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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 4. REAL ESTATE [10000 - 11506] (*Division 4 added by Stats. 1943, Ch. 127.*)

PART 2. REGULATION OF TRANSACTIONS [11000 - 11288] (*Part 2 added by Stats. 1943, Ch. 127.*)

CHAPTER 2. The Vacation Ownership and Time-Share Act of 2004 [11210 - 11288] (*Chapter 2 added by Stats. 2004, Ch. 697, Sec. 14.*)

ARTICLE 3. Time-Share Plan Requirements [11250 - 11256] (*Article 3 added by Stats. 2004, Ch. 697, Sec. 14.*)

11250. A time-share plan may be created in any accommodation unless otherwise prohibited. All time-share plans shall maintain a one-to-one purchaser to accommodation ratio, which means the ratio of the number of purchasers eligible to use the accommodations of a time-share plan on a given night to the number of accommodations available for use within the plan on that night, such that the total number of purchasers eligible to use the accommodations of the time-share plan during a given calendar year never exceeds the total number of accommodations available for use in the time-share plan during that year. For purposes of the calculation under this section, each purchaser must be counted at least once, and no individual accommodation may be counted more than 365 times per calendar year or more than 366 times per leap year. A purchaser who is delinquent in the payment of time-share plan assessments shall continue to be considered eligible to use the accommodations of the time-share plan for purposes of calculating the one-to-one purchaser to accommodation ratio.

(*Added by Stats. 2004, Ch. 697, Sec. 14. Effective January 1, 2005. Section operative July 1, 2005, pursuant to Section 11288.*)

11251. (a) The developer of a single site time-share plan and for the component sites of a multisite time-share plan located in the state, shall cause to be recorded prior to the closing of the first sale of a time-share interest in each accommodation in the time-share plan, covenants dedicating the accommodations to the time-share plan and incorporating all covenants of the grantor or lessor of the time-share interests, and the following provisions:

- (1) Organization of an association of time-share interest owners.
- (2) A description of the real property for the common ownership or use of the time-share interest owners. Where the time-share plan is a personal property time-share plan, a description of the personal property for common use of the time-share interest owners.
- (3) A description of the method for calculating and collecting regular and special assessments from time-share interest owners to defray expenses of the time-share property and for related purposes.
- (4) A description of the method for terminating the membership and selling the interest of a time-share interest owner for failure to pay regular or special assessments.
- (5) A description of the method for the disciplining of time-share interest owners for the late payment of assessments.
- (6) Provisions requiring comprehensive general liability insurance and adequate property and casualty insurance covering the time-share property.
- (7) Restrictions upon partition of an accommodation of the time-share plan.
- (8) A description of the method for amending the covenants affecting the time-share plan.
- (9) Where applicable, a description of the method relating to the annexation or de-annexation of additional accommodations, phases, or properties to the time-share plan.

(10) A description of the procedures in the event of condemnation, destruction, or extensive damage to an accommodation, including provisions for the disposition of insurance proceeds or damages payable on account of damage or condemnation.

(11) A method of the procedures on regular termination of the time-share plan.

(12) Where applicable, allocation of the cost of maintenance and operation between different elements or mixed uses within the portions of a project or relating to reciprocal rights and obligations between the time-share project and other property.

(13) A description of the method for entry into accommodations of the time-share plan under authority granted by the association for the purpose of cleaning, maid service, maintenance, and repair including emergency repairs and for the purpose of abating a nuisance or a known or suspected dangerous or unlawful activity.

(14) Delineate all reserved rights of the developer.

(15) For projects located within the state, the covenants shall, insofar as reasonably possible, satisfy the requirements of Section 1468 or Sections 1469 and 1470 of the Civil Code for real property located in this state.

(b) For single site time-share plans and component sites of a multisite time-share plan located outside of the state, the developer shall cause to be recorded a declaration dedicating the accommodations to the time-share plan and incorporating all covenants of the grantor or lessor of the time-share interests. The declaration shall include the subject matter set forth in paragraphs (1) to (14), inclusive, of subdivision (a). If there is no provision for the recording of a declaration in the state or jurisdiction in which the time-share property or component site is located, alternatively, the developer shall establish that the declaration is otherwise enforceable in the state or jurisdiction in which the time-share property or component site is located. The declaration shall be in compliance with the applicable laws of the state or jurisdiction in which the time-share property or component site is located, and if a conflict exists between laws of the situs state and the requirements set forth in this section, the law of the situs state shall control. If the declaration provides for the matters contained in paragraphs (1) to (14), inclusive, of subdivision (a), the declaration shall be deemed to be in compliance with the requirements of subdivision (a) and this subdivision and the developer shall not be required to make revisions in order to comply with subdivision (a) and this subdivision.

