifts, vacations,  
22 discount vacations, or other benefits under the promotion;  
23 a complete and fully detailed description, including  
24 approximate retail value, of all prizes, gifts, or benefits  
25 under the promotion; the quantity of each prize, gift, or  
26 benefit to be awarded or conferred; and the date by which

1 each prize, gift, or benefit will be awarded or conferred.

2 (6) Any other disclosures provided by rule.

3 (c) If a person represents that a prize, gift, or benefit  
4 will be awarded in connection with a promotion, the prize,  
5 gift, or benefit must be awarded or conferred in the manner  
6 represented, and on or before the date represented.

7 (d) A developer or other person using a promotion in  
8 connection with the offering of a timeshare interest shall  
9 provide the disclosures required by this Section in writing or  
10 electronically to the prospective purchaser at least once  
11 before a scheduled sales presentation and within a reasonable  
12 period before the scheduled sales presentation to ensure that  
13 the prospective purchaser receives the disclosures before  
14 leaving to attend the sales presentation.

15 (e) A developer or other person using a promotion in  
16 connection with the offering of a timeshare interest is not  
17 required to provide the disclosures required by this Section in  
18 every advertisement or other written, oral, or electronic  
19 communication provided or made to a prospective purchaser.

20 (Source: P.A. 91-585, eff. 1-1-00.)

21 Section 97. Severability. The provisions of this Act are  
22 severable under Section 1.31 of the Statute on Statutes.

23 Section 99. Effective date. This Act takes effect upon  
24 becoming law.