

Amendment No. 441

Senate Amendment to Senate Bill No. 320	(BDR 10-1034)
Proposed by: Senate Committee on Judiciary	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION		Initial and Date	SENATE ACTION		Initial and Date
Adopted	<input type="checkbox"/>	Lost <input type="checkbox"/>	Adopted	<input type="checkbox"/>	Lost <input type="checkbox"/>
Concurred In	<input type="checkbox"/>	Not <input type="checkbox"/>	Concurred In	<input type="checkbox"/>	Not <input type="checkbox"/>
Receded	<input type="checkbox"/>	Not <input type="checkbox"/>	Receded	<input type="checkbox"/>	Not <input type="checkbox"/>

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

MNM/BAW



Date: 4/14/2015

S.B. No. 320—Revises provisions relating to time shares. (BDR 10-1034)



SENATE BILL NO. 320—SENATORS HARRIS,
ROBERSON AND LIPPARELLI

MARCH 16, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to time shares. (BDR 10-1034)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to time shares; requiring ~~the following disclosures to be included in public offering statements filed with the Real Estate Division of the Department of Business and Industry by developers of time shares;~~ that the purchaser of a time share be provided with a disclosure statement containing certain disclosures before the purchaser enters into a contract of sale; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

~~Existing law requires a developer of a time share to file a public offering statement with the Real Estate Division of the Department of Business and Industry for approval for the purposes of applying for and being issued an initial permit to sell time shares by the Real Estate Administrator. The public offering statement must include certain disclosures. (NRS 119A.300, 119A.307.)~~ This bill requires that before the purchaser of a time share enters into a contract of sale, the purchaser must be provided with a disclosure statement containing certain ~~additional~~ disclosures ~~to be included in a public offering statement~~ which concern: (1) the expectations a person should have in purchasing a time-share interest; and (2) the resale of a time-share interest. The purchaser is required to sign and date the disclosure statement on the date of purchase.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:**Section 1.** ~~NRS 119A.307 is hereby amended to read as follows:~~~~119A.307 1. The developer shall file a public offering statement with the Division for approval for use as prescribed in NRS 119A.300.~~~~2. The public offering statement must include the following disclosures in substantially the following form, in at least 12-point bold type:~~~~This Public Offering Statement is prepared by the Developer to provide you with basic and relevant information on a specific time share offering. The~~

~~Developer or Owner of the offering that is the subject of this Public Offering Statement has provided certain information and documentation to the Real Estate Division of the Department of Business and Industry (the "Division") as required by law.~~

~~The statements contained in this Public Offering Statement are only summary in nature. A prospective purchaser should review the purchase contract, all documents governing the time share plan or provided or available to the purchaser and the sales materials. You should not rely upon oral representations as being correct. Refer to this public offering statement, the purchase contract and the documents governing the time share plan for correct representations.~~

~~While the Division makes every effort to confirm the information provided and to ensure that the offering will be developed, managed and operated as planned, there is no guarantee this will always be the case. The Division cannot and does not make any promise or guarantee as to the viability or continuance of the offering or the financial future of the offering or any plan, club or association affiliated therewith.~~

~~The information included in this Public Offering Statement is applicable as of its effective date. Expenses of operation are difficult to predict accurately and even if accurately estimated initially, most expenses increase with the age of facilities and with increases in the cost of living.~~

~~The Division strongly suggests that before executing an agreement or contract, you read all of the documentation and information provided to you and seek additional assistance if necessary to assure that you understand all aspects of the offering and are aware of any potential adverse circumstances that could result from a time share purchase in this Offering.~~

~~The purchaser of a time share may cancel, by written notice, the contract of sale until midnight of the fifth calendar day following the date of execution of the contract. The right of cancellation may not be waived. Any attempt by the Developer to obtain a waiver results in a contract which is voidable by the purchaser. The notice of cancellation may be delivered personally to the Developer or sent by certified mail, return receipt requested, or by providing notice by express, priority or recognized overnight delivery service, with proof of service, to the business address of the Developer. The Developer must, within 20 days after receipt of the notice of cancellation, return all payments made by the Purchaser.~~

