

CHAPTER 166

CONSUMER AND COMMERCIAL TRANSACTIONS

SENATE BILL 13-182

BY SENATOR(S) Nicholson, Todd, Schwartz, Aguilar, Heath, Newell;
also REPRESENTATIVE(S) Williams, Hamner, Mitsch Bush, Duran, Hullinghorst, Melton, Pabon, Ryden, Salazar, Singer, Vigil.

AN ACT**CONCERNING DECEPTIVE TRADE PRACTICES RELATED TO TIME SHARE RESALE SERVICES.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 6-1-102, **add** (9.5), (11.7), (11.8), and (11.9) as follows:

6-1-102. Definitions. As used in this article, unless the context otherwise requires:

(9.5) "RESALE TIME SHARE" MEANS A TIME SHARE, INCLUDING ALL OR SUBSTANTIALLY ALL OWNERSHIP, RIGHTS, OR INTERESTS ASSOCIATED WITH THE TIME SHARE:

(a) THAT HAS BEEN ACQUIRED PREVIOUSLY FOR PERSONAL, FAMILY, OR HOUSEHOLD USE; AND

(b) (I) THAT IS OWNED BY A COLORADO RESIDENT; OR

(II) THE ACCOMMODATIONS AND OTHER FACILITIES OF WHICH ARE AVAILABLE FOR USE THROUGH THE TIME SHARE AND ARE PRIMARILY LOCATED IN COLORADO.

(11.7) (a) "TIME SHARE RESALE ENTITY" MEANS ANY PERSON WHO, EITHER DIRECTLY OR INDIRECTLY, ENGAGES IN A TIME SHARE RESALE SERVICE.

(b) "TIME SHARE RESALE ENTITY" DOES NOT INCLUDE:

(I) THE DEVELOPER, ASSOCIATION OF TIME SHARE OWNERS, OR OTHER PERSON

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

RESPONSIBLE FOR MANAGING OR OPERATING THE PLAN OR ARRANGEMENT BY WHICH THE RIGHTS OR INTERESTS ASSOCIATED WITH A RESALE TIME SHARE ARE UTILIZED, BUT ONLY TO THE EXTENT THE RESALE TIME SHARE IS PART OF AN EXISTING PLAN OR ARRANGEMENT MANAGED BY THAT DEVELOPER, ASSOCIATION, OR PERSON;

(II) ATTORNEYS, TITLE AGENTS, TITLE COMPANIES, OR ESCROW COMPANIES PROVIDING CLOSING, SETTLEMENT, OR OTHER TRANSACTION SERVICES AS LONG AS THE SERVICES ARE PROVIDED IN THE NORMAL COURSE OF BUSINESS IN SUPPORTING A CONVEYANCE OF TITLE OR IN ISSUING TITLE INSURANCE PRODUCTS IN A TIME SHARE RESALE TRANSACTION. TO THE EXTENT THE ATTORNEY, TITLE AGENT, TITLE COMPANY, OR ESCROW COMPANY IS ENGAGED IN PROVIDING SERVICES OR PRODUCTS THAT ARE OUTSIDE THE NORMAL COURSE OF BUSINESS IN SUPPORTING A CONVEYANCE OF TITLE OR IN ISSUING TITLE INSURANCE PRODUCTS OR HAS AN AFFILIATED BUSINESS ARRANGEMENT WITH A PARTY TO A TIME SHARE RESALE TRANSACTION, THIS EXEMPTION DOES NOT APPLY; OR

(III) REAL ESTATE BROKERS OPERATING WITHIN THE SCOPE OF ACTIVITIES SPECIFIED IN SECTION 12-61-101 (2), C.R.S., WITH RESPECT TO A TIME SHARE RESALE TRANSACTION AS LONG AS THE REAL ESTATE BROKER DOES NOT COLLECT A FEE IN ADVANCE. TO THE EXTENT A REAL ESTATE BROKER IS ENGAGED IN ACTIVITIES OUTSIDE THE SCOPE OF ACTIVITIES SPECIFIED IN SECTION 12-61-101 (2), C.R.S., COLLECTS AN ADVANCE FEE, OR HAS AN AFFILIATED BUSINESS ARRANGEMENT WITH A PARTY TO A TIME SHARE RESALE TRANSACTION, THIS EXEMPTION DOES NOT APPLY.

