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AB-905 Time-shares: public report: real property inspection. (2015-2016)

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Assembly Bill No. 905

CHAPTER 88

An act to amend Sections 11216 and 11234 of the Business and Professions Code, and to amend Section 2079.6 of the Civil Code, relating to time-shares.

[Approved by Governor July 14, 2015. Filed with Secretary of State July 14, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 905, Beth Gaines. Time-shares: public report: real property inspection.

Existing law, the Vacation Ownership and Time-share Act of 2004, requires a developer, defined as a person who creates a time-share plan or is in the business of selling time-share interests, to prepare, for issuance by the Real Estate Commissioner, a public report that discloses certain facts concerning the developer and time-share plan and to provide a copy of the public report in writing to each purchaser of a time-share interest in a time-share plan at the time of purchase. Existing law requires a developer who offers a purchaser the opportunity to subscribe or become a member of an exchange program to provide the purchaser with specified disclosures in writing. Existing law makes a violation of the public report disclosure requirement a public offense.

This bill would require the developer to provide the purchaser with the public report or other disclosures in writing or in a digital format at the discretion of the purchaser. By changing the definition of a crime, this bill would impose a state-mandated local program.

Existing law provides that it is the duty of a real estate broker or salesperson to a prospective purchaser of residential real property comprising one to 4 inclusive, residential dwelling units or a manufactured home, to make a reasonably competent and diligent visual inspection of, and disclosure regarding, the property, as specified, except for transfers that are required to be preceded by the furnishing of a copy of a specified public report and to transfers that can be made without a specified public report, unless the property has been previously occupied.

This bill would also create an exception for a transfer that is required to be preceded by the furnishing of a copy of the public report required pursuant to the above-described act, unless the property has been previously occupied.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 11216 of the Business and Professions Code is amended to read:

11216. (a) An exchange program is not a part of a time-share plan offering and, except as provided in this section and Section 11238, shall not be subject to either this chapter or the regulations of the commissioner adopted pursuant to this chapter.

(b) If a developer offers a purchaser the opportunity to subscribe to or to become a member of an exchange program, the developer shall provide to the purchaser in writing or in a digital format at the discretion of the purchaser all of the information set forth in paragraphs (1) to (17), inclusive. If the exchange company is offering directly to the purchaser the opportunity to subscribe to or become a member of an exchange company, the exchange company shall provide to the purchaser in writing all of the information set forth in paragraphs (1) to (17), inclusive. In either case, the written information shall be provided prior to or concurrently with the execution of any contract or subscription for membership in the exchange program.

(1) The name and address of the exchange company.

(2) The names of all officers, directors, and shareholders of the exchange company.

(3) Whether the exchange company or any of its officers or directors have any legal or beneficial interest in any developer or managing entity for any time-share plan participating in the exchange program and, if so, the identity of the time-share plan and the nature of the interest.

(4) A copy of the form of the contract between the purchaser and the exchange company, along with a statement that the purchaser's contract with the exchange company is a contract separate and distinct from the purchaser's contract with the seller of time-share interests.

(5) Whether the purchaser's participation in the exchange program is dependent upon the continued affiliation of the applicable time-share plan with the exchange program.

(6) Whether the purchaser's participation in the exchange program is voluntary.

(7) A fair and accurate description of the terms and conditions of the purchaser's contractual relationship with the exchange program and the procedure by which changes thereto may be made.

(8) A fair and accurate description of the procedures necessary to qualify for and effectuate exchanges.

(9) A fair and accurate description of all limitations, restrictions, and priorities employed in the operation of the exchange program, including, but not limited to, limitations on exchanges based on seasonality, accommodation size, or levels of occupancy, expressed in conspicuous type. If those limitations, restrictions, or priorities are not uniformly applied by the exchange company, the information shall include a clear description of the manner in which they are applied.

(10) Whether exchanges are arranged on a space available basis and whether any guarantees of fulfillment of specific requests for exchanges are made by the exchange company.

(11) Whether and under what circumstances an owner, in dealing with the exchange program, may lose the right to use and occupy an accommodation of the time-share plan during a reserved use period with respect to any properly applied for exchange without being provided with substitute accommodations by the exchange program.

(12) The fees or range of fees for participation by owners in the exchange program, a statement of whether any such fees may be altered by the exchange company and the circumstances under which alterations may be made.

(13) The name and address of the site of each accommodation included within a time-share plan participating in the exchange program.

(14) The number of accommodations in each time-share plan that are available for occupancy and that qualify for participation in the exchange program, expressed within the following numerical groups: 1–5; 6–10; 11–20; 21–50; and 51 and over.