(c) The developer of a time-share plan located within the state shall make provisions in the time-share instruments for all of the following:

(1) A description of the services to be made available to time-share interest owners under the time-share plan.

(2) A description, to be contained in the declaration or the bylaws of the association, of the procedures regarding transfer to the association of control over the time-share property and services comprising the time-share plan.

(3) A description of the method for preparation and availability to time-share interest owners of budgets, financial statements, and other information related to the time-share plan.

(4) A description of the methods for employing and for terminating the employment of a managing entity for the time-share plan.

(5) A description of the method for adoption of standards and rules of conduct for the use of accommodations by time-share interest owners.

(6) A description of the method for establishment of the rights of time-share interest owners to the use of an accommodation according to schedule or under a first-reserved, first-served priority system.

(7) A description of the method for compensating use periods or monetary compensation for an owner of a time-share estate if an accommodation cannot be made available for the period of use to which the owner is entitled by schedule or under a reservation system because of an error by the association or managing entity.

(8) A description of the method for the use of accommodations for transient accommodations or other income-producing purpose during periods of nonuse by time-share interest owners.

(9) A description of the method for the inspection of the books and records of the association by time-share interest owners.

(10) A description of the method for collective decisionmaking and the undertaking of action by or in the name of the association including, where applicable, representation of time-share accommodations in an association for the time-share in which the accommodations are located.

(d) For single site time-share plans and component sites of a multisite time-share plan located outside of the state, the developer shall cause to be included in the time-share instrument the subject matter set forth in subdivision (c). The time-share instruments shall be in compliance with the applicable laws of the state or jurisdiction in which the time-share property or component site is located, and if there is a conflict between laws of the situs state and the requirements set forth in this section, the law of the situs state shall control. If the time-share instruments provide for the matters contained in subdivision (c), the time-share instruments shall

be deemed to be in compliance with the requirements of subdivision (c) and this subdivision and the developer shall not be required to make revisions in order to comply with subdivision (c) and this subdivision.

(Added by Stats. 2004, Ch. 697, Sec. 14. Effective January 1, 2005. Section operative July 1, 2005, pursuant to Section 11288.)

11252. In a time-share plan offering time-share use interests, the developer shall not encumber the accommodations of the time-share plan in a manner that could materially and adversely affect the use rights of the purchasers of the accommodations without the written assent of not less than 51 percent of the time-share interest owners other than the developer. This section shall not prevent the developer from encumbering the purchaser's use rights so long as the developer has sufficient protection as permitted by Section 11244.

(Added by Stats. 2004, Ch. 697, Sec. 14. Effective January 1, 2005. Section operative July 1, 2005, pursuant to Section 11288.)

11253. For single site time-share plans and component sites of multisite time-share plans located in this state, the time-share instrument shall require that the following insurance be at all times maintained in force to protect time-share interest owners in the time-share plan:

(a) Insurance against property damage as a result of fire and other hazards commonly insured against, covering all real and personal property comprising the time-share plan in an amount not less than 80 percent of the full replacement value of the time-share property.

(1) In a time-share use offering, the trustee shall be a named coinsured, and if for any reason, title to the accommodation is not held in trust, the association shall be named as a coinsured as the agent for each of the time-share interest owners.

(2) In a time-share estate offering, the association shall be named as a coinsured if it has title to the property or as a coinsured as agent for each of the time-share interests owners if title is held by the owners as tenants in common.

(3) If, after control of the governing body of the association has passed to the owners other than the developer, and the association amends the time-share instrument to reduce the percentage below 80 percent, the failure of the association to maintain coverage at 80 percent of replacement value shall not be grounds for denial of a public report.

(b) Liability insurance against death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the accommodations of the time-share plan.

(1) The amounts of the insurance shall be determined by the association, but shall not be less than five hundred thousand dollars (\$500,000) to one million dollars (\$1,000,000) for personal injury and one hundred thousand dollars (\$100,000) for property damage.

(2) The liability insurance policy shall provide for all of the following:

(A) All time-share interest owners as a class are named as additional insureds in a policy issued to the association.

(B) The waiver by the insurer of its right to subrogation under the policy against any time-share interest owner or member of his or her household.

(C) No act or omission by a time-share interest owner, unless acting within the scope of his or her authority on behalf of the association, shall void the policy or operate as a condition to recovery under the policy by any other person.

(Added by Stats. 2004, Ch. 697, Sec. 14. Effective January 1, 2005. Section operative July 1, 2005, pursuant to Section 11288.)