(11.8) "TIME SHARE RESALE SERVICE" MEANS ANY OF THE FOLLOWING ACTIVITIES, ENGAGED IN DIRECTLY OR INDIRECTLY AND FOR CONSIDERATION, REGARDLESS OF WHETHER PERFORMED IN PERSON, BY MAIL, BY TELEPHONE, OR BY ANY OTHER MODE OF INTERNET OR ELECTRONIC COMMUNICATION, UNLESS PERFORMED BY A PERSON OR ENTITY THAT, PURSUANT TO PARAGRAPH (b) OF SUBSECTION (11.7) OF THIS SECTION, IS EXEMPTED:

(a) THE SALE, RENTAL, LISTING, OR ADVERTISING OF, OR AN OFFER TO SELL, RENT, LIST, OR ADVERTISE, ANY RESALE TIME SHARE;

(b) THE PURCHASE OR OFFER TO PURCHASE ANY RESALE TIME SHARE;

(c) THE TRANSFER OR OFFER TO ASSIST IN THE TRANSFER OF ANY RESALE TIME SHARE; OR

(d) THE INVALIDATION OR AN OFFER TO INVALIDATE THE PURCHASE OR OWNERSHIP OF ANY RESALE TIME SHARE OR THE PURCHASE OF ANY TIME SHARE RESALE SERVICE.

(11.9) (a) "TIME SHARE RESALE TRANSFER AGREEMENT" MEANS A CONTRACT BETWEEN A TIME SHARE RESALE ENTITY AND THE OWNER OF A RESALE TIME SHARE IN WHICH THE TIME SHARE RESALE ENTITY AGREES TO TRANSFER, OR OFFERS TO ASSIST IN THE TRANSFER OF ALL OR SUBSTANTIALLY ALL OF, THE RIGHTS OR INTERESTS IN A RESALE TIME SHARE ON BEHALF OF THE OWNER OF THE RESALE TIME SHARE.

(b) (I) "TIME SHARE RESALE TRANSFER AGREEMENT" DOES NOT INCLUDE A

CONTRACT TO SELL, RENT, LIST, ADVERTISE, PURCHASE, OR TRANSFER A RESALE TIME SHARE IF THE OWNER OF THE RESALE TIME SHARE:

(A) UPON ENTERING THE CONTRACT, REASONABLY EXPECTS TO RECEIVE CONSIDERATION IN EXCHANGE FOR THE RESALE TIME SHARE; AND

(B) UPON THE ACTUAL SALE, RENTAL, OR TRANSFER OF THE TIME SHARE, RECEIVES CONSIDERATION.

(II) FOR PURPOSES OF THIS SUBSECTION (11.9), A TRANSFER OF THE RESALE TIME SHARE DOES NOT, BY ITSELF, CONSTITUTE CONSIDERATION.

SECTION 2. In Colorado Revised Statutes, **amend** 6-1-703 as follows:

6-1-703. Time shares and resale time shares - deceptive trade practices.

(1) A person engages in a deceptive trade practice when, in the course of ~~such~~ THE person's business, vocation, or occupation, ~~such~~ THE person engages in one or more of the following activities in connection with the advertisement or sale of a time share OR THE PROVISION OF A TIME SHARE RESALE SERVICE:

(a) Misrepresents:

(I) The investment, resale, or rental value of any time share;

(II) The conditions under which a purchaser may exchange the right to use accommodations or facilities in one location for the right to use accommodations or facilities in another location; or

(III) The period of time during which the accommodations or facilities contracted for will be available to the purchaser;

(b) Fails to allow any purchaser ~~of a time share~~ a right to rescind the sale OF A TIME SHARE OR A TIME SHARE RESALE SERVICE within five calendar days after the sale;

(c) (I) Fails to provide conspicuous notice on the contract of the right of a purchaser of a time share OR TIME SHARE RESALE SERVICE to rescind the sale IN WRITING either by ~~telegram~~ ELECTRONIC MEANS, mail, or hand delivery.

