House Engrossed

FILED

KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 92

HOUSE BILL 2195

AN ACT

AMENDING SECTIONS 32-2197.08 AND 48-6414, ARIZONA REVISED STATUTES; RELATING TO REAL ESTATE TIMESHARES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 32-2197.08, Arizona Revised Statutes, is amended to read:

32-2197.08. Issuance of public report and amended public report by commissioner on timeshare plan; denial of issuance; additional information; use of another state's public report

A. On examination of a timeshare plan, the commissioner, unless there are grounds for denial, shall approve for use by the developer a public report authorizing the sale or lease of the timeshare interests within the timeshare plan. For all timeshare interests sold in this state, the commissioner shall require the developer to reproduce the public report and furnish each prospective customer with a copy, taking a receipt for each copy. The public report shall be made available to each prospective purchaser in written format and may also be made available in CD-ROM or other electronic format as approved by the commissioner. The public report shall include the following:

1. The name and principal address of the owner and developer.

2. A description of the type of timeshare interests being offered.

3. A description of the existing and proposed accommodations and amenities of the timeshare plan, including type and number, any use restrictions and any required fees for use.

4. A description of any accommodations and amenities that are committed to be built, including:

(a) The developer's schedule of commencement and completion of all accommodations and amenities.

(b) The estimated number of accommodations per site that may become subject to the timeshare plan.

5. A brief description of the duration, phases and operation of the timeshare plan.

6. The current annual budget if available or the projected annual budget for the timeshare plan. The budget shall include:

(a) A statement of the amount or a statement that there is no amount included in the budget as a reserve for repairs and replacement.

(b) The projected common expense liability, if any, by category of expenditures for the timeshare plan.

(c) A statement of any services or expenses that are not reflected in the budget and that the developer provides or pays.

7. A description of any liens, defects or encumbrances on or affecting the title to the timeshare interests.

8. A statement that by midnight of the seventh calendar day after execution of the purchase agreement a purchaser may cancel any purchase agreement for a timeshare interest from a developer together with a statement providing the name and street address where the purchaser should mail any notice of cancellation. However, if, by agreement of the parties through the

purchase agreement, the purchase agreement allows for cancellation of the purchase agreement for a period of time exceeding seven calendar days, the public report shall include a statement that the cancellation of the purchase agreement is allowed for that period of time exceeding seven calendar days.

9. A description of any bankruptcies, pending suits, adjudications or disciplinary actions material to the timeshare interests of which the developer has knowledge.

10. Any restrictions on alienation of any number or portion of any timeshare interests.

11. Any current or expected fees or charges to be paid by timeshare purchasers for the use of any amenities related to the timeshare plan.

12. The extent to which financial arrangements have been provided for completion of all promised improvements.

13. If the timeshare plan provides purchasers with the opportunity to participate in any exchange programs, a description of the name and address of the exchange companies and the method by which a purchaser accesses the exchange programs.

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

15. If the developer is offering a multisite timeshare plan, the following information, which may be disclosed in a written, graphic or tabular form:

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

(b) The number of accommodations and timeshare periods, expressed in periods of use availability, committed to the multisite timeshare plan and available for use by purchasers.

(c) 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 the purposes of this subdivision, "full kitchen" means a kitchen having a minimum of a dishwasher, range, oven, sink and refrigerator.

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

(e) A description of the reservation system, including the following:

(i) The entity responsible for operating the reservation system.

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

(iii) 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 reserved, first served basis.

(f) A description of any right to make any additions, substitutions or deletions of accommodations or amenities and a description of the basis on which accommodations and amenities may be added to, substituted in or deleted from the multisite timeshare plan.

(g) A description of the purchaser's liability for any fees associated with the multisite timeshare plan.

(h) The location and the anticipated relative use demand of each component site in a multisite timeshare plan 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 the time within the multisite timeshare plan.

(i) Any other information reasonably required by the commissioner or established by rule necessary for the protection of purchasers of timeshare interests in timeshare plans.

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

16. If a developer offers a nonspecific timeshare interest in a multisite timeshare plan, the information set forth in paragraphs 1 through 14 of this subsection as to each component site.

17. Any other information that the commissioner determines or establishes by rule is necessary to implement the purpose of this article.

B. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE REQUIREMENTS PRESCRIBED BY SUBSECTION A OF THIS SECTION APPLY TO A DEVELOPER'S APPLICATION FOR APPROVAL TO USE AN AMENDED PUBLIC REPORT FOR THE SALE OF TIMESHARE INTERESTS IN A TIMESHARE PLAN, INCLUDING AN AMENDED PUBLIC REPORT TO DISCLOSE AND ADDRESS A MATERIAL CHANGE UNDER SECTION 32-2197.04. A DEVELOPER MAY ELECT TO PREPARE AN AMENDED PUBLIC REPORT FOR USE IN THE SALE OF TIMESHARE INTERESTS AS FOLLOWS:

1. THE DEVELOPER SHALL PREPARE THE AMENDED PUBLIC REPORT AND PROVIDE A COPY OF THE REPORT TO THE COMMISSIONER WITH THE SUBMISSION OF THE APPLICATION FOR AN AMENDED PUBLIC REPORT, INCLUDING ANY NOTIFICATION REQUIRED BY SECTION 32-2197.04, AND SHALL COMPLY WITH ALL OTHER REQUIREMENTS OF THIS ARTICLE.

