

**ASSEMBLY BILL**

**No. 905**

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**Introduced by Assembly Member Beth Gaines**

February 26, 2015

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An act to amend Sections 11216 and 11234 of the Business and Professions Code, and to amend Section 2079.6 of the Civil Code, relating to time-shares.

LEGISLATIVE COUNSEL'S DIGEST

AB 905, as introduced, Beth Gaines. Time-shares: public report: real property inspection.

Existing law, the Vacation Ownership and Time-share Act of 2004, requires a developer, defined as a person who creates a time-share plan or is in the business of selling time-share interests, to prepare, for issuance by the Real Estate Commissioner, a public report that discloses certain facts concerning the developer and time-share plan and to provide a copy of the public report in writing to each purchaser of a time-share interest in a time-share plan at the time of purchase. Existing law requires a developer who offers a purchaser the opportunity to subscribe or become a member of an exchange program to provide the purchaser with specified disclosures in writing. Existing law makes a violation of the public report disclosure requirement a public offense.

This bill would require the developer to provide the purchaser with the public report or other disclosures in writing or in a digital format at the discretion of the purchaser. By changing the definition of a crime, this bill would impose a state-mandated local program.

Existing law provides that it is the duty of a real estate broker or salesperson to a prospective purchaser of residential real property comprising one to 4 inclusive, residential dwelling units or a

manufactured home, to make a reasonably competent and diligent visual inspection of, and disclosure regarding, the property, as specified, except for transfers that are required to be preceded by the furnishing of a copy of a specified public report and to transfers that can be made without a specified public report, unless the property has been previously occupied.

This bill would also create an exception for a transfer that is required to be preceded by the furnishing of a copy of the public report required pursuant to the above-described act, unless the property has been previously occupied.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: yes.

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

- 1 SECTION 1. Section 11216 of the Business and Professions
- 2 Code is amended to read:
- 3 11216. (a) An exchange program is not a part of a time-share
- 4 plan offering and, except as provided in this section and Section
- 5 11238, shall not be subject to either this chapter or the regulations
- 6 of the commissioner adopted pursuant to this chapter.
- 7 (b) If a developer offers a purchaser the opportunity to subscribe
- 8 to or to become a member of an exchange program, the developer
- 9 shall provide to the purchaser in writing *or in a digital format at*
- 10 *the discretion of the purchaser* all of the information set forth in
- 11 paragraphs (1) to (17), inclusive. If the exchange company is
- 12 offering directly to the purchaser the opportunity to subscribe to
- 13 or become a member of an exchange company, the exchange
- 14 company shall provide to the purchaser in writing all of the
- 15 information set forth in paragraphs (1) to (17), inclusive. In either
- 16 case, the written information shall be provided prior to or
- 17 concurrently with the execution of any contract or subscription for
- 18 membership in the exchange program.
- 19 (1) The name and address of the exchange company.

1 (2) The names of all officers, directors, and shareholders of the  
2 exchange company.

3 (3) Whether the exchange company or any of its officers or  
4 directors have any legal or beneficial interest in any developer or  
5 managing entity for any time-share plan participating in the  
6 exchange program and, if so, the identity of the time-share plan  
7 and the nature of the interest.

8 (4) A copy of the form of the contract between the purchaser  
9 and the exchange company, along with a statement that the  
10 purchaser's contract with the exchange company is a contract  
11 separate and distinct from the purchaser's contract with the seller  
12 of time-share interests.

13 (5) Whether the purchaser's participation in the exchange  
14 program is dependent upon the continued affiliation of the  
15 applicable time-share plan with the exchange program.

16 (6) Whether the purchaser's participation in the exchange  
17 program is voluntary.

18 (7) A fair and accurate description of the terms and conditions  
19 of the purchaser's contractual relationship with the exchange  
20 program and the procedure by which changes thereto may be made.

21 (8) A fair and accurate description of the procedures necessary  
22 to qualify for and effectuate exchanges.

23 (9) A fair and accurate description of all limitations, restrictions,  
24 and priorities employed in the operation of the exchange program,  
25 including, but not limited to, limitations on exchanges based on  
26 seasonality, accommodation size, or levels of occupancy, expressed  
27 in conspicuous type. If those limitations, restrictions, or priorities  
28 are not uniformly applied by the exchange company, the  
29 information shall include a clear description of the manner in which  
30 they are applied.

31 (10) Whether exchanges are arranged on a space available basis  
32 and whether any guarantees of fulfillment of specific requests for  
33 exchanges are made by the exchange company.

34 (11) Whether and under what circumstances an owner, in dealing  
35 with the exchange program, may lose the right to use and occupy  
36 an accommodation of the time-share plan during a reserved use  
37 period with respect to any properly applied for exchange without  
38 being provided with substitute accommodations by the exchange  
39 program.

1 (12) The fees or range of fees for participation by owners in the  
2 exchange program, a statement of whether any such fees may be  
3 altered by the exchange company and the circumstances under  
4 which alterations may be made.

5 (13) The name and address of the site of each accommodation  
6 included within a time-share plan participating in the exchange  
7 program.

8 (14) The number of accommodations in each time-share plan  
9 that are available for occupancy and that qualify for participation  
10 in the exchange program, expressed within the following numerical  
11 groups: 1–5; 6–10; 11–20; 21–50; and 51 and over.

