

House Engrossed

timeshares; public reports; purchase contracts

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 169
HOUSE BILL 2120

AN ACT

AMENDING SECTIONS 32-2197.08 AND 32-2197.10, ARIZONA REVISED STATUTES;
RELATING TO TIMESHARES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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
5 report by commissioner on timeshare plan;
6 denial of issuance; additional information; use
7 of another state's public report

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

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

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

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

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

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

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

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

41 8. A statement that by midnight of the ~~seventh~~ TENTH calendar day
42 after execution of the purchase agreement a purchaser may cancel any
43 purchase agreement for a timeshare interest from a developer together with
44 a statement providing the name and street address where the purchaser
45 should mail any notice of cancellation. ~~However,~~ If, by agreement of the

1 parties through the purchase agreement, the purchase agreement allows for
2 cancellation of the purchase agreement for a period of time exceeding
3 ~~seven~~ TEN calendar days, the public report shall include a statement that
4 the cancellation of the purchase agreement is allowed for that period of
5 time exceeding ~~seven~~ TEN calendar days.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 (iii) The existence of and an explanation regarding any priority
42 reservation features that affect a purchaser's ability to make
43 reservations for the use of a given accommodation on a ~~first reserved~~
44 FIRST-RESERVED, ~~first served~~ FIRST-SERVED basis.

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

5 (g) A description of the purchaser's liability for any fees
6 associated 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
10 order to respond to actual purchaser use patterns and changes in purchaser
11 use demand for the accommodations existing at the time within the
12 multisite timeshare plan.

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

16 (j) Any other information that the developer, with the approval of
17 the 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
20 through 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
24 requirements prescribed by subsection A of this section apply to a
25 developer's application for approval to use an amended public report for
26 the sale of timeshare interests in a timeshare plan, including an amended
27 public report to disclose and address a material change under section
28 32-2197.04. A developer may elect to prepare an amended public report for
29 use in the sale of timeshare interests as follows:

30 1. The developer shall prepare the amended public report and
31 provide a copy of the report to the commissioner with the submission of
32 the application for an amended public report, including any notification
33 required by section 32-2197.04, and shall comply with all other
34 requirements of this article.

35 2. An amendment filing fee established pursuant to section
36 32-2197.07 shall accompany the application prescribed by paragraph 1 of
37 this subsection.

38 3. On receipt of the application and amended public report, the
39 department shall review and, within fifteen business days if the amendment
40 adds less than six new component sites to the timeshare plan or within
41 thirty calendar days if the amendment adds six or more new component sites
42 to the timeshare plan, issue either a certification that the application
43 and amended public report are administratively complete or a denial letter
44 if it appears that the application, amended public report or timeshare
45 plan is not in compliance with all legal requirements, that the applicant

1 has a background of violations of state or federal law or that the
2 applicant or timeshare plan presents an unnecessary risk of harm to the
3 public. If the commissioner has received the application and amended
4 public report but has not issued a certification or a denial letter within
5 the required time period, the application and amended public report are
6 deemed administratively complete.

7 4. The developer may commence sales or leasing activities as
8 ~~permitted~~ ALLOWED under this article using an amended public report when
9 the commissioner issues a certification of administrative completeness or
10 as of the date the application and amended public report are deemed
11 administratively complete pursuant to paragraph 3 of this subsection. The
12 certification may be issued on paper or electronically.

13 5. Before or after the commissioner issues a certification of
14 administrative completeness or, if applicable, after the application and
15 amended public report are deemed to be administratively complete pursuant
16 to paragraph 3 of this subsection, the department may examine any public
17 report, timeshare plan or applicant that has applied for or received the
18 certification. If the commissioner determines that the public report,
19 timeshare plan or applicant is not in compliance with any requirement of
20 state law or that grounds exist under this chapter to suspend, deny or
21 revoke a public report, the commissioner may commence an administrative
22 action under section 32-2154, 32-2157 or 32-2197.14. If the developer
23 immediately corrects the deficiency and fully complies with state law, the
24 commissioner shall promptly vacate any action that the commissioner may
25 have commenced pursuant to section 32-2154, 32-2157 or 32-2197.14.

26 6. The department shall provide forms and guidelines for the
27 submission of the application and amended public report pursuant to this
28 subsection.

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

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

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

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

42 4. The developer, including if an entity, an officer, director,
43 member, manager, partner, owner, trust beneficiary holding ten ~~per cent~~
44 PERCENT or more beneficial interest, stockholder owning ten ~~per cent~~

1 **PERCENT** or more of the stock or other person exercising control of the
2 entity, has:

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

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

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

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

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

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

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

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

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

41 1. The director of water resources has reported pursuant to section
42 45-108 that the timeshare property has an adequate water supply.

43 2. The developer has obtained a written commitment of water service
44 for the timeshare property from a city, town or private water company

1 designated as having an adequate water supply by the director of water
2 resources pursuant to section 45-108.

