

## Assembly Bill No. 3020

### CHAPTER 429

An act to amend Sections 11211.5, 11226, 11238, 11240, 11241, 11242, 11267, and 11275 of, and to add Sections 11226.1, 11242.1, and 11265.1 to, the Business and Professions Code, relating to time-share developments, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 2006. Filed with Secretary of State September 22, 2006.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 3020, Montanez. Real estate: time-share developments.

Existing law, the Vacation Ownership and Time-share Act of 2004, requires time-share developers and exchange companies to disclose certain information to purchasers and prospective purchasers of time-share plans and exchange programs, as defined, and requires specified time-share plans offered for sale in this state or created and existing in this state to comply with specified fee, registration, notice, and disclosure requirements with respect to oral and written communications, including the issuance of a public report by the Real Estate Commissioner.

This bill would require any person offering to sell or lease any interest in a time-share interest or time-share plan to make a copy of specified documents available for a prospective purchaser or examinee and give a copy of those documents to each purchaser or lessee as soon as practicable before the transfer of the interest being acquired. The bill would specify when regular and special assessments are delinquent, the costs that may subsequently be charged, and how an association shall provide notice of any increase in a regular or special assessment. The bill would make other related changes.

Existing law requires an estimated operating budget for the time-share plan to be filed with the commissioner and requires it to include a certification by an expert in the preparation of time-share plan budgets, including, at the discretion of the Real Estate Commissioner, a qualified individual or entity.

This bill would prohibit the acceptance of an individual or entity for purposes of obtaining this certification from being considered an endorsement by the commissioner of a proposed budget.

The bill would require a developer to certify the budget in a specified manner and submit the certified budget to the commissioner. The bill would authorize the commissioner to review a budget to confirm the accuracy of the certification if the budget is not certified by an

independent certified public accountant or an employee of the developer who is a licensed certified public accountant.

Existing law obligates the developer for expenses associated with unsold inventory held by the developer and requires the developer to furnish assurances that the obligation will be fulfilled.

This bill would authorize the amount of the assurance to be adjusted annually and would specify the maximum amount by which it may be adjusted. If the developer is paying a buy down subsidy, the bill would require the developer to provide an additional assurance in an amount acceptable to the commissioner, but not more than a specified amount.

The bill would also require for any buy down subsidy agreements entered into after July 1, 2005, and for the assurances required by the developer under these provisions, that any dispute between the developer and the association with respect to the satisfaction of the conditions for exoneration or release of the security, at the request of either party, be submitted to arbitration, as specified.

The bill would also provide that the assurances required by the developer under these provisions be subject to specified escrow instructions.

This bill would declare that it is to take effect immediately as an urgency statute, but would delay the operation of specified provisions.

*The people of the State of California do enact as follows:*

SECTION 1. Section 11211.5 of the Business and Professions Code is amended to read:

11211.5. (a) This chapter applies to all of the following:

(1) Time-share plans with an accommodation or component site in this state.

(2) Time-share plans without an accommodation or component site in this state, if those time-share plans are sold or offered to be sold to any individual located within this state.

(3) Exchange programs as defined in this chapter.

(4) Short-term products as defined in this chapter.

(b) This chapter does not apply to any of the following:

(1) Time-share plans, whether or not an accommodation is located in this state, consisting of 10 or fewer time-share interests. Use of an exchange program by owners of time-share interests to secure access to other accommodations shall not affect this exemption.

(2) Time-share plans, whether or not an accommodation is located in this state, the use of which extends over any period of three years or less.

(3) Time-share plans, whether or not an accommodation is located in this state, under which the prospective purchaser's total financial obligation will be equal to or less than three thousand dollars (\$3,000) during the entire term of the time-share plan.

(c) For purposes of determining the term of a time-share plan, the period of any renewal or renewal option shall be included.

(d) Single site time-share plans located outside the state and component sites of multisite time-share plans located outside the state, that are offered for sale or sold in this state are subject only to Sections 11210 to 11219, inclusive, Sections 11225 to 11246, inclusive, Sections 11250 to 11256, inclusive, paragraphs (1), (2), (3), and (4) of subdivision (a), and subdivisions (b) and (c), of Section 11265, subdivision (g) of Section 11266, subdivisions (a) and (c) of Section 11267, Sections 11272 and 11273, subdivisions (b), (c), and (d) of Section 11274, and Sections 11280 to 11287, inclusive.