(II) For purposes of this section, notice of rescission is ~~considered~~ given:

(A) If by mail, when postmarked;

(B) If by ~~telegram~~ ELECTRONIC MAIL OR OTHER ELECTRONIC MEANS, when ~~filed~~ for telegraphic transmission SENT; or

(C) If by hand delivery, when delivered to the seller's place of business.

(d) Fails to refund any down payment or deposit made pursuant to a time share contract OR CONTRACT FOR TIME SHARE RESALE SERVICE within seven days after the seller OR TIME SHARE RESALE ENTITY receives the purchaser's written notice of

rescission; EXCEPT THAT, IF THE PURCHASER'S CHECK HAS NOT CLEARED AT THE TIME NOTICE OF RESCISSION IS RECEIVED, THE PERSON HAS SEVEN ADDITIONAL DAYS AFTER RECEIPT OF FUNDS FROM THE PURCHASER'S CLEARED CHECK TO REFUND THE DOWN PAYMENT OR DEPOSIT;

(e) WITH RESPECT TO THE SALE OR SOLICITATION OF ANY TIME SHARE RESALE SERVICE, MAKES FALSE OR MISLEADING STATEMENTS, INCLUDING STATEMENTS CONCERNING:

(I) THE EXISTENCE OF OFFERS TO BUY OR RENT THE RESALE TIME SHARE;

(II) THE LIKELIHOOD OF, OR THE TIME NECESSARY TO COMPLETE, ANY SALE, RENTAL, TRANSFER, OR INVALIDATION;

(III) THE VALUE OF THE RESALE TIME SHARE;

(IV) THE CURRENT OR FUTURE COSTS OF OWNING THE RESALE TIME SHARE, INCLUDING ASSESSMENTS, MAINTENANCE FEES, OR TAXES;

(V) HOW AMOUNTS PAID BY THE PURCHASER OF THE TIME SHARE RESALE SERVICE WILL BE UTILIZED;

(VI) THE METHOD OR SOURCE FROM WHICH THE NAME, ADDRESS, TELEPHONE NUMBER, OR OTHER CONTACT INFORMATION OF THE OWNER OF THE RESALE TIME SHARE WAS OBTAINED;

(VII) THE IDENTITY OF THE TIME SHARE RESALE ENTITY OR THAT ENTITY'S AFFILIATES; OR

(VIII) THE TERMS AND CONDITIONS UPON WHICH THE TIME SHARE RESALE SERVICE IS OFFERED;

(f) ENGAGES IN ANY TIME SHARE RESALE SERVICE WITHOUT FIRST OBTAINING A WRITTEN CONTRACT TO PROVIDE THE SERVICE, WHICH CONTRACT IS SIGNED BY THE PURCHASER OF THE TIME SHARE RESALE SERVICE AND COMPLIES WITH THE REQUIREMENTS OF THIS SECTION. FOR PURPOSES OF PARAGRAPH (c) OF THIS SUBSECTION (1), THE REQUIRED NOTICE OF RESCISSION RIGHTS APPLICABLE TO A CONTRACT FOR A TIME SHARE RESALE SERVICE IS CONSPICUOUS IF PRINTED IN AT LEAST FOURTEEN-POINT, BOLD-FACED TYPE IMMEDIATELY PRECEDING THE SPACE IN THE CONTRACT PROVIDED FOR THE PURCHASER'S SIGNATURE. IN ADDITION TO ANY OTHER REMEDY PROVIDED IN THIS ARTICLE, A TIME SHARE RESALE SERVICE CONTRACT THAT DOES NOT SATISFY THE REQUIREMENTS OF THIS SECTION IS VOIDABLE AT THE OPTION OF THE PURCHASER FOR UP TO ONE YEAR AFTER THE DATE THE PURCHASER EXECUTES THE CONTRACT.