11254. (a) In a time-share plan in which the fee or a long-term leasehold interest in all or some of the accommodations and in appurtenant real and personal property is to be transferred to the association or to a corporate trustee under a trust agreement, the conveyance shall be made prior to the closing of the escrow for the first sale of a time-share interest in the accommodation.

(b) The developer may reserve easements in the real property conveyed for purposes reasonably related to the conduct of commercial activities in the time-share property, if the developer covenants to use the easements in a manner that will minimize any adverse impact on the use and enjoyment of the accommodation by any time-share interest owner occupying it.

(Added by Stats. 2004, Ch. 697, Sec. 14. Effective January 1, 2005. Section operative July 1, 2005, pursuant to Section 11288.)

11255. (a) The department shall require that each of the accommodations in a time-share plan offering time-share use interests be conveyed to a trustee or an association acceptable to the commissioner prior to the closing of the escrow for the first sale of a time-share use interest that entitles the purchaser to occupy the accommodation in question.

(b) If the accommodation in a time-share plan offering time-share use interests that is free and clear of blanket encumbrances, other than a lien of current real property taxes, is conveyed to a trustee or an association, the trust or association instruments shall include, but not be limited to, all of the following:

- (1) Transfer of title to the accommodations to the trustee or association.
- (2) If the time-share use interests are conveyed to a trust, the association as a party to the trust or an express third-party beneficiary of the trust.
- (3) Notice to the department of the intention of the trustee to resign, if applicable.
- (4) Continuance of the trustee in that capacity until a successor trustee acceptable to the department assumes the position, if applicable.
- (5) Prohibition against any amendments of the trust or association instruments adversely affecting the interests or rights of time-share interest owners without the prior approval of the association.
- (6) Instructions for the distribution of condemnation or insurance proceeds by the trustee or the association.

(c) The department may require that each of the accommodations in a time-share plan offering time-share estate interests that is subject to a blanket encumbrance be conveyed to a trustee acceptable to the department prior to the closing of the escrow for the first sale of a time-share estate which entitles the purchaser to occupy the accommodation in question.

(d) If an accommodation in the time-share plan is conveyed to a trustee pursuant to subdivision (c), the trust instrument shall include all of the following provisions in addition to those set forth in subdivision (b):

(1) The deposit into trust, and the retention for the duration of the trust, of nondelinquent installment sales contracts or promissory notes of time-share interests purchases having an aggregate principal balance owing not ordinarily less than 150 percent of the difference between the aggregate principal balance owing under blanket encumbrances against the accommodation and the amount of money, or its equivalent, in the trust and available at any time to be applied to the reduction of the principal balance of the blanket encumbrances.

(A) The trust instrument shall further provide that if the 150 percent requirement has not been met within six months after execution of the trust instrument by the developer, the trustee shall thereafter retain in the trust, or apply to debt service on the blanket encumbrance, the entire amount of all installment payments received on contracts or promissory notes until the 150 percent requirement has been met.

(B) For purposes of this regulation, a contract or promissory note is deemed delinquent when an installment payment is more than 60 days past due.

(C) If the developer for purposes of satisfying the requirements of this subdivision proposes to deposit installment sales contracts or promissory notes of obligor other than purchasers of interests in the time-share plan into the trust, the developer shall have the burden of establishing the liquidated value of the notes and contracts to the satisfaction of the department.

(2) The deposit into trust, and the retention for the duration of the trust, of funds in an amount at all times sufficient to pay the total of three successive monthly installments of debt service on the blanket encumbrance.

(A) If installments of debt service on a blanket encumbrance that is fully amortized are due less frequently than monthly, the funds retained in the trust shall be sufficient to pay all installments becoming due within the next succeeding six months, or, if no installments are due within the next succeeding six months the next installment due.

(B) If a blanket encumbrance against the trust property is an interest-only loan, contains a balloon payment provision, or is otherwise not fully amortized under the terms for repayment, the trust instrument shall require that the developer make monthly payments into the trust sufficient to pay debt service installments as they become due and to create a sinking fund to extinguish the debt at its maturity.

(3) Payment by the trustee of debt service on the blanket encumbrance, property taxes, or assessments on insurance premiums, either as the entity having primary responsibilities for the payments or the entity secondarily responsible if the person with primary responsibility fails to make the payments in a timely manner.

(4) The deposit or investment by the trustee of funds constituting a part of the trust corpus in interest bearing accounts, treasury bills, certificates of deposit, or similar investments.

(e) In the case of a time-share plan offering time-share use interests that have been conveyed to a trustee, the trust for the accommodation shall be irrevocable during the time that any time-share interest owner has a right to the occupancy of an accommodation.