SEC. 2. Section 11226 of the Business and Professions Code is amended to read:

11226. (a) Any person who, to any individual located in the state, sells, offers to sell, or attempts to solicit prospective purchasers to purchase a time-share interest, or any person who creates a time-share plan with an accommodation in the state, shall register the time-share plan with the commissioner, unless the time-share plan is otherwise exempt under this chapter.

(b) A developer, or any of its agents, shall not sell, offer, or dispose of a time-share interest in the state unless all necessary registration requirements are provided and approved by the commissioner, or the sale, offer, or disposition is otherwise permitted by this chapter, or while an order revoking or suspending a registration is in effect.

(c) In registering a time-share plan, the developer shall provide the commissioner all of the following information:

(1) The developer's legal name, any assumed names used by the developer, principal office street address, mailing address, primary contact person, and telephone number.

(2) The name of the developer's authorized or registered agent in the state upon whom claims can be served or service of process be had, the agent's street address in California, and telephone number.

(3) The name, street address, mailing address, primary contact person, and telephone number of the time-share plan being registered.

(4) The name, street address, mailing address, and telephone number of any managing entity of the time-share plan.

(5) A public report that complies with the requirements of Section 11234, or for a time-share plan located outside of the state, a public report that has been authorized for use by the situs state regulatory agency and that contains disclosures as determined by the commissioner upon review to be substantially equivalent to or greater than the information required to be disclosed pursuant to Section 11234.

(6) A description of the inventory control system that will ensure compliance with Section 11250.

(7) Any other information regarding the developer, time-share plan, or managing entities as established by regulation.

(d) An applicant for a public report for a time-share plan shall present evidence of the following for each accommodation in each time-share property that is, or will be, offered for sale in this state pursuant to the registration:

(1) That the accommodation is presently suitable for human occupancy or that financial arrangements have been made to complete construction or renovation of the accommodation to make it suitable for human occupancy on or before the first date for occupancy by a time-share interest owner.

(2) That the accommodation is owned or leased by the developer of the time-share plan or is the subject of an enforceable option or contract under which the developer will build, purchase, or lease the accommodation. Notwithstanding this subdivision, the developer shall present evidence prior to the receipt of a final public report that the accommodation to be sold is owned or leased by the developer and that the accommodation is free and clear of encumbrances in accordance with Sections 11244 and 11255.

(e) If an accommodation in a time-share plan is located within a local governmental jurisdiction or subdivision of real property in which the dedication of accommodations to time-sharing is expressly prohibited by ordinance or recorded restriction, either absolutely or without a permit or other entitlement from the governing body, the applicant for a public report shall present evidence of a permit or other entitlement by the appropriate authority for the local government or the subdivision.

(f) (1) The developer shall amend or supplement its disclosure documents and registration information, to reflect any material change in any information required by this chapter or the regulations implementing this chapter. The developer shall notify the commissioner of the material change prior to implementation of the change, unless the change is beyond the control of the developer; in which event, the developer shall provide written notice to the commissioner as soon as reasonably practicable after the occurrence of the event necessitating the change. All amendments, supplements, and facts relevant to the material change shall be filed with the commissioner within 20 calendar days of the material change.

(2) The developer may continue to sell time-share interests in the time-share plan so long as, prior to closing, the developer provides a notice to each purchaser that describes the material change and provides to each purchaser the previously approved public report.

(A) If the change is material and adverse to the purchaser, all purchaser funds shall be held in escrow, or pursuant to alternative assurances permitted by subdivision (c) of Section 11243, and no closing shall occur until the amendment relating to the material and adverse change has been approved by the commissioner. After the amendment relating to the material and adverse change has been approved and the amended public report has been issued, the amended public report shall be sent to the purchaser, and an additional seven-day rescission period shall commence. The developer shall be required to maintain evidence of the receipt by each purchaser of the amended public report.

(B) If the commissioner refuses to approve the amendment relating to the material and adverse change, all sales made using the notice shall be subject to rescission and all funds returned.

(3) The developer shall update the public report to reflect any changes to the time-share plan that are not material and adverse, including the addition of any component sites, within a reasonable time, and may continue to sell and close time-share interests prior to the date that the amended public report is approved.