~~***Be aware that:***~~

~~***The future value of a time share interest is very uncertain; do not count on appreciation. The purchase of a time share interest should be based upon its value as a vacation experience or for spending leisure time, and not considered for purposes of acquiring an appreciating investment or with an expectation that the time share interest may be resold.***~~

~~***Resale of your time share interest may be subject to the Developer's restrictions, such as limitations on the posting of signs, limitations on the rights of other parties to enter the project unaccompanied, membership prerequisites or approval requirements, or the Developer's first right of***~~

~~refusal. You should check your contract for such restrictions and also note whether your purchase contract or note, or any other obligation, would affect your right to sell your time share interest.~~

~~You should consider the competition which you may experience from the Developer in attempting to resell your time share interest and the possibility that real estate brokers may not be interested in listing your time share interest or unit.~~

~~The Developer may have limited your resale rights. Any future purchaser (other than a transfer to an immediate family member or as the result of death or divorce) who buys your time share interest from you will have severely limited opportunities to reserve occupancy in this time share plan.~~

~~3. The public offering statement must include, without limitation, the following information in a form prescribed by the Division:~~

~~(a) A brief history of the developer's business background, experience in real estate and regulatory history.~~

~~(b) A description of any judgment against the developer or sales and marketing entity which has a material adverse effect on the developer or the time share plan. If no such judgment exists, there must be a statement of such fact.~~

~~(c) The status of any pending proceeding to which the developer or sales and marketing entity is a party and which has a material adverse effect on the developer or the time share plan. If no such proceedings exist, there must be a statement of such fact.~~

~~(d) The name and address of the developer, the name of the time share plan and the address of each component site.~~

~~(e) A summary of the current annual budget of the project or the time share plan, including:~~

~~(1) The projected assessments for each type of unit offered in the time share plan; and~~

~~(2) A statement of property taxes assessed against the project and, if not included in the projected assessments, the projected amount of the purchaser's share of responsibility for the property taxes assessed against the project.~~

~~(f) A detailed description of the type of time share plan being offered, a description of the type of interest and use rights the purchaser will receive and a description of the total number of time shares in the time share plan at the time the permit is issued.~~

~~(g) A description of all restrictions, easements, reservations or zoning requirements which may limit the purchaser's use, sale, lease, transfer or conveyance of the time share. The description must include any restrictions to be imposed on time shares concerning the use of any of the accommodations or facilities, and whether there are restrictions upon children or pets. For the purposes of this paragraph:~~

~~(1) The description may reference a list of the documents containing the restrictions and state that the copies of the documents are available to the purchaser upon request.~~

~~(2) If there are any restrictions upon the sale, lease, transfer or conveyance of a time share, the description must include a statement, in at least 12 point bold type, in substantially the following form:~~

~~The sale, lease, transfer or conveyance of a time share is restricted or controlled.~~

~~(Immediately following this statement, a description of the nature of the restriction, limitation or control on the sale, lease, transfer or conveyance of the time share must be included.)~~

~~(2) If there are no restrictions, there must be a statement of that fact.~~

~~(h) A description of the duration, projected phases and operation of the time share plan.~~

~~(i) A representation by the developer ensuring that the time share plan maintains a one to one use night to use right ratio. For the purposes of the ratio calculation in this paragraph, each purchaser must be counted according to the use rights held by that purchaser in any calendar year. For the purposes of this paragraph, "one to one use night to use right ratio" has the meaning ascribed to it in NRS 119A.525.~~

~~(j) A summary of the organization of the association for the time share plan, the voting rights of the members, the developer's voting rights in that association, a description of what constitutes a quorum for voting purposes and at what point in the sales program the developer relinquishes his or her control of that association, if applicable, and any other information pertaining to that association which is material to the right of the purchaser to use a time share.~~