2. AN AMENDMENT FILING FEE ESTABLISHED PURSUANT TO SECTION 32-2197.07 SHALL ACCOMPANY THE APPLICATION PRESCRIBED BY PARAGRAPH 1 OF THIS SUBSECTION.

3. ON RECEIPT OF THE APPLICATION AND AMENDED PUBLIC REPORT, THE DEPARTMENT SHALL REVIEW AND, WITHIN FIFTEEN BUSINESS DAYS IF THE AMENDMENT ADDS LESS THAN SIX NEW COMPONENT SITES TO THE TIMESHARE PLAN OR WITHIN THIRTY CALENDAR DAYS IF THE AMENDMENT ADDS SIX OR MORE NEW COMPONENT SITES TO THE TIMESHARE PLAN, ISSUE EITHER A CERTIFICATION THAT THE APPLICATION AND AMENDED PUBLIC REPORT ARE ADMINISTRATIVELY COMPLETE OR A DENIAL LETTER IF IT APPEARS THAT THE APPLICATION, AMENDED PUBLIC REPORT OR TIMESHARE PLAN IS NOT IN COMPLIANCE WITH ALL LEGAL REQUIREMENTS, THAT THE APPLICANT HAS A BACKGROUND OF VIOLATIONS OF STATE OR FEDERAL LAW OR THAT THE APPLICANT OR TIMESHARE PLAN PRESENTS AN UNNECESSARY RISK OF HARM TO THE PUBLIC. IF THE COMMISSIONER HAS RECEIVED THE APPLICATION AND AMENDED PUBLIC REPORT BUT HAS NOT ISSUED A CERTIFICATION OR A DENIAL LETTER WITHIN THE REQUIRED TIME PERIOD, THE APPLICATION AND AMENDED PUBLIC REPORT ARE DEEMED ADMINISTRATIVELY COMPLETE.

4. THE DEVELOPER MAY COMMENCE SALES OR LEASING ACTIVITIES AS PERMITTED UNDER THIS ARTICLE USING AN AMENDED PUBLIC REPORT WHEN THE COMMISSIONER ISSUES A CERTIFICATION OF ADMINISTRATIVE COMPLETENESS OR AS OF THE DATE THE APPLICATION AND AMENDED PUBLIC REPORT ARE DEEMED ADMINISTRATIVELY COMPLETE PURSUANT TO PARAGRAPH 3 OF THIS SUBSECTION. THE CERTIFICATION MAY BE ISSUED ON PAPER OR ELECTRONICALLY.

5. BEFORE OR AFTER THE COMMISSIONER ISSUES A CERTIFICATION OF ADMINISTRATIVE COMPLETENESS OR, IF APPLICABLE, AFTER THE APPLICATION AND AMENDED PUBLIC REPORT ARE DEEMED TO BE ADMINISTRATIVELY COMPLETE PURSUANT TO PARAGRAPH 3 OF THIS SUBSECTION, THE DEPARTMENT MAY EXAMINE ANY PUBLIC REPORT, TIMESHARE PLAN OR APPLICANT THAT HAS APPLIED FOR OR RECEIVED THE CERTIFICATION. IF THE COMMISSIONER DETERMINES THAT THE PUBLIC REPORT, TIMESHARE PLAN OR APPLICANT IS NOT IN COMPLIANCE WITH ANY REQUIREMENT OF STATE LAW OR THAT GROUNDS EXIST UNDER THIS CHAPTER TO SUSPEND, DENY OR REVOKE A PUBLIC REPORT, THE COMMISSIONER MAY COMMENCE AN ADMINISTRATIVE ACTION UNDER SECTION 32-2154, 32-2157 OR 32-2197.14. IF THE DEVELOPER IMMEDIATELY CORRECTS THE DEFICIENCY AND FULLY COMPLIES WITH STATE LAW, THE COMMISSIONER SHALL PROMPTLY VACATE ANY ACTION THAT THE COMMISSIONER MAY HAVE COMMENCED PURSUANT TO SECTION 32-2154, 32-2157 OR 32-2197.14.

6. THE DEPARTMENT SHALL PROVIDE FORMS AND GUIDELINES FOR THE SUBMISSION OF THE APPLICATION AND AMENDED PUBLIC REPORT PURSUANT TO THIS SUBSECTION.