(g) An applicant for a public report for a multisite, time-share plan consisting of specific time-share interests, as defined in subparagraph (A) of paragraph (2) of subdivision (z) of Section 11212, affiliated with sites operated through the time-share plan's reservation system, shall certify both of the following:

(1) That a purchaser has, or will have, contractual or membership rights to use accommodations at each affiliated site and that, if an accommodation or promised improvement is, or may become, subject to a blanket encumbrance, that the blanket encumbrance is, or will be, subordinate to these rights.

(2) That a certificate of occupancy has been issued with respect to the accommodations at each affiliated site or that adequate provisions exist or will exist for the completion of all such accommodations. For any affiliated site accommodations that are not complete, the public report shall clearly identify in conspicuous type that those accommodations are not completed. For any accommodations that are not complete and for which adequate provisions for completion do not exist at the time the public report is issued, the public report shall also provide in conspicuous type that those accommodations might not be built, provided, however, that a developer's failure to build the accommodations shall not relieve the developer of any obligations created by the certification made pursuant to this subdivision.

(h) For purposes of subdivision (d) of this section, the "time-share property being offered for sale in this state" shall mean the following:

(1) With respect to a single site time-share plan, the time-share property being registered pursuant to this chapter.

(2) With respect to a specific time-share interest multisite time-share plan, the specific time-share property being registered pursuant to this chapter.

(3) With respect to a nonspecific time-share interest multisite time-share plan, all time-share properties in the time-share plan.

SEC. 3. Section 11226.1 is added to the Business and Professions Code, to read:

11226.1. Any person offering to sell or lease any interest subject to the requirements of Section 11226 shall make a copy of each of the following documents available for examination by a prospective purchaser or lessee before the execution of an offer to purchase or lease and shall give a copy of those documents to each purchaser or lessee as soon as practicable before transfer of the interest being acquired by the purchaser or lessee:

(a) The declaration of covenants, conditions, and restrictions for the time-share plan.

(b) Articles of incorporation or association for the time-share owners' association.

(c) Bylaws of the owners' association.

(d) Any other instrument that establishes or defines the common, mutual, and reciprocal rights and responsibilities of the owners or lessees of interest in the time-share plan as members of the owners' association or otherwise.

(e) The current budget and financial statements for the time-share plan.

SEC. 4. Section 11238 of the Business and Professions Code is amended to read:

11238. (a) The purchase contract entered into by any person who has made an offer to purchase a time-share interest or interests, any incidental benefit, made on the same day or within seven calendar days after the person attended a sales presentation for a time-share interest, or any right under an exchange program, made on the same day or within seven calendar days after the person attended a sales presentation for a time-share interest, shall be voidable by the purchaser, without penalty, within seven calendar days, or a longer period as provided in the contract, after the receipt of the public report or the execution of the purchase contract, whichever is later.

(1) The purchase contract for the time-share interest shall provide notice of the seven-day cancellation period, together with the name and mailing address to which any notice of cancellation shall be delivered.

(2) Notice of cancellation shall be deemed timely if given not later than midnight of the seventh calendar day.

(b) A person who has made an offer to purchase a time-share interest, incidental benefit, or rights under an exchange program as described above may exercise the right of cancellation granted by this section by giving written notification of the notice to cancel to the developer at the place of business designated by the developer in the purchase contract.

(c) If the notice of cancellation is by United States mail, a rebuttable presumption shall exist that notice was given on the date that it is postmarked. If the notice is sent by facsimile, it shall be considered given on the date of a confirmed transmission. If the notice is by means of a writing sent other than by United States mail or telegraph, it shall be considered as given at the time of delivery at the place of business designated by the developer. Exercising the rescission rights of the time-share interest shall also automatically rescind any agreement for the purchase of an incidental benefit or an enrollment into an exchange program where the agreements were entered into in conjunction with the purchase of the time-share interest.

(d) Each developer shall utilize and furnish each purchaser with a fully completed and executed copy of a contract pertaining to the sale of a time-share interest, which contract shall include the following information:

(1) The actual date the contract is executed by each party.

