

COMMITTEE ON COMMERCE

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2195

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

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

4 32-2197.08. Issuance of public report and amended public report  
5 by commissioner on timeshare plan; denial of  
6 issuance; additional information; use of another  
7 state's public report

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

- 18 1. The name and principal address of the owner and developer.  
19 2. A description of the type of timeshare interests being offered.  
20 3. A description of the existing and proposed accommodations and  
21 amenities of the timeshare plan, including type and number, any use  
22 restrictions and any required fees for use.

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

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

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

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

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

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

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

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

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

15           8. A statement that by midnight of the seventh calendar day after  
16 execution of the purchase agreement a purchaser may cancel any purchase  
17 agreement for a timeshare interest from a developer together with a statement  
18 providing the name and street address where the purchaser should mail any  
19 notice of cancellation. However, if, by agreement of the parties through the  
20 purchase agreement, the purchase agreement allows for cancellation of the  
21 purchase agreement for a period of time exceeding seven calendar days, the  
22 public report shall include a statement that the cancellation of the purchase  
23 agreement is allowed for that period of time exceeding seven calendar days.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28           (iii) The existence of and an explanation regarding any priority  
29 reservation features that affect a purchaser's ability to make reservations  
30 for the use of a given accommodation on a first reserved, first served basis.

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

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

7 (h) The location and the anticipated relative use demand of each  
8 component site in a multisite timeshare plan as well as any periodic  
9 adjustment or amendment to the reservation system that may be needed in order  
10 to respond to actual purchaser use patterns and changes in purchaser use  
11 demand for the accommodations existing at the time within the multisite  
12 timeshare plan.

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

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

18 16. If a developer offers a nonspecific timeshare interest in a  
19 multisite timeshare plan, the information set forth in paragraphs 1 through  
20 14 of this subsection as to each component site.

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

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

30 1. THE DEVELOPER SHALL PREPARE THE AMENDED PUBLIC REPORT AND PROVIDE A  
31 COPY OF THE REPORT TO THE COMMISSIONER WITH THE SUBMISSION OF THE APPLICATION

1 FOR AN AMENDED PUBLIC REPORT, INCLUDING ANY NOTIFICATION REQUIRED BY SECTION  
2 32-2197.04, AND SHALL COMPLY WITH ALL OTHER REQUIREMENTS OF THIS ARTICLE.

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

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

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

24 5. BEFORE OR AFTER THE COMMISSIONER ISSUES A CERTIFICATION OF  
25 ADMINISTRATIVE COMPLETENESS OR, IF APPLICABLE, AFTER THE APPLICATION AND  
26 AMENDED PUBLIC REPORT ARE DEEMED TO BE ADMINISTRATIVELY COMPLETE PURSUANT TO  
27 PARAGRAPH 3 OF THIS SUBSECTION, THE DEPARTMENT MAY EXAMINE ANY PUBLIC REPORT,  
28 TIMESHARE PLAN OR APPLICANT THAT HAS APPLIED FOR OR RECEIVED THE  
29 CERTIFICATION. IF THE COMMISSIONER DETERMINES THAT THE PUBLIC REPORT,  
30 TIMESHARE PLAN OR APPLICANT IS NOT IN COMPLIANCE WITH ANY REQUIREMENT OF  
31 STATE LAW OR THAT GROUNDS EXIST UNDER THIS CHAPTER TO SUSPEND, DENY OR REVOKE  
32 A PUBLIC REPORT, THE COMMISSIONER MAY COMMENCE AN ADMINISTRATIVE ACTION UNDER

1 SECTION 32-2154, 32-2157 OR 32-2197.14. IF THE DEVELOPER IMMEDIATELY  
2 CORRECTS THE DEFICIENCY AND FULLY COMPLIES WITH STATE LAW, THE COMMISSIONER  
3 SHALL PROMPTLY VACATE ANY ACTION THAT THE COMMISSIONER MAY HAVE COMMENCED  
4 PURSUANT TO SECTION 32-2154, 32-2157 OR 32-2197.14.

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

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

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

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

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

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

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

29 (b) Been permanently or temporarily enjoined by order, judgment or  
30 decree from engaging in or continuing any conduct or practice in connection  
31 with the sale or purchase of real estate, cemetery property, timeshare

1 interests, membership camping campgrounds or contracts, or securities or  
2 involving consumer fraud or the Arizona racketeering laws.

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

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

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

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

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

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

25 ~~D.~~ E. In areas outside of active management areas, if the timeshare  
26 property is located in a county that has adopted the provision authorized by  
27 section 11-823, subsection A or in a city or town that has enacted an  
28 ordinance pursuant to section 9-463.01, subsection 0, the commissioner shall  
29 deny issuance of a public report unless one of the following applies:

30 1. The director of water resources has reported pursuant to section  
31 45-108 that the timeshare property has an adequate water supply.

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

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

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

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

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