(g) WITH RESPECT TO TIME SHARE RESALE TRANSFER AGREEMENTS, FAILS TO COMPLY WITH ANY PROVISION OF, OR OTHERWISE MAKES FALSE OR MISLEADING STATEMENTS IN CONNECTION WITH, ANY DISCLOSURE OR OTHER ACT REQUIRED TO BE MADE OR OBSERVED UNDER SECTION 6-1-703.5.

(2) THE UNLAWFUL PRACTICES LISTED IN THIS SECTION ARE IN ADDITION TO, AND

DO NOT LIMIT, THE TYPES OF DECEPTIVE TRADE PRACTICES ACTIONABLE UNDER SECTION 6-1-105.

(3) NO PERSON SHALL KNOWINGLY CIRCUMVENT THE REQUIREMENTS OF THIS SECTION OR SECTION 6-1-703.5.

(4) (a) A PERSON WHO, AS DIRECTOR, OFFICER, OR AGENT OF A TIME SHARE RESALE ENTITY OR AS AGENT OF A PERSON WHO VIOLATES THIS ARTICLE, ASSISTS OR AIDS, DIRECTLY OR INDIRECTLY, IN A VIOLATION OF THIS ARTICLE IS RESPONSIBLE EQUALLY WITH THE PERSON FOR WHICH THE PERSON ACTS.

(b) IN THE PROSECUTION OF A PERSON AS OFFICER, DIRECTOR, OR AGENT, IT IS SUFFICIENT TO ALLEGE AND PROVE THE UNLAWFUL INTENT OF THE PERSON OR ENTITY FOR WHICH THE PERSON ACTS.

SECTION 3. In Colorado Revised Statutes, **add 6-1-703.5** as follows:

6-1-703.5. Time share resale transfer agreements - deceptive trade practices.

(1) A TIME SHARE RESALE ENTITY ENGAGES IN A DECEPTIVE TRADE PRACTICE WHEN THE ENTITY FAILS TO INCLUDE IN A TIME SHARE RESALE TRANSFER AGREEMENT THE FOLLOWING INFORMATION:

(a) THE NAME, TELEPHONE NUMBER, AND PHYSICAL ADDRESS OF THE TIME SHARE RESALE ENTITY AND THE NAME AND ADDRESS OF ANY AGENT OR THIRD-PARTY SERVICE PROVIDER WHO WILL PERFORM ANY OF THE TIME SHARE RESALE SERVICES FOR THAT TIME SHARE RESALE ENTITY;

(b) A DESCRIPTION OF THE APPLICABLE RESALE TIME SHARE LEGALLY SUFFICIENT FOR RECORDING OR OTHER LEGAL TRANSFER;

(c) A DESCRIPTION OF THE METHOD OR DOCUMENTATION BY WHICH THE TRANSFER OF THE RESALE TIME SHARE WILL BE COMPLETED, INCLUDING WHETHER:

(I) THE OWNER OF THE RESALE TIME SHARE WILL RETAIN ANY INTEREST IN THE RESALE TIME SHARE FOLLOWING THE TRANSFER; AND

(II) THE OWNER OF THE RESALE TIME SHARE MUST GRANT A POWER OF ATTORNEY OR OTHERWISE DELEGATE ANY AUTHORITY NECESSARY TO COMPLETE THE TRANSFER OF THE RESALE TIME SHARE AND THE SCOPE OF THE AUTHORITY DELEGATED BY THE OWNER OF THE RESALE TIME SHARE;

(d) IF THE OWNER OF THE RESALE TIME SHARE WILL RETAIN ANY INTEREST IN THE RESALE TIME SHARE, A DESCRIPTION OF THE INTERESTS RETAINED BY THE OWNER OF THE RESALE TIME SHARE;

(e) A LISTING OF ANY FEES, COSTS, OR OTHER CONSIDERATION THAT THE OWNER OF THE RESALE TIME SHARE MUST PAY OR REIMBURSE FOR PERFORMANCE OF THE TIME SHARE RESALE SERVICE;