- (2) The names and addresses of the developer and time-share plan.
- (3) The initial purchase price and any additional recurring or nonrecurring charges, or a good faith estimate if the amount of those charges cannot then be determined, that the purchaser will be required to pay in connection with the purchase of the time-share interest, including, but not limited to, the current year's annual assessment for common expenses and financing charges.
- (4) The estimated date of completion of construction of each accommodation promised to be completed which is not completed at the time the contract is executed.
- (5) A brief description of the nature and duration of the time-share interest being sold, including whether any interest in real property is being conveyed.
- (6) The specific number of years of the term of the time-share plan.
- (7) Immediately prior to the space reserved in the contract for the signature of the purchaser, the developer shall disclose, in conspicuous type, substantially the following notice of cancellation:

You may cancel this contract without any penalty or obligation within seven calendar days of receipt of the public report or after the date you sign this contract, whichever date is later. If you decide to cancel this contract, you must notify the developer in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to (name of developer) at (address of developer). Your notice of cancellation may also be sent by facsimile to (facsimile number of the developer) or by hand-delivery. Any attempt to obtain a waiver of your cancellation right is void and of no effect.

- (8) The purchase contract for an interest in a single site or specific time-share interest multisite time-share plan without an accommodation in this state shall include the following additional disclosure in conspicuous type:

The accommodations of this time-share plan are located outside of California. As such, the management (including all matters relating to the association, the association budget, and any management contract) of this time-share plan is not governed by California law, but by the applicable law, if any, of the jurisdiction in which the accommodations are located as stated in the public report. You should review the governing documents related to the association, the association's budget, and the management of the time-share plan.

- (e) If rescission is sought by the purchaser in accordance with this section, and a court finds the developer denied the rescission in violation of this section, the court may also award reasonable attorneys' fees and costs to the prevailing purchaser.

SEC. 5. Section 11240 of the Business and Professions Code is amended to read:

11240. An estimated operating budget for the time-share plan shall be filed with the commissioner along with the other information required to

be registered pursuant to this chapter, and shall contain the following information:

(a) The estimated annual expenses of the time-share plan along with the estimated revenue of the association from all sources, including the amounts collectible from purchasers as assessments. The estimated payments by the purchaser for assessments shall also be stated in the estimated amounts for the times when they will be due. Expenses shall be shown in a manner that enables the purchaser to calculate the annual expenses associated with the time-share interest being purchased. Expenses that are personal to purchasers that are not uniformly incurred by all purchasers or that are not provided for or contemplated by the time-share plan documents may be excluded from this estimate.

(b) (1) The estimated items of expenses of the time-share plan and the association, except as excluded under subdivision (a), including, but not limited to, if applicable, the following items, that shall be stated either as association expenses collectible by assessments or as expenses of the purchaser payable to persons other than the association:

(2) Expenses for the association:

(A) Administration of the association.

(B) Management fees.

(C) Maintenance.

(D) Rent for accommodations.

(E) Taxes upon time-share property.

(F) Taxes upon leased areas.

(G) Insurance.

(H) Security provisions.

(I) Other expenses.

(J) Operating capital.

(K) Equitable apportionment of expenses between time-share and non-time-share uses of the common area, if applicable.

(L) Reserves for deferred maintenance and reserves for capital expenditures. All reserves for any accommodations and common areas of a time-share plan located in this state shall be based upon the estimated life and replacement cost of accommodations and common elements of the time-share plan. For any accommodations and common elements of a time-share plan located outside of this state, the developer shall disclose the amount of reserves for deferred maintenance and capital expenditures required by the law of the situs state, if applicable, and maintained for those accommodations and common elements, which amount of reserves shall be based on the estimated life and replacement cost of each reserve item. The developer or the association shall include in the budget a reasonable reserve accumulation plan. A plan that (i) provides for reserves to be funded within five years at a level of 50 percent of the amount specified in the reserve study as fully funded, and (ii) requires those reserves collected in any given year to equal or exceed the amount of reserve expenditures estimated for that year shall be deemed to be a reasonable reserve accumulation plan. The funding of reserves may be

based on collection of reserve amounts in conjunction with annual assessments, or on some alternative mechanism, including, but not limited to, a bond, letter of credit, or similar mechanism. Collection of required reserve amounts solely by one or more special assessments is not reasonable. If control of the association is in owners other than the developer, and such owners vote not to maintain reserves or to maintain reserves at less than 50 percent, the failure to maintain the required level of reserves shall not be cause for denying the developer a public report.

(c) The estimated amounts shall be stated for a period of at least 12 months and may distinguish between the period prior to the time that purchasers elect a majority of the board of administration and the period after that date.

(d) The budget of a phase time-share plan shall contain a note identifying the number of time-share interests covered by the budget, indicating the number of time-share interests, if any, estimated to be declared as part of the time-share plan during that calendar year, and projecting the common expenses for the time-share plan based upon the number of time-share interests estimated to be declared as part of the time-share plan during that calendar year.