(15) The number of currently enrolled owners for each time-share plan participating in the exchange program, expressed within the following numerical groups: 1–100; 101–249; 250–499; 500–999; and 1,000 and over; and a statement of the criteria used to determine those owners who are currently enrolled with the exchange program.

(16) The disposition made by the exchange company of use periods deposited with the exchange program by owners enrolled in the exchange program and not used by the exchange company in effecting exchanges.

(17) The following information for the preceding calendar year, which shall be independently audited by a certified public accountant in accordance with the standards of the Accounting Standards Board of the American Institute of Certified Public Accountants and reported annually no later than August 1 of each year:

(A) The number of owners currently enrolled in the exchange program.

(B) The number of time-share plans that have current affiliation agreements with the exchange program.

(C) The percentage of confirmed exchanges, which is the number of exchanges confirmed by the exchange program divided by the number of exchanges properly applied for, together with a complete and accurate statement of the criteria used to determine whether an exchange request was properly applied for.

(D) The number of use periods for which the exchange program has an outstanding obligation to provide an exchange to an owner who relinquished a use period during a particular year in exchange for a use period in any future year.

(E) The number of exchanges confirmed by the exchange program during the year.

(F) A statement in conspicuous type to the effect that the percentage described in subparagraph (C) is a summary of the exchange requests entered with the exchange program in the period reported and that the percentage does not indicate the probabilities of an owner's being confirmed to any specific choice or range of choices.

(c) All written, visual, and electronic communications relating to an exchange company or an exchange program shall be filed with the commissioner upon its request.

(d) The failure of an exchange company to observe the requirements of this section, and the use of any unfair or deceptive act or practice in connection with the operation of an exchange program, is a violation of this chapter.

(e) An exchange company may elect to deny exchange privileges to any owner whose use of the accommodations of the owner's time-share plan is denied, and no exchange program or exchange company shall be liable to any of its members or any third parties on account of any such denial of exchange privileges.

SEC. 2. Section 11234 of the Business and Professions Code is amended to read:

11234. A developer shall prepare, for issuance by the commissioner, a public report that shall fully and accurately disclose those facts concerning the time-share developer and time-share plan that are required by this chapter or by regulation. The developer shall provide the public report to each purchaser of a time-share interest in a time-share plan at the time of purchase. The public report shall be in writing or in a digital format at the discretion of the purchaser and dated and shall require the purchaser to certify in writing the receipt thereof. The public report for a single site time-share plan is subject to the requirements of subdivision (a). The public report for a specific time-share interest multisite time-share plan is subject to the requirements of both subdivisions (a) and (b). The public report for a nonspecific time-share interest multisite time-share plan is subject to the requirements of subdivision (c). For time-share plans located outside of the state, a public report that has been authorized for use by the situs state regulatory agency and that contains disclosures as determined by the commissioner upon review to be substantially equivalent to or greater than the information required to be disclosed pursuant to this section may be used by the developer to meet the requirements of this section. A developer may, upon approval by the commissioner, submit a public report that combines, in a manner prescribed by the commissioner, the information required to be disclosed by the applicable subdivisions of this section and the information required to be disclosed in a public report issued by a regulatory agency in one or more other states.

(a) Public reports for a single site and those component sites of a specific time-share interest multisite time-share plan that are offered in this state shall include the following:

(1) The name and address of the developer and the type of time-share plan being offered and the name and address of the time-share project.

(2) A description of the existing or proposed accommodations, including the type and number of time-share interests in the accommodations, and if the accommodations are proposed or not yet complete or fully functional, an estimated date of completion.

(3) The number of accommodations and time-share interests, expressed in periods of seven-day use availability or other time increments applicable to the time-share plan, committed to the multisite time-share plan, and available for use by purchasers and a representation about the percentage of useable time authorized for sale, and if that percentage is 100 percent, then a statement describing how adequate periods of time for maintenance and repair will be provided.

(4) A description of any existing or proposed amenities of the time-share plan and, if the amenities are proposed or not yet complete or fully functional, the estimated date of completion.

(5) The extent to which financial arrangements have been made for the completion of any incomplete, promised improvements.

(6) A description of the duration, phases, and operation of the time-share plan.

(7) The name and principal address of the managing entity and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it.

(8) The current annual budget as required by Section 11240, along with the projected assessments and a description of the method for calculating and apportioning the assessments among purchasers, all of which shall be attached as an exhibit to the public report.

(9) Any initial or special fee due from the purchaser at closing together with a description of the purpose and the method of calculating the fee.