~~(k) A description of the existing or proposed accommodations, including a description of the type and number of time shares in the accommodations which is expressed in periods of 7 day use availability or other time increments applicable to the time share plan and, if the accommodations are proposed or not yet completed or fully functional, an estimated date of completion. For the purposes of this paragraph, the type of accommodation must be described in terms of the number of bedrooms, bathrooms and sleeping capacity, and a statement of whether the accommodation contains a full kitchen. As used in this paragraph, "full kitchen" means a kitchen that includes, at a minimum, a dishwasher, range, sink, oven and refrigerator.~~

~~(l) A description of any existing or proposed amenities of the time share plan and, if the amenities are proposed or not yet completed or fully functional, the estimated date of completion, including a description of the extent to which financial assurances have been made for the completion of any incomplete but promised amenities.~~

~~(m) The name and principal address of the manager, if any, of the project or time share plan, as applicable, and a description of the procedures, if any, for altering the powers and responsibilities of the manager and for removing or replacing the manager.~~

~~(n) A description of any liens, defects or encumbrances on or affecting the title to the time share which materially affects the purchaser's use of the units or facilities within the time share plan.~~

~~(o) Any special fee due from the purchaser at closing, other than customary closing costs, together with a description of the purpose of the fee.~~

~~(p) Any current or expected fees or charges to be paid by purchasers for the use of any amenities of the time share plan.~~

~~(q) A statement of whether or not the amenities of the time share plan will be used exclusively by purchasers of time shares in, or authorized under, the time share plan and, if the amenities are not to be used exclusively by such purchasers or authorized users, a statement of whether or not the purchasers of time shares in the time share plan are required to pay any portion of the maintenance expenses of such amenities in addition to any fees for the use of such amenities.~~

~~(r) A statement indicating that hazard insurance coverage is provided for the project.~~

~~(s) A description of the purchaser's right to cancel the purchase contract.~~

~~(t) A statement of whether or not the purchaser's deposit will be held by an escrow agent until the expiration of any right to cancel the contract or, if the purchaser's deposit will not be held by such an escrow agent, a statement that the purchaser's deposit will be immediately released to the developer and that the developer has posted a surety bond.~~

~~(u) A statement that the deposit plus any interest earned must be returned to the purchaser if he or she elects to exercise his or her right of cancellation.~~

~~(v) If the time share plan provides purchasers with the opportunity to participate in an exchange program, the name and address of the exchange company and a description of the method by which a purchaser may choose to participate in the exchange program.~~

~~(w) A description of the reservation system, if applicable, which must include:~~

~~(1) The name of the entity responsible for operating the reservation system, its relationship to the developer and the duration of any agreement for operation of the reservation system; and~~

~~(2) A summary of the rules and regulations governing access to and use of the reservation system, including, without limitation, 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 come, first served basis.~~

~~(x) A description of the points system, if applicable, including, without limitation, whether additional points may be acquired by purchase or otherwise, in the future and the manner in which future purchases of points may be made, and the transferability of points to other persons, other years or other time share plans. The description must include:~~

~~(1) A statement that no owner shall be prevented from using a time share as a result of changes in the manner in which point values may be used;~~

~~(2) A statement that in the event point values are changed or adjusted, no owner shall be prevented from using his or her home resort, if any, in the same manner as was provided for under the original purchase contract; and~~

~~(3) A description of any limitations or restrictions upon the use of point values.~~

~~(y) A statement as to whether any unit within the time share plan is within a mixed-use project containing whole ownership condominiums.~~

~~(z) A statement that documents filed with the Division as part of the statement of record which are not delivered to the purchaser are available from the developer upon request.~~