~~B.~~ C. In the event of denial, suspension or revocation, grounds shall be set forth in writing at the time of denial, suspension or revocation. The commissioner may deny, suspend or revoke the public report on any of the following grounds:

1. Failure to comply with this article or the rules of the commissioner pertaining to this article.

2. The sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees.

3. Inability to demonstrate that adequate financial or other arrangements acceptable to the commissioner have been made for completion of the timeshare property, installation of all streets, sewers, electric, gas and water utilities, drainage, flood control and other similar improvements included in the offering.

4. The developer, including if an entity, an officer, director, member, manager, partner, owner, trust beneficiary holding ten per cent or more beneficial interest, stockholder owning ten per cent or more of the stock or other person exercising control of the entity, has:

(a) Been convicted of a felony or misdemeanor involving theft, fraud or dishonesty or involving the conduct of any business or a transaction in real estate, cemetery property, timeshare interests or membership camping campgrounds or contracts.

(b) Been permanently or temporarily enjoined by order, judgment or decree from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate, cemetery property, timeshare interests, membership camping campgrounds or contracts, or securities or involving consumer fraud or the Arizona racketeering laws.

(c) Had an administrative order entered against him by a real estate regulatory agency or securities regulatory agency.

(d) Had an adverse decision or judgment entered against him involving fraud or dishonesty or involving the conduct of any business in or a transaction in real estate, cemetery property, timeshare interests or membership camping campgrounds or contracts.

(e) Disregarded or violated this chapter or the rules of the commissioner pertaining to this chapter.

(f) Participated in, operated or held an interest in any entity to which subdivision (b), (c), (d), or (e) of this paragraph applies.

5. If within this state, the timeshare property is incompatible with the existing neighborhood and would introduce into a neighborhood a character of property or use that would clearly be detrimental to property values in that neighborhood.

~~C.~~ D. If the timeshare property is within an active management area, as defined in section 45-402, the commissioner shall deny issuance of a public report unless the developer has been issued a certificate of assured water supply by the director of water resources and has paid all applicable fees pursuant to sections 48-3772 and 48-3774.01, or unless the developer has obtained a written commitment of water service for the timeshare property from a city, town or private water company designated as having an assured water supply by the director of water resources pursuant to section 45-576.

~~D.~~ E. In areas outside of active management areas, if the timeshare property is located in a county that has adopted the provision authorized by section 11-823, subsection A or in a city or town that has enacted an ordinance pursuant to section 9-463.01, subsection O, the commissioner shall deny issuance of a public report unless one of the following applies:

1. The director of water resources has reported pursuant to section 45-108 that the timeshare property has an adequate water supply.

2. The developer has obtained a written commitment of water service for the timeshare property from a city, town or private water company designated as having an adequate water supply by the director of water resources pursuant to section 45-108.

3. The timeshare property was approved pursuant to an exemption authorized by section 9-463.01, subsection K, pursuant to an exemption authorized by section 11-823, subsection B, paragraph 1, pursuant to an exemption granted by the director of water resources under section 45-108.02 and the exemption has not expired or pursuant to an exemption granted by the director of water resources under section 45-108.03.

4. The subdivision received final plat approval from the city, town or county before the requirement for an adequate water supply became effective in the city, town or county, and there have been no material changes to the plat since the final plat approval. If changes were made to the plat after the final plat approval, the director of water resources shall determine whether the changes are material pursuant to the rules adopted by the director to implement section 45-108.

~~E.~~ F. In addition to providing to each prospective customer a copy of the public report as required in subsection A of this section, the developer shall also provide to each customer before the close of any transaction information and materials that identify any timeshare exchange companies currently under contract and disclosure statements regarding the use of the timeshare exchange companies, as well as any additional information the commissioner deems appropriate.

~~F.~~ G. The commissioner may authorize for use in this state by a developer of a timeshare plan in which all accommodations are located outside of this state a current public report that is issued by another jurisdiction or an equivalent registration and disclosure document that is required before offering a timeshare plan for sale, lease or use and that is issued by another jurisdiction. This authorization does not constitute an exemption from other applicable requirements of this article.

Sec. 2. Section 48-6414, Arizona Revised Statutes, is amended to read:

48-6414. <u>Inapplicability of other adequate water supply provisions to proposed subdivisions in the district</u>

Section 9-463.01, subsections J through Q, section 11-823, section 32-2181, subsection F, section 32-2183, subsection H, section 32-2197.08, subsection ~~D~~ E, section 45-108, subsection H, section 45-108.01, section 45-108.02 and section 45-108.03 do not apply to proposed subdivisions in the district.

APPROVED BY THE GOVERNOR MARCH 27, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 27, 2012.

Passed the House February 9, 2012

by the following vote: 54 Ayes,

0 Nays, 5 Not Voting
1 vacant

Speaker of the House

Cheryl Laube
Chief Clerk of the House

Passed the Senate March 22, 2010

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

26 day of March, 2012

at 3:30 o'clock P M.

Secretary to the Governor

Approved this 27th day of

March

at 3:42 o'clock P. M.

Jennifer K. Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 27th day of March, 2012

at 5:12 o'clock P M.

Secretary of State

H.B. 2195