(10) A description of any financing offered by or available through the developer.

(11) A description of any liens, defects, or encumbrances on or affecting the title to the time-share interests.

(12) A description of any bankruptcies, pending civil or criminal suits, adjudications, or disciplinary actions of which the developer has knowledge, that would have a material effect on the developer's ability to perform its obligations.

(13) Any current or expected fees or charges to be paid by time-share purchasers for the use of any amenities related to the time-share plan.

(14) A description and amount of insurance coverage provided for the protection of the purchaser.

(15) The extent to which a time-share interest may become subject to a tax lien or other lien arising out of claims against purchasers of different time-share interests.

(16) A statement disclosing any right of first refusal or other restraint on the transfer of all or any portion of a time-share interest.

(17) A statement disclosing that a deposit made in connection with the purchase of a time-share interest shall be held by an escrow agent until expiration of any right to cancel the contract and that a deposit shall be returned to the purchaser if he or she elects to exercise his or her right of cancellation. Alternatively, if the commissioner has accepted from the developer a surety bond, irrevocable letter of credit, or other financial assurance, each of which shall be enforceable by the association, in lieu of placing deposits in an escrow account: (A) a statement disclosing that the developer has provided a surety bond, irrevocable letter of credit, or other financial assurance in an amount equal to or in excess of the funds that would otherwise be placed in an escrow account, (B) a description of the type of financial assurance that has been obtained, (C) a statement that if the purchaser elects to exercise his or her right of cancellation as provided in the contract, the developer shall return the deposit, and (D) a description of the person or entity to whom the purchaser should apply for payment.

(18) A statement that the assessments collected from the purchasers will be kept in a segregated account separate from the assessments collected from the purchasers of other time-share plans managed by the same managing entity, along with a statement identifying the location of the account and a disclosure of the rights of owners to inspect the records pertaining to their accounts.

(19) If the time-share plan provides purchasers with the opportunity to participate in an exchange program, a description of the name and address of the exchange company and the method by which a purchaser accesses the exchange program.

(20) Any other information that the developer, with the approval of the commissioner, desires to include in the public report.

(21) Any other information reasonably requested by the commissioner.

(b) Public reports for specific time-share interest multisite time-share plans shall include the following additional disclosures:

(1) A description of each component site, including the name and address of each component site.

(2) The number of accommodations and time-share interests, expressed in periods of seven-day use availability or other time increments applicable to each component site of the time-share plan, committed to the multisite time-share plan and available for use by purchasers and a representation about the percentage of useable time authorized for sale, and if that percentage is 100 percent, then a statement describing how adequate periods of time for maintenance and repair will be provided.

(3) Each type of accommodation in terms of the number of bedrooms, bathrooms, and sleeping capacity, and a statement of whether or not the accommodation contains a full kitchen. For purposes of this description, a "full kitchen" means a kitchen having a minimum of a dishwasher, range, sink, oven, and refrigerator.

(4) A description of amenities available for use by the purchaser at each component site.

(5) A description of the reservation system, which shall include the following:

(A) The entity responsible for operating the reservation system, its relationship to the developer, and the duration of any agreement for operation of the reservation system.

(B) A summary of the rules and regulations governing access to and use of the reservation system.

(C) The existence of and an explanation regarding any priority reservation features that affect a purchaser's ability to make reservations for the use of a given accommodation on a first-come-first-served basis.

(6) The name and principal address of the managing entity for the multisite time-share plan and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it.

(7) A description of any right to make any additions, substitutions, or deletions of accommodations, amenities, or component sites, and a description of the basis upon which accommodations, amenities, or component sites may be added to, substituted in, or deleted from the multisite time-share plan.

(8) A description of the purchaser's liability for any fees associated with the multisite time-share plan.

(9) The location of each component site of the multisite time-share plan, the historical occupancy of each component site for the prior 12-month period, if the component site was part of the multisite time-share plan during the 12-month time period, as well as any periodic adjustment or amendment to the reservation system that may be needed in order to respond to actual purchaser use patterns and changes in purchaser use demand for the accommodations existing at that time within the multisite time-share plan.

(10) Any other information that the developer, with the approval of the commissioner, desires to include in the time-share disclosure statement.

(c) Public reports for nonspecific time-share interest multisite time-share plans shall include the following:

(1) The name and address of the developer.

(2) A description of the type of interest and usage rights the purchaser will receive.

(3) A description of the duration and operation of the time-share plan.

(4) A description of the type of insurance coverage provided for each component site.

(5) An explanation of who holds title to the accommodations of each component site.