(e) For single site time-share plans and component sites of a multisite time-share plan located outside of the state, the budget shall include the subject matter set forth in subdivisions (a) to (d), inclusive. The budget shall be in compliance with the applicable laws of the state or jurisdiction in which the time-share property or component site is located, and if there is a conflict between the affirmative standards set forth in the laws of the situs state and the requirements set forth in this section, the law of the situs state shall control. If the budget provides for the matters contained in subdivisions (a) to (d), inclusive, the budget shall be deemed to be in compliance with the requirements of this section, and the developer shall not be required to make revisions in order to comply with this section.

(f) The budget shall include a certification subscribed and sworn by an expert in the preparation of time-share plan budgets, who may be (1) an independent public accountant, (2) a certified public accountant, who is an employee of the developer, or (3) at the discretion of the commissioner, an individual or entity acceptable to the commissioner to conduct the review. Acceptance of the individual or entity shall not be considered an endorsement by the commissioner of a proposed budget. The budget certification shall also be signed by the developer or on behalf of the developer by an appropriate officer, if the developer is a corporation, or the managing member, if the developer is a limited liability company. The certification concerning the adequacy of the budget shall be in the following form:

On behalf of the developer of the captioned time-share plan, I/my firm has reviewed or prepared the budget containing projections of income and expenses for time-share operation. My/our experience in this field includes: [List experience.]

I/we have reviewed the budget and investigated the facts set forth in the budget and the facts underlying it with due diligence in order to form a basis for this certification.

I/we certify that the projections in the budget appear reasonable and adequate based on present prices (adjusted to reflect continued inflation and present levels of consumption for comparable units similarly situated) or, for an existing project, based on historical data for the project.

I/we certify that the budget:

(1) Sets forth in detail the terms of the transaction as it relates to the budget and is complete, current, and accurate.

(2) Affords potential purchasers an adequate basis upon which to found their judgment.

(3) Does not omit any material fact.

(4) Does not contain any untrue statement of a material fact.

(5) Does not contain any fraud, deception, concealment, or suppression.

(6) Does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances.

(7) Does not contain any representation or statement which is false, where I/we:

(A) Knew the truth.

(B) With reasonable effort could have known the truth and made no reasonable effort to ascertain the truth.

(C) Did not have knowledge concerning the representation or statement made.

I/we understand that a copy of this certification is intended to be incorporated into the public report so that prospective purchasers may rely on it.

This certification is made under the penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the laws of California.

The certification shall be dated within 90 days prior to the date of the submission of the budget to the commissioner. The expert's certification shall be based on experience in the management of hotel, resort, or time-share properties and disclose the approximate number of properties managed and length of time managed, together with other relevant real estate experience, qualifications, and licenses.

(g) Any budget that is not certified by an independent certified public accountant or an employee of the developer who is licensed as a certified public accountant may be reviewed by the commissioner to confirm the accuracy of the certification.

(h) The certified budget for the time-share plan shall be prepared and submitted by the developer to the commissioner annually for as long as the registration is in effect. If the budget is increased more than 20 percent in

any year, the developer shall submit to the commissioner, along with the increased budget, evidence that the requirements of paragraph (5) of subdivision (a) of Section 11265 have been met. The budget shall be submitted at least 15 days prior to the first day of the period that it covers. Upon the submission of each annual budget, the exhibit to the public report specified in paragraph (8) of subdivision (a) of, and paragraph (16) of subdivision (c) of, Section 11234 shall be updated. The updating of the exhibit shall not be considered to constitute an amendment of the public report.

(i) The audited financial statements of the association prepared pursuant to paragraph (2) of subdivision (b) of Section 11272 shall be delivered to the commissioner upon request.

(j) At the time an application is submitted for renewal of the public report or any amendment of the public report that affects the budget for the time-share plan, the developer shall submit with the application a copy of the most recent audited financial statement for the time-share plan, along with a certified copy of the budget reflecting the amendment or renewal. If the commissioner, upon reasonable comparison of the budget and the prior year's audited financial statements, determines that the budget is deficient, the commissioner may subject the budget to a substantive review.

SEC. 6. Section 11241 of the Business and Professions Code is amended to read:

11241. (a) The developer is obligated for the expenses associated with unsold inventory held by the developer. The obligation can be fulfilled in either of the following ways:

(1) The developer shall pay the full maintenance fee for each of the interests owned by the developer.