(f) A STATEMENT THAT NEITHER THE TIME SHARE RESALE ENTITY NOR ANY AFFILIATE OR AGENT OF THE ENTITY SHALL COLLECT FROM THE OWNER OF THE

RESALE TIME SHARE ANY FEES, COSTS, OR OTHER CONSIDERATION UNTIL THE TIME SHARE RESALE ENTITY:

(I) PROVIDES THE OWNER OF THE RESALE TIME SHARE A COPY OF THE RECORDABLE DEED OR OTHER EQUIVALENT WRITTEN EVIDENCE CLEARLY DEMONSTRATING THAT THE RESALE TIME SHARE HAS BEEN TRANSFERRED TO A SUBSEQUENT TRANSFEREE IN ACCORDANCE WITH THE TIME SHARE RESALE TRANSFER AGREEMENT AND APPLICABLE LAW; AND

(II) SATISFIES ALL OTHER REQUIREMENTS OF THIS SECTION;

(g) THE DATE BY WHICH ALL ACTS SUFFICIENT TO TRANSFER THE RESALE TIME SHARE IN ACCORDANCE WITH THE TIME SHARE RESALE TRANSFER AGREEMENT ARE ESTIMATED TO BE COMPLETED. THE TIME SHARE RESALE ENTITY SHALL USE COMMERCIALY REASONABLE GOOD FAITH EFFORTS TO COMPLETE THE TRANSFER OF THE SUBJECT TIME SHARE WITHIN THE ESTIMATED PERIOD. COMMERCIALY REASONABLE GOOD FAITH EFFORTS INCLUDE MAKING A REQUEST TO THE ASSOCIATION OF TIME SHARE OWNERS PURSUANT TO SECTION 38-33.3-316 (8), C.R.S., FOR A WRITTEN STATEMENT DETAILING UNPAID ASSESSMENTS LEVIED AGAINST THE TIME SHARE.

(h) A STATEMENT AS TO WHETHER ANY PERSON, INCLUDING THE OWNER OF THE RESALE TIME SHARE, MAY OCCUPY, RENT, EXCHANGE, OR OTHERWISE EXERCISE ANY FORM OF USE OF THE RESALE TIME SHARE DURING THE TERM OF THE TIME SHARE RESALE TRANSFER AGREEMENT;

(i) THE NAME OF ANY PERSON, OTHER THAN THE OWNER OF THE RESALE TIME SHARE, WHO WILL RECEIVE ANY RENTS, PROFITS, OR OTHER CONSIDERATION OR THING OF VALUE, IF ANY, GENERATED FROM THE TRANSFER OF THE APPLICABLE RESALE TIME SHARE OR THE USE OF THE APPLICABLE RESALE TIME SHARE DURING THE TERM OF THE TIME SHARE RESALE TRANSFER AGREEMENT;

(j) THE FOLLOWING STATEMENT CLEARLY AND CONSPICUOUSLY AND IN SUBSTANTIALLY THE FOLLOWING FORM:

WE [NAME OF TIME SHARE RESALE ENTITY] WILL USE COMMERCIALY REASONABLE GOOD FAITH EFFORTS TO TRANSFER OWNERSHIP OF YOUR RESALE TIME SHARE TO ANOTHER PERSON WITHIN THE PERIOD WE ESTIMATE FOR COMPLETING THE TRANSFER. UNTIL THE TRANSFER OF OWNERSHIP IS COMPLETE, YOU, THE RESALE TIME SHARE OWNER, WILL CONTINUE TO BE RESPONSIBLE FOR THE PAYMENT OF ALL COSTS AND FEES ASSOCIATED WITH YOUR RESALE TIME SHARE, INCLUDING, AS APPLICABLE, REGULAR ASSESSMENTS, SPECIAL ASSESSMENTS, AND REAL AND PERSONAL PROPERTY TAXES.