(6) A description of each component site, including the name and address of each component site.

(7) The number of accommodations and time-share interests, expressed in periods of seven-day use availability or other time increments applicable to the multisite time-share plan for each component site committed to the multisite time-share plan and available for use by purchasers and a representation about the percentage of useable time authorized for sale, and if that percentage is 100 percent, then a statement describing how adequate periods of time for maintenance and repair will be provided.

(8) Each type of accommodation in terms of the number of bedrooms, bathrooms, and sleeping capacity, and a statement of whether or not the accommodation contains a full kitchen. For purposes of this description, a "full kitchen" means a kitchen having a minimum of a dishwasher, range, sink, oven, and refrigerator.

(9) A description of amenities available for use by the purchaser at each component site.

(10) A description of any incomplete amenities at any of the component sites along with a statement as to any assurance for completion and the estimated date the amenities will be available.

(11) The location of each component site of the multisite time-share plan, the historical occupancy of each component site for the prior 12-month period, if the component site was part of the multisite time-share plan during such 12-month time period, as well as any periodic adjustment or amendment to the reservation system that may be needed in order to respond to actual purchaser use patterns and changes in purchaser use demand for the accommodations existing at that time within the multisite time-share plan.

(12) A description of any right to make any additions, substitutions, or deletions of accommodations, amenities, or component sites, and a description of the basis upon which accommodations, amenities, or component sites may be added to, substituted in, or deleted from the multisite time-share plan.

(13) A description of the reservation system that shall include all of the following:

(A) The entity responsible for operating the reservation system, its relationship to the developer, and the duration of any agreement for operation of the reservation system.

(B) A summary of the rules and regulations governing access to and use of the reservation system.

(C) The existence of and an explanation regarding any priority reservation features that affect a purchaser's ability to make reservations for the use of a given accommodation on a first-come-first-served basis.

(14) A description of any liens, defects, or encumbrances that materially affect the purchaser's use rights.

(15) The name and principal address of the managing entity for the multisite time-share plan and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it, and a description of the relationship between a multisite time-share plan managing entity and the managing entity of the component sites of a multisite time-share plan, if different from the multisite time-share plan managing entity.

(16) The current annual budget as provided in Section 11240, along with the projected assessments and a description of the method for calculating and apportioning the assessments among purchasers, all of which shall be attached as an exhibit to the public report.

(17) Any current fees or charges to be paid by time-share purchasers for the use of any amenities related to the time-share plan and a statement that the fees or charges are subject to change.

(18) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee.

(19) A description of any financing offered by or available through the developer.

(20) A description of any bankruptcies, pending civil or criminal suits, adjudications, or disciplinary actions of which the developer has knowledge, which would have a material effect on the developer's ability to perform its obligations.

(21) A statement disclosing any right of first refusal or other restraint on the transfer of all or any portion of a time-share interest.

(22) A statement disclosing that a deposit made in connection with the purchase of a time-share interest shall be held by an escrow agent until expiration of any right to cancel the contract and that a deposit shall be returned to the purchaser if he or she elects to exercise his or her right of cancellation. Alternatively, if the commissioner has accepted from the developer a surety bond, irrevocable letter of credit, or other financial assurance in lieu of placing deposits in an escrow account: (A) a statement disclosing that the developer has provided a surety bond, irrevocable letter of credit, or other financial assurance in an amount equal to or in excess of the funds that would otherwise be placed in an escrow account, (B) a description of the type of financial assurance that has been arranged, (C) a statement that if the purchaser elects to exercise his or her right of cancellation as provided in the contract, the developer shall return the deposit, and (D) a description of the person or entity to whom the purchaser should apply for payment.

(23) If the time-share plan provides purchasers with the opportunity to participate in an exchange program, a description of the name and address of the exchange company and the method by which a purchaser accesses the exchange program.

(24) Any other information that the developer, with the approval of the commissioner, desires to include in the time-share disclosure statement.

(d) The commissioner may establish by regulation provisions regarding the delivery of the public report and other required information through alternative media forms.

(e) The commissioner may, upon finding that the subject matter is otherwise adequately covered or the information is unnecessary or inapplicable, waive any requirement set forth in this section.

SEC. 3. Section 2079.6 of the Civil Code is amended to read:

2079.6. This article does not apply to transfers which are required to be preceded by the furnishing, to a prospective transferee, of a copy of a public report pursuant to Section 11018.1 or Section 11234 of the Business and Professions Code and transfers that can be made without a public report pursuant to Section 11010.4 of the Business and Professions Code, unless the property has been previously occupied.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of

the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.