(2) The developer shall enter into a subsidy agreement with the association to cover any shortfall between expenses incurred and assessments collected from other owners ("deficit subsidy"), and shall furnish the association with an executed copy of the agreement within 10 days after closing of escrow of the first sale or lease of a time-share interest. The department will not approve a deficit subsidy program unless provisions are made for the accumulation of reserves for replacement and major maintenance of the time-share property in accordance with accepted property management practices and the transfer of the reserve fund to the association on termination of the program.

(b) To assure the fulfillment of the obligations of the developer of a time-share plan to either pay assessments as an owner of time-share interests in the time-share plan or to pay a deficit subsidy, the commissioner shall require that the developer furnish a surety bond, cash deposit, letter of credit, or other alternate assurance enforceable by the association and acceptable to the commissioner, and that assurance shall be in compliance with either paragraph (1) or (2) of subdivision (c).

(c) The amount of the assurance shall be in such an amount as may be approved by the commissioner, but shall not exceed the lesser of 50 percent of the anticipated cost of operation and maintenance of the

time-share plan, including the establishment of reserves for replacement and major repair, for an operational period of one year or 100 percent of the assessments attributed to the total amount of the total unsold time-share interests owned by the developer and registered pursuant to this chapter. The security shall be delivered to a neutral escrow depository, or to the trustee if title to the time-share property has been delivered to the trustee, along with instructions signed by the developer for the benefit of the association which shall provide as follows:

(1) Where the developer pays full maintenance fees on unsold inventory the security shall remain available to pay any assessments for which the developer is liable and delinquent until the depository or trustee has received both of the following:

(A) Written notice, from the developer that sales of 80 percent of the time-share interest in the time-share plan have been closed.

(B) Written notice from the association that the developer is not delinquent in the payment of assessments for which it is obligated.

(2) The amount of the assurance required by this section may be adjusted annually to an amount approved by the commissioner, but shall be not more than the smaller of 50 percent of the anticipated cost of operation and maintenance of the time-share plan, including the establishment of reserves for replacement and major repair, for an operational period of one year or 100 percent of the assessments attributed to the total amount of the total unsold time-share interests owned by the developer and registered pursuant to this chapter.

(d) A deficit subsidy agreement entered into after July 1, 2005, shall provide that if there is a dispute between the developer and the association with respect to the question of satisfaction of the conditions for exoneration or release of the security, the issue shall, at the request of either party, be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The fee payable to the American Arbitration Association to initiate the arbitration shall be remitted by the developer. The cost of arbitration shall ultimately be borne as determined by the arbitrator under these rules.

SEC. 7. Section 11242 of the Business and Professions Code is amended to read:

11242. (a) In any time-share plan, the developer may undertake to pay a portion of the assessments otherwise payable by each purchaser ("buy down subsidy"). Any developer undertaking to pay a buy down subsidy shall do both of the following:

(1) Enter into a contract with the association that specifies in detail the obligations of the developer and the methods to be used in valuing the goods and services furnished under the time-share plan.

(2) Furnish the association with an executed copy of the subsidization contract within 10 days after closing of escrow of the first sale or lease of a time-share interest.

(b) If the developer is paying a buy down subsidy, the developer shall provide an assurance for its buy down subsidy obligation in an amount

acceptable to the commissioner, but not more than the aggregate amount by which annual assessments are to be reduced, for example, the number of interests to be sold in each unit type multiplied by the amount by which the annual assessment for such unit type is to be reduced, multiplied by the number of years in the term of the buy down subsidy.

(c) For any buy down subsidy agreements entered into after July 1, 2005, the subsidy agreements shall provide that if there is a dispute between the developer and the association with respect to the question of satisfaction of the conditions for exoneration or release of the security, the issue shall, at the request of either party, be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The fee payable to the American Arbitration Association to initiate the arbitration shall be remitted by the developer. The cost of arbitration shall ultimately be borne as determined by the arbitrator under those rules.

SEC. 8. Section 11242.1 is added to the Business and Professions Code, to read:

11242.1. (a) The assurance specified in Section 11241 and, if applicable, the assurance specified in Section 11242, shall be delivered to the trustee or an escrow depository acceptable to the department along with an executed copy of the subsidization contract and instructions to the escrow depository signed by the developer and on behalf of the association. The instructions shall provide for both of the following:

(1) The escrow agent shall not release or exonerate the security device until it has received written notice from the association that the developer has faithfully performed all of his or her obligations under the subsidization contract, if applicable, and the escrow agent has received the written notices specified in paragraph (1) of subdivision (c) of Section 11241.