~~(aa) For a time share plan with more than one component site, a description of each component site. With respect to a component site, the information required by subparagraph (2) and paragraphs (d), (k), (l), (p), (q) and (r) may be disclosed in written, graphic, tabular or any other form approved by the Division. In addition to the information required by paragraphs (a) to (z), inclusive, the description of a time share plan with more than one component site must include the following information:~~

~~(1) A general statement as to whether the developer has a right to make additions, substitutions or deletions of any accommodations, amenities or component sites, and a statement of the basis upon which accommodations, amenities or component sites may be added to, substituted for or deleted from the time share plan.~~

~~(2) The location of each component site of the time share plan, the historical occupancy of the units in each component site for the previous 12 month period, if the component site was part of the time share plan during the previous 12 month time period, or any other description acceptable to the Division that reasonably informs a purchaser regarding the relative use demand per component site, as well as a statement of any periodic adjustment or amendment to the reservation system that may be needed in order to respond to actual use patterns and changes in use demand for the accommodations existing at that time within the time share plan.~~

~~(3) The number of accommodations and time shares, expressed in periods of 7 day use availability or other time increments applicable to the time share plan, committed to the time share plan, and available for use by purchasers, and a statement describing how adequate periods of time for maintenance and repair will be provided.~~

~~(bb) Any other information that the developer, with the approval of the Administrator, decides to include in the public offering statement.~~

~~4. Copies of the following documents and plans, or proposed documents if the time share plan has not been declared or created at the time the application for a permit is submitted, to the extent they are applicable, must be provided to the purchaser with the public offering statement:~~

~~(a) Copies of the time share instruments;~~

~~(b) The estimated or, if applicable, actual operating budget of the time share plan.~~

~~5. The public offering statement must include a list of the following documents, if applicable to the time share plan, and must state that the documents listed are available to the purchaser upon request:~~

~~(a) Any ground lease or other underlying lease of the real property associated with the time share plan.~~

~~(b) The management agreement of the project or time share plan, as applicable.~~

~~(c) The floor plan of each type of accommodation and any existing plot plan showing the location of all accommodations and facilities declared as part of the time share plan and filed with the Division.~~

~~(d) The lease for any facilities that are part of the time share plan.~~

~~(e) Any executed agreement for the escrow of payments made to the developer before closing.~~

~~(f) Any letter from the escrow agent confirming that the escrow agent and its officers, directors or other partners are independent.~~

~~6. The Administrator may, upon finding that the subject matter is otherwise adequately covered or the information is unnecessary or inapplicable, waive any requirement set forth in this section.] (Deleted by amendment.)~~

Sec. 1.5. Chapter 119A of NRS is hereby amended by adding thereto a new section to read as follows:

1. Before a purchaser of a time share enters into a contract of sale, the purchaser must be provided with a disclosure statement that contains the disclosures set forth in subsection 2. The purchaser shall sign and date the disclosure statement on the date of purchase.

2. The disclosure statement provided to the purchaser of a time share pursuant to subsection 1 must be in substantially the following form, in at least 14-point bold type:

By signing this disclosure statement, you are indicating that you understand the following:

Any time-share interest is for personal use and is not an investment for a profit or tax advantage. The purchase of a time-share interest should be based upon its value as a vacation experience or for spending leisure time, and not considered for purposes of acquiring an appreciating investment or with an expectation that the time-share interest may be resold.

Resale of your time-share interest may be subject to restrictions, including, without limitation, limitations on the posting of signs, limitations on the rights of other parties to enter the project unaccompanied, membership prerequisites or approval requirements, the developer's right of first refusal and the developer's continued sale of time-share inventory. Any future purchaser may not receive any ancillary benefits which were not part of the time-share plan that the developer may have offered to the purchaser at the time of purchase.

You should check your contract and the governing documents for any such restrictions and also note whether your purchase contract or note, or any other obligation, would affect your right to sell your time-share interest. Real estate agents may not be interested in listing your time-share interest or unit.

Sec. 2. This act becomes effective on July 1, 2015.