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

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

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

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

30 Sec. 2. Section 32-2197.10, Arizona Revised Statutes, is amended to
31 read:

32 32-2197.10. Timeshare interest reservations

33 A. The notice of intent required by section 32-2197.02 and the
34 approval for use of a public report required by section 32-2197.08 are not
35 required for any party to enter into a timeshare interest reservation.

36 B. Before the approval for use of a public report for a timeshare
37 plan, a deposit may be accepted from a prospective buyer for a timeshare
38 interest reservation if all of the following requirements are met:

39 1. Before accepting any timeshare interest reservation the
40 prospective seller shall mail or deliver, or provide in A written, CD-ROM
41 or other electronic format as approved by the commissioner, notice of the
42 seller's intention to accept timeshare interest reservations to the
43 department. The notice shall include:

44 (a) The name, address and telephone number of the prospective
45 seller.

1 (b) The name, address and telephone number of any real estate
2 broker retained by the prospective seller to promote the timeshare
3 interest reservation program.

4 (c) The name and location of the timeshare property for which
5 timeshare interest reservations are to be offered.

6 (d) The form to be used for accepting timeshare interest
7 reservations subject to approval by the commissioner.

8 (e) The name and address of the independent third party escrow or
9 trust account agent responsible for holding the reservation deposits.

10 2. The reservation deposit for a single timeshare interest shall
11 not exceed twenty ~~per cent~~ PERCENT of the purchase price.

12 3. Within one business day after a reservation is accepted by the
13 prospective seller, the reservation deposit shall be delivered to an
14 independent ~~third party~~ THIRD-PARTY escrow or trust account in a federally
15 insured depository. The account may be interest bearing at the direction
16 of either the prospective seller or prospective buyer. Payment of any
17 account fees and payment of interest monies shall be as agreed to between
18 the prospective buyer and prospective seller. All reservation deposits
19 shall remain in the account until cancellation or termination of the
20 timeshare interest reservation or execution of a purchase agreement.

21 4. Within fifteen calendar days after the prospective seller
22 receives the public report approved for use by the commissioner relating
23 to the reserved timeshare interest, the prospective seller shall provide
24 the prospective buyer with a copy of the public report and a copy of the
25 proposed purchase agreement for the sale of the timeshare interest. The
26 prospective buyer and prospective seller shall have ~~seven~~ TEN business
27 days after the prospective buyer's receipt of the public report and the
28 proposed purchase agreement to enter into a contract for the purchase of
29 the timeshare interest. If the prospective buyer and prospective seller
30 do not enter into a contract for the purchase of the timeshare interest
31 within the ~~seven~~ TEN business day period, the reservation automatically
32 terminates. The prospective seller has no cancellation rights concerning
33 a timeshare interest reservation other than as provided in this
34 subsection.

35 5. A prospective buyer may cancel a timeshare interest reservation
36 at any time before the execution of a purchase agreement by delivering
37 written notice of termination to the prospective seller as provided in
38 paragraph 9 of this subsection.

39 6. Within five business days after a timeshare interest reservation
40 has been terminated for any reason, the prospective seller shall refund to
41 the prospective buyer all reservation deposits made by the prospective
42 buyer, including any interest monies earned ~~less~~ MINUS any account fees
43 agreed on, if applicable. The independent ~~third party~~ THIRD-PARTY escrow
44 account or trust account agent shall refund to the prospective buyer all
45 reservation deposits made by the prospective buyer, including any interest

1 monies earned ~~less~~ MINUS any account fees agreed on if the prospective
2 seller is not available. After the refund, neither the prospective buyer
3 nor the prospective seller has any obligation arising out of the timeshare
4 interest reservation.

5 7. A prospective buyer may not transfer rights under a reservation
6 without the prior written consent of the prospective seller, and any
7 purported transfer without the consent of the prospective seller is
8 voidable at the sole discretion of the prospective seller.

9 8. If the department denies an application for a public report on a
10 timeshare plan on which timeshare interest reservations were taken, within
11 five business days ~~of~~ AFTER notification by the department, the
12 prospective seller shall notify in writing each prospective buyer who
13 entered into a timeshare interest reservation agreement. The prospective
14 seller shall return any reservation deposits previously taken.

15 9. All notices required by this section to be given to the
16 department, the prospective buyer or the prospective seller shall be in
17 writing and either hand delivered or sent by certified mail, return
18 receipt requested with postage fully prepaid. Notices sent by mail are
19 deemed delivered on the earlier of actual receipt, as evidenced by the
20 delivery receipt, or seven calendar days after being deposited in the
21 United States mail.

22 10. Each timeshare interest reservation form shall contain the
23 following statement in conspicuous type ABOVE THE PURCHASER'S SIGNATURE
24 LINE:

25 The Arizona department of real estate has not inspected
26 or approved this timeshare property and no public report has
27 been issued for the timeshare plan. No offer to sell may be
28 made and no offer to purchase may be accepted before issuance
29 of a public report or pre-sale authorization for the timeshare
30 plan.

31 C. The commissioner may deny, suspend or revoke authorization to
32 accept timeshare interest reservations under this section to any person
33 who has violated any provision of this chapter.

APPROVED BY THE GOVERNOR APRIL 5, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 5, 2021.