(2) If there is a dispute between the developer and the association with respect to the questions of satisfaction of the conditions for exoneration or release of the security, the issue or issues shall, at the request of either party, be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

(b) The fee payable to the American Arbitration Association to initiate arbitration shall be submitted by the developer. The costs of arbitration shall be borne by the party as determined by the arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association.

(c) The agreement for the deficit subsidy, described in subdivision (a) of Section 11241, and the agreement for the buy down subsidy, described in subdivision (a) of Section 11242 may, at the option of the developer, be contained in one instrument.

SEC. 9. Section 11265.1 is added to the Business and Professions Code, to read:

11265.1. (a) Regular and special assessments levied pursuant to the time-share instrument are delinquent 30 days after they become due, unless the time-share instrument provides a longer time period, in which

case the longer time period shall apply. If an assessment is delinquent, the association may recover all of the following:

(1) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorneys' fees.

(2) A late charge not exceeding 10 percent of the delinquent assessment or ten dollars (\$10), whichever is greater, unless the time-share instrument specifies a late charge in a smaller amount, in which case any late charge imposed shall not exceed the amount specified in the governing instrument.

(3) Interest on all sums imposed in accordance with this section, including the delinquent assessments, reasonable fees and costs of collection, and reasonable attorneys' fees, at an annual interest rate not to exceed 12 percent, commencing 30 days after the assessment becomes due, unless the time-share instrument specifies the recovery of interest at a lower rate, in which case, the lower rate of interest shall apply.

(b) Regular assessments imposed or collected to perform the obligations of an association under the governing documents of this title shall be exempt from execution by a judgment creditor of the association only to the extent necessary for the association to perform essential services, such as paying for utilities and insurance. In determining the appropriateness of an exemption, a court shall ensure that only essential services are protected under this subdivision. This exemption shall not apply to any consensual pledges, liens, or encumbrances that have been approved by the owners of the association, constituting a quorum, casting a majority of the votes at a meeting or election of the association, or to any state tax lien, or to any lien for labor or materials supplied to the common area.

(c) The association shall provide notice by first-class mail to the owners of the time-share interests of any increase in the regular or special assessments of the association, not less than 30 days nor more than 60 days prior to the increased assessment becoming due.

(d) Associations are hereby exempted from interest rate limitations imposed by Article XV of the California Constitution, subject to the limitations of this section.

SEC. 10. Section 11267 of the Business and Professions Code is amended to read:

11267. (a) The time-share instruments shall require the employment of a managing entity for the time-share plan or component site pursuant to a written management agreement that shall include all of the following provisions:

(1) Delegation of authority to the managing entity to carry out the duties and obligations of the association or the developer to the time-share interest owners.

(2) Authority of the managing entity to employ subagents, if applicable.

(3) A term of not more than five years with automatic renewals for successive three-year periods after expiration of the first term unless the association by the vote or written assent of a majority of the voting power

residing in members other than the developer determines not to renew the contract and gives appropriate notice of that determination. However, in those time-share plans where the association is controlled by owners other than the developer, the management agreement shall not be subject to the term limitations set forth in this section, and any longer term shall not be grounds for denial of a public report, unless the longer term of the management contract is the result of the developer exercising control.

(4) Termination for cause at any time by the governing body of the association. If the single site time-share plan or the component site of a multisite time-share plan is located within the state, then that termination provision shall include a provision for arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association if requested by or on behalf of the managing entity.

(5) Not less than 90 days' written notice to the association of the intention of the managing entity to resign.

(6) Enumeration of the powers and duties of the managing entity in the operation of time-share plan and the maintenance of the accommodations comprising the time-share plan.

(7) Compensation to be paid to the managing entity.

(8) Records to be maintained by the managing entity.

(9) A requirement that the managing entity provide a policy for fidelity insurance or bond for the activities of the managing entity, payable to the association, which shall be in an amount no less than the sum of the largest amount of funds expected to be held or controlled by the managing entity at any time during the year, pursuant to the budget. The commissioner may provide a reduction in the insurance policy or bond amounts required by this paragraph.

(10) Errors and omissions insurance coverage for the managing entity, if available.

