

SENATE BILL REPORT

SB 5492

As Reported By Senate Committee On:
Financial Services, Insurance & Housing, February 27, 2003

Title: An act relating to timeshares.

Brief Description: Revising provisions for sale of timeshares.

Sponsors: Senators Mulliken, Keiser and Winsley.

Brief History:

Committee Activity: Financial Services, Insurance & Housing: 2/13/03, 2/27/03 [DPS].

SENATE COMMITTEE ON FINANCIAL SERVICES, INSURANCE & HOUSING

Majority Report: That Substitute Senate Bill No. 5492 be substituted therefor, and the substitute bill do pass.

Signed by Senators Benton, Chair; Winsley, Vice Chair; Keiser, Prentice and Zarelli.

Staff: Elizabeth Mitchell (786-7430)

Background: Timeshare promoters can currently accept deposits toward the purchase of incomplete timeshares called "timeshare interest reservations" if they register with the Department of Licensing prior to accepting the deposits. The registration must include information about the promoter's business history, as well as a disclosure form about the timeshare property.

"Timeshare interest reservations" cannot exceed 20 percent of the purchase price of a timeshare, and must be deposited in an escrow account where the funds are held for the benefit of the purchaser. A buyer has the right to cancel his/her purchase at any time before the signing of a purchase agreement, and the promoter must refund the timeshare interest reservation funds within ten days of receiving a notice of cancellation. The buyer's right to cancel must be clearly specified on contracts for timeshare interest reservations.

Summary of Substitute Bill: A party must register with the department prior to selling a timeshare interest. If a promoter seeks to enter into irrevocable purchase agreements for interests in incomplete timeshare projects, the promoter must fulfill additional requirements. These requirements include: the promoter is limited to offering or selling only fee simple deeded timeshare interests; construction on the project must be at least 20 percent complete, and must be completed no later than two years after the initial offer to sell the timeshare interest; the promoter must establish an escrow or trust account for funds deposited by purchasers; the promoter's promotional materials must conspicuously disclose that the project is not yet complete, and must specify the last possible estimated date for completion of construction.

Any purchaser has the right to void the timeshare purchase agreement and request a full refund if construction of the timeshare project is not completed within the earlier of two years or the last estimated date of construction contained in the timeshare purchase agreement. If the completed timeshare project is materially and adversely different than the project promised to purchasers at the time that the purchase agreement was signed, the department may declare the purchase contract to be void.

The timeshare interest purchase agreement must conspicuously state that if the project is not completed by the estimated date of completion, the purchaser shall have the right to void the purchase agreement, and is entitled to a full refund of all monies paid.

All funds received by the promoter must be deposited into an escrow or trust account approved by the department, with specified exceptions. Funds may be released from the escrow or trust account to the purchaser if the purchaser cancels within the cancellation period, or to the promoter only when all three of the following conditions occur: the purchaser's cancellation period has expired; closing has occurred; and construction is complete and the facility is ready to occupy.

Instead of depositing funds into an escrow or trust account, the promoter may post a bond with the department equal to the amount of Washington resident purchaser funds. The amount of the bond must at all times equal the amount of funds that have been paid by Washington resident purchasers.

If the promoter borrows or intends to borrow against funds held in an escrow or trust account, or protected by a bond, this must be fully and conspicuously disclosed in all written or oral solicitations for the sale of the timeshare interest, in the registration with the director, and in the purchase agreement.

Substitute Bill Compared to Original Bill: A party must register with the department prior to selling a timeshare interest. If a promoter seeks to enter into irrevocable purchase agreements for interests in incomplete timeshare projects, the promoter must fulfill additional requirements. Any purchaser has the right to void the timeshare purchase agreement and request a full refund if construction of the timeshare project is not completed within the earlier of two years or the last estimated date of construction contained in the timeshare purchase agreement. If the completed timeshare project is materially and adversely different than the project promised to purchasers at the time that the purchase agreement was signed, the department may declare the purchase contract to be void. All funds received by the promoter must be deposited into an escrow or trust account approved by the department, with specified exceptions. Funds may only be released from the escrow or trust account when certain conditions occur. Instead of depositing funds into an escrow or trust account, the promoter may post a bond with the department equal to the amount of Washington resident purchaser funds.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Without this bill, the state of Washington will lose timeshare business. Timeshare promoters should be able to sell incomplete timeshare offerings because other buildings are allowed to be sold when they are incomplete. Consumer protection is important to the proponents of the bill.

Testimony Against: Last year much work was done on a bill that passed the Legislature regarding incomplete timeshares. The Legislature should not undo last year's language, and the current bill seems to do this. The industry wants to sell binding interests as opposed to nonbinding interests, which were the focus of last year's bill. There should be adequate protections in the bill for consumers.

Testified: Steve Gano, ARDA (pro); Paul Silver, Attorney General's Office (con); Trudie Touchette, Department of Licensing (con).