(f) In the case of a time-share plan offering time-share use interests that have been conveyed to an association, the association shall not be dissolved or terminated during the time that any time-share interest owner has the right to occupancy of an accommodation.

(g) In a time-share plan offering time-share estate interests, the trust for an accommodation shall be irrevocable until the extinguishment of all blanket monetary encumbrances against the accommodation.

(Added by Stats. 2004, Ch. 697, Sec. 14. Effective January 1, 2005. Section operative July 1, 2005, pursuant to Section 11288.)

11256. (a) The contract proposed to be used by a developer applying for a public report for the sale or lease of time-share interests shall provide that if the escrow for sale or lease of a time-share interest does not close on or before the date set forth in the contract, or a later closing date mutually agreed to by the developer and the prospective purchaser or lessee, within 15 days after the closing date set forth in the contract or an extended closing date mutually agreed to by the developer and the prospective purchaser or lessee, the developer shall, except as provided in subdivisions (c) to (h), inclusive, order all of the money remitted by the prospective purchaser or lessee under the terms of the contract for acquisition of the time-share interest (purchase money) to be refunded to the prospective purchaser or lessee. Any extension of the closing of escrow shall be in writing and shall clearly and conspicuously disclose that the purchaser is not obligated to extend the closing of escrow.

(b) The contract may provide for disbursements or charges to be made against purchase money for payments to third parties for credit reports, escrow services, preliminary title reports, appraisals, and loan processing services by the parties if the contract includes the following:

(1) Specific enumeration of all of the disbursements or charges that may be made against purchase money.

(2) The developer's estimate of the total amount of the disbursements and charges.

(c) Any contractual provision that calls for disbursement or a charge against purchase money based upon the prospective purchaser's or lessee's alleged failure to complete the purchase of the time-share interest shall conform with Sections 1675, 1676, 1677, and 1678 of the Civil Code.

(d) Except for a disbursement made following substantial compliance with the procedures set forth in subdivision (f) or pursuant to a written agreement of the parties that either cancels the contract or is executed after the final closing date specified by the parties, a disbursement or charge against purchase money as liquidated damages may be done only pursuant to a determination by a court of law, or by an arbitrator if the parties have so provided by contract, that the developer is entitled to a disbursement or charge against purchase money as liquidated damages.

(e) A contractual provision for a determination by arbitration that the developer is entitled to a disbursement or charge against purchase money as liquidated damages shall require that the arbitration be conducted in accordance with procedures that are equivalent in substance to the Commercial Arbitration Rules of the American Arbitration Association or another third-party arbitration organization selected by the parties and in accordance with Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure that any arbitration include every cause of action that has arisen between the prospective purchaser or lessee and the developer under the contract, and that the developer remit the fee to initiate arbitration with the costs of the arbitration ultimately to be borne as determined by the arbitrator.

(f) The contract of sale may include a procedure under which purchase money may be disbursed by the escrowholder to the developer as liquidated damages upon the prospective purchaser's or lessee's failure to timely give the escrowholder the prospective purchaser's or lessee's written objection to disbursement of purchase money as liquidated damages. This procedure shall contain at least the following elements:

(1) The developer shall give written notice, in the manner prescribed by Section 116.340 of the Code of Civil Procedure for service in a small claims action, to the escrowholder and to the prospective purchaser or lessee that the prospective purchaser or lessee is in default under the contract that the developer is demanding that the escrowholder remit _____ dollars (\$____) from the purchase money to the developer as liquidated damages unless, within 20 days, the prospective purchaser or lessee gives the escrowholder the prospective purchaser's or lessee's written objection to the disbursement of purchase money as liquidated damages.

(2) The prospective purchaser or lessee shall have a period of 20 days from the date of receipt of the developer's 20-day notice and demand in which to give the escrowholder the prospective purchaser or lessee written objection to the disbursement of purchase money as liquidated damages.

(g) The contract may not make the prospective purchaser's or lessee's failure to timely give the escrowholder the aforesaid written objection a waiver of any cause of action the prospective purchaser or lessee may have against the developer under the contract unless the waiver is conditioned upon service of the developer's 20-day notice and demand in a manner prescribed by Section 116.340 of the Code of Civil Procedure for service in a small claims action.

(h) If the developer has had the use of purchase money pending consummation of the sale or lease transaction under authorization by the department pursuant to Section 11243, the developer shall immediately upon alleging the default of the prospective purchaser or lessee, transmit to the escrowholder, funds equal to all of the purchase money paid by the prospective purchaser or lessee.

(Amended by Stats. 2019, Ch. 153, Sec. 5. (SB 578) Effective January 1, 2020.)