(11) Delineation of the authority of the managing entity and persons authorized by the managing entity to enter into accommodations of the time-share plan for the purpose of cleaning, maid service, maintenance and repair including emergency repairs, and for the purpose of abating a nuisance or dangerous, unlawful, or prohibited activity being conducted in the accommodation.

(12) Description of the duties of the managing entity, including, but not limited to, the following:

(A) Collection of all assessments as provided in the time-share instruments.

(B) Maintenance of all books and records concerning the time-share plan.

(C) Scheduling occupancy of accommodations, when purchasers are not entitled to use specific time-share periods, so that all purchasers will be provided the opportunity for use and possession of the accommodations of the time-share plan, that they have purchased.

(D) Providing for the annual meeting of the association of owners.

(E) Performing any other functions and duties related to the maintenance of the accommodations or that are required by the time-share instrument.

(b) Any written management agreement in existence as of the effective date of this chapter shall not be subject to the term limitations set forth above.

(c) For single site time-share plans and component sites of a multisite time-share plan located outside of the state, the time-share instruments shall include the subject matter set forth in subdivision (a). The time-share instruments shall be in compliance with the applicable laws of the state or jurisdiction in which the time-share property or component site is located, and if a conflict exists between laws of the situs state and the requirements set forth in this section, the law of the situs state shall control. If the time-share instruments provide for the matters contained in subdivision (a), the time-share instruments shall be deemed to be in compliance with the requirements of subdivision (a) and the developer shall not be required to make revisions in order to comply with subdivision (a) and this subdivision.

SEC. 11. Section 11275 of the Business and Professions Code is amended to read:

11275. (a) Any contractual provision or other provision in the time-share instruments implemented after July 1, 2005, setting forth terms, conditions, and procedures for resolution of a dispute or claim between a time-share interest owner and a developer, or any provision in the time-share instruments implemented after July 1, 2005, setting forth terms, conditions, and procedures for resolution of a dispute of a claim between an association and the developer, shall, at a minimum, provide that the dispute or claim resolution process, proceeding, hearing, or trial be conducted in accordance with the following rules:

(1) For the developer to advance the fees necessary to initiate the dispute or claim resolution process, with the costs and fees, including ongoing costs and fees, if any, to be paid as agreed by the parties and if they cannot agree then the costs and fees are to be paid as determined by the person or persons presiding at the dispute or claim resolution proceeding or hearing.

(2) For a neutral or impartial person to administer and preside over the claim or dispute resolution process.

(3) For the appointment or selection, as designation, or assignment of the person to administer and preside over the claim or dispute resolution process within a specific period of time, which in no event shall be more than 60 days from initiation of the claim or dispute resolution process or hearing. The person appointed, selected, designated, or assigned to preside may be challenged for bias.

(4) For the venue of the claim or dispute resolution process to be in the county where the time-share is located unless the parties agree to some other location.

(5) For the prompt and timely commencement of the claim or dispute resolution process. When the contract provisions provide for a specific type of claim or dispute resolution process, the process shall be deemed to be promptly and timely commenced if it is to be commenced in accordance with the rules applicable to that process. If the rules do not specify a date by which the proceeding or hearing is required to commence, then commencement shall be by a date agreed upon by the parties, and if they cannot agree, a date shall be determined by the person presiding over the dispute resolution process.

(6) For the claim or dispute resolution process to be conducted in accordance with rules and procedures that are reasonable and fair to the parties.

(7) For the prompt and timely conclusion of the claim or dispute resolution process, including the issuance of any decision or ruling following the proceeding or hearing.

(8) For the person presiding at the claim or dispute resolution process to be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of the proceeding or hearing. The parties may authorize the limitation or prohibition of punitive damages.

(b) A copy of the rules applicable to the claim or dispute resolution process shall be submitted as part of the application for a public report.

(c) If the claim or dispute resolution process provides or allows for a judicial remedy in accordance with the laws of this state, it shall be presumed that the proceeding or hearing satisfies the provisions of subdivision (a).

SEC. 12. The amendments to Sections 11211.5, 11226, 11238, 11240, 11241, 11242, 11267, and 11275 of, and the addition of Sections 11226.1 and 11242.1 to, the Business and Professions Code by Sections 1 to 8, inclusive, Section 10, and Section 11, respectively, of this act shall become operative on January 1, 2007.

SEC. 13. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that essential fiscal resources are maintained at a sufficient level to avoid a fiscal crisis for time-share homeowner associations, it is necessary that this bill take effect immediately.