(k) A STATEMENT THAT THE TIME SHARE RESALE ENTITY WILL NOTIFY THE FOLLOWING PERSONS OR ENTITIES, IN WRITING, WHEN OWNERSHIP OF THE RESALE TIME SHARE IS TRANSFERRED, AS APPLICABLE:

(I) THE ASSOCIATION OF TIME SHARE OWNERS OR OTHER PERSONS RESPONSIBLE FOR MANAGING OR OPERATING THE PLAN OR ARRANGEMENT BY WHICH THE RIGHTS OR INTERESTS ASSOCIATED WITH THE APPLICABLE TIME SHARE RESALE ARE UTILIZED;

AND

(II) THE EXCHANGE COMPANY OPERATING ANY EXCHANGE PROGRAM THAT THE RESALE TIME SHARE WAS PART OF AT THE TIME THE TRANSFER WAS COMPLETED.

(2) IN MAKING THE DISCLOSURES REQUIRED UNDER THIS SECTION, THE TIME SHARE RESALE ENTITY MAY RELY UPON INFORMATION PROVIDED IN WRITING BY THE OWNER OF THE APPLICABLE RESALE TIME SHARE OR THE DEVELOPER, ASSOCIATION OF TIME SHARE OWNERS, OR OTHER PERSON RESPONSIBLE FOR MANAGING OR OPERATING THE PLAN OR ARRANGEMENT BY WHICH THE RIGHTS OR INTERESTS ASSOCIATED WITH THE APPLICABLE RESALE TIME SHARE ARE UTILIZED.

(3) A TIME SHARE RESALE ENTITY SHALL NOT TRANSFER OR OFFER TO ASSIST IN TRANSFERRING A RESALE TIME SHARE, OR RECEIVE CONSIDERATION IN CONNECTION WITH THE TRANSFER OF A RESALE TIME SHARE, IF THE TIME SHARE RESALE ENTITY KNOWS THAT THE TRANSFEREE DOES NOT HAVE THE ABILITY OR THE INTENT TO FULFILL THE OBLIGATIONS OF OWNERSHIP OF THE RESALE TIME SHARE, INCLUDING THE OBLIGATION TO PAY ALL ASSESSMENTS AND TAXES INCURRED IN CONNECTION WITH OWNERSHIP OF THE RESALE TIME SHARE. IF A TIME SHARE RESALE ENTITY TRANSFERS OR OFFERS TO TRANSFER, OR RECEIVES COMPENSATION IN CONNECTION WITH THE TRANSFER OF, A RESALE TIME SHARE TO A PERSON WHO HAS A DEMONSTRATED PATTERN OF NONPAYMENT OF ASSESSMENTS OR TAXES OR THE DEMONSTRATED INABILITY TO MEET PAYMENT OBLIGATIONS, THE ACTIONS OF THE TIME SHARE RESALE ENTITY ARE PRIMA FACIE EVIDENCE OF A VIOLATION OF THIS SUBSECTION (3).

(4) A TIME SHARE RESALE ENTITY SHALL SUPERVISE, MANAGE, AND CONTROL ALL ASPECTS OF THE TIME SHARE RESALE TRANSFER AGREEMENT AND THE OFFERING OF THE RESALE TIME SHARE BY ANY AFFILIATE, AGENT, CONTRACTOR, OR EMPLOYEE OF THAT TIME SHARE RESALE ENTITY. A VIOLATION OF THIS SECTION IS A VIOLATION BY THE TIME SHARE RESALE ENTITY AND BY THE PERSON ACTUALLY COMMITTING THE CONDUCT THAT CONSTITUTES THE VIOLATION.

(5) IF A TIME SHARE RESALE ENTITY ENGAGES IN AN ACT THAT IS PROHIBITED BY THIS SECTION, EITHER DIRECTLY OR AS A MEANS TO AVOID OR CIRCUMVENT THE PURPOSE OF THIS SECTION, A PERSON INJURED BY THE ACT MAY BRING A PRIVATE CIVIL ACTION PURSUANT TO SECTION 6-1-113.

SECTION 4. No appropriation. The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

SECTION 5. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect

unless approved by the people at the general election to be held in November 2014 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 3, 2013