

ESSB 5492 - H COMM AMD

By Committee on Commerce & Labor

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 64.36 RCW
4 to read as follows:

5 (1) An effective registration pursuant to this chapter is required
6 for any party to offer to sell a timeshare interest. A promoter who
7 offers to sell or sells revocable timeshare interests in incomplete
8 projects or facilities is limited by and must comply with all of the
9 requirements of RCW 64.36.025. If a promoter seeks to enter into
10 irrevocable purchase agreements with purchasers for timeshare interests
11 in incomplete projects or facilities, the promoter must meet the
12 requirements in this section in addition to RCW 64.36.020 and the
13 following limitations and conditions apply:

14 (a) The promoter is limited to offering or selling only fee simple
15 deeded timeshare interests;

16 (b) Construction on the project must have begun by the time the
17 irrevocable purchase agreement is signed, and the purchaser must have
18 the right to occupy the unit and use all contracted for amenities no
19 later than within two years of the date that the irrevocable purchase
20 agreement is signed;

21 (c) The promoter must establish an independent third-party escrow
22 account for the purpose of protecting the funds or other property paid,
23 pledged, or deposited by purchasers;

24 (d) The promoter's solicitations, advertisements, and promotional
25 materials must clearly and conspicuously disclose that "THE PROJECT IS
26 NOT YET COMPLETED; IT IS STILL UNDER CONSTRUCTION"; and

27 (e) The promoter's solicitations, advertisements, and promotional
28 materials and the timeshare interest purchase agreement must clearly
29 and conspicuously provide for and disclose the last possible estimated

1 date for completion of construction of any building(s) the promoter is
2 contractually obligated to the purchaser to complete.

3 (2) The timeshare interest purchase agreement must contain the
4 following language in fourteen-point bold face type: "If the building
5 in which the timeshare interest is located and all contracted for
6 amenities are not completed by [estimated date of completion], the
7 purchaser has the right to void the purchase agreement and is entitled
8 to a full, unqualified refund of all moneys paid."

9 (3) One hundred percent of all funds or other property that is
10 received from or on behalf of purchasers of timeshare interests prior
11 to the occurrence of events required in this section must be deposited
12 pursuant to a third-party escrow agreement approved by the director.
13 For purposes of this section, "purchasers" includes all persons
14 solicited, offered, or who purchase a timeshare interest by the
15 promoter within the state of Washington. An escrow agent shall
16 maintain the account only in such a manner as to be under the direct
17 supervision and control of the escrow agent. The escrow agent has a
18 fiduciary duty to each purchaser to maintain the escrow accounts in
19 accordance with good accounting practices and to release the
20 purchaser's funds or other property from escrow only in accordance with
21 this chapter. Should the escrow agent receive conflicting demands for
22 funds or property held in escrow, the escrow agent shall immediately
23 notify the department of licensing of the dispute and the department
24 shall determine if and how the funds should be distributed. If the
25 purchaser, promoter, or escrow agent disagrees with the department's
26 determination, the parties have the right to request an administrative
27 hearing under chapter 34.05 RCW. Funds may be released from the escrow
28 account to the purchaser if the purchaser cancels within the
29 cancellation period, or to the promoter only when all three of the
30 following conditions occur:

31 (a) The purchaser's cancellation period has expired;

32 (b) Closing has occurred; and

33 (c) Construction is complete and the building is ready to occupy.

34 (4) In lieu of depositing purchaser funds into an escrow account,
35 the promoter may post with the department a bond in an amount equal to
36 or greater than the amount that would otherwise be required to be
37 placed into the escrow account.

1 (5) Any purchaser has the right to void the timeshare purchase
2 agreement and request a full, unqualified refund if construction of the
3 building in which the timeshare interest is located or all contracted
4 for amenities are not completed within two years from the date that the
5 irrevocable purchase agreement is signed or by the last estimated date
6 of construction contained in the irrevocable purchase agreement,
7 whichever is earlier.

8 (6) If the completed timeshare building or contracted for amenities
9 are materially and adversely different from the building or amenities
10 that were promised to purchasers at the time that the purchase
11 agreements were signed, the director may declare any or all of the
12 purchaser contracts void. Before declaring the contracts void, the
13 director shall give the promoter the opportunity for a hearing in
14 accordance with chapters 34.05 and 18.235 RCW.

15 (7) If the promoter intends to or does pledge or borrow against
16 funds or properties, which are held in escrow or protected by a bond,
17 to help finance in whole or in part the construction of the timeshare
18 project or to help pay for operating costs, this must be fully,
19 plainly, and conspicuously disclosed in all written advertising, in all
20 written solicitations for the sale of the timeshare interests, in the
21 registration with the director, and in the purchase agreement or
22 contract.

23 (8) A promoter who obtains an effective registration for a
24 revocable timeshare interest reservation must meet the requirements of
25 this section in order to complete an irrevocable purchase agreement."

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26 On page 1, line 1 of the title, after "timeshares;" strike the
27 remainder of the title and insert "and adding a new section to chapter
28 64.36 RCW."

EFFECT: Deletes the requirement that timeshare projects under construction must be at least twenty percent finished before being offered for sale.

Requires that purchaser must be able to occupy the purchased timeshare within two years of the date of purchase.

Clarifies the required disclosures of estimated completion dates in advertising.

Changes references from "projects" and "facilities" to "buildings."

Clarifies requirements for the holding purchasers' funds in a third-party escrow account.

Deletes the provisions which allow a promoter to hold purchasers' funds in trust accounts.

Requires that promoters who post a bond with the Department in lieu of holding purchasers' funds in an escrow account must post a bond in an amount equal to the funds that would have been deposited in an escrow account.

Allows purchasers to obtain a full refund if the building in which their timeshare interest is located is not completed within two years of the date of purchase, or the estimated completion date, whichever is earlier.

Allows purchasers to void the purchase if the building or the contracted amenities are materially and adversely different from those agreed to at the time of sale.

Provides that promoters need only disclose the intent to borrow against purchasers' funds held in escrow, or the timeshare property, in written advertising rather than all forms of advertising and solicitations.

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