12 (15) The number of currently enrolled owners for each  
13 time-share plan participating in the exchange program, expressed  
14 within the following numerical groups: 1–100; 101–249; 250–499;  
15 500–999; and 1,000 and over; and a statement of the criteria used  
16 to determine those owners who are currently enrolled with the  
17 exchange program.

18 (16) The disposition made by the exchange company of use  
19 periods deposited with the exchange program by owners enrolled  
20 in the exchange program and not used by the exchange company  
21 in effecting exchanges.

22 (17) The following information for the preceding calendar year,  
23 which shall be independently audited by a certified public  
24 accountant in accordance with the standards of the Accounting  
25 Standards Board of the American Institute of Certified Public  
26 Accountants and reported annually no later than August 1 of each  
27 year:

28 (A) The number of owners currently enrolled in the exchange  
29 program.

30 (B) The number of time-share plans that have current affiliation  
31 agreements with the exchange program.

32 (C) The percentage of confirmed exchanges, which is the  
33 number of exchanges confirmed by the exchange program divided  
34 by the number of exchanges properly applied for, together with a  
35 complete and accurate statement of the criteria used to determine  
36 whether an exchange request was properly applied for.

37 (D) The number of use periods for which the exchange program  
38 has an outstanding obligation to provide an exchange to an owner  
39 who relinquished a use period during a particular year in exchange  
40 for a use period in any future year.

1 (E) The number of exchanges confirmed by the exchange  
2 program during the year.

3 (F) A statement in conspicuous type to the effect that the  
4 percentage described in subparagraph (C) is a summary of the  
5 exchange requests entered with the exchange program in the period  
6 reported and that the percentage does not indicate the probabilities  
7 of an owner's being confirmed to any specific choice or range of  
8 choices.

9 (c) All written, visual, and electronic communications relating  
10 to an exchange company or an exchange program shall be filed  
11 with the commissioner upon its request.

12 (d) The failure of an exchange company to observe the  
13 requirements of this section, and the use of any unfair or deceptive  
14 act or practice in connection with the operation of an exchange  
15 program, is a violation of this chapter.

16 (e) An exchange company may elect to deny exchange privileges  
17 to any owner whose use of the accommodations of the owner's  
18 time-share plan is denied, and no exchange program or exchange  
19 company shall be liable to any of its members or any third parties  
20 on account of any such denial of exchange privileges.

21 SEC. 2. Section 11234 of the Business and Professions Code  
22 is amended to read:

23 11234. A developer shall prepare, for issuance by the  
24 commissioner, a public report that shall fully and accurately  
25 disclose those facts concerning the time-share developer and  
26 time-share plan that are required by this chapter or by regulation.  
27 The developer shall provide the public report to each purchaser of  
28 a time-share interest in a time-share plan at the time of purchase.  
29 The public report shall be in writing *or in a digital format at the*  
30 *discretion of the purchaser* and dated and shall require the  
31 purchaser to certify in writing the receipt thereof. The public report  
32 for a single site time-share plan is subject to the requirements of  
33 subdivision (a). The public report for a specific time-share interest  
34 multisite time-share plan is subject to the requirements of both  
35 subdivisions (a) and (b). The public report for a nonspecific  
36 time-share interest multisite time-share plan is subject to the  
37 requirements of subdivision (c). For time-share plans located  
38 outside of the state, a public report that has been authorized for  
39 use by the situs state regulatory agency and that contains  
40 disclosures as determined by the commissioner upon review to be

1 substantially equivalent to or greater than the information required  
2 to be disclosed pursuant to this section may be used by the  
3 developer to meet the requirements of this section. A developer  
4 may, upon approval by the commissioner, submit a public report  
5 that combines, in a manner prescribed by the commissioner, the  
6 information required to be disclosed by the applicable subdivisions  
7 of this section and the information required to be disclosed in a  
8 public report issued by a regulatory agency in one or more other  
9 states.

10 (a) Public reports for a single site and those component sites of  
11 a specific time-share interest multisite time-share plan that are  
12 offered in this state shall include the following:

13 (1) The name and address of the developer and the type of  
14 time-share plan being offered and the name and address of the  
15 time-share project.

16 (2) A description of the existing or proposed accommodations,  
17 including the type and number of time-share interests in the  
18 accommodations, and if the accommodations are proposed or not  
19 yet complete or fully functional, an estimated date of completion.

20 (3) The number of accommodations and time-share interests,  
21 expressed in periods of seven-day use availability or other time  
22 increments applicable to the time-share plan, committed to the  
23 multisite time-share plan, and available for use by purchasers and  
24 a representation about the percentage of useable time authorized  
25 for sale, and if that percentage is 100 percent, then a statement  
26 describing how adequate periods of time for maintenance and  
27 repair will be provided.

28 (4) A description of any existing or proposed amenities of the  
29 time-share plan and, if the amenities are proposed or not yet  
30 complete or fully functional, the estimated date of completion.

31 (5) The extent to which financial arrangements have been made  
32 for the completion of any incomplete, promised improvements.

33 (6) A description of the duration, phases, and operation of the  
34 time-share plan.

35 (7) The name and principal address of the managing entity and  
36 a description of the procedures, if any, for altering the powers and  
37 responsibilities of the managing entity and for removing or  
38 replacing it.

39 (8) The current annual budget as required by Section 11240,  
40 along with the projected assessments and a description of the

1 method for calculating and apportioning the assessments among  
2 purchasers, all of which shall be attached as an exhibit to the public  
3 report.

4 (9) Any initial or special fee due from the purchaser at closing  
5 together with a description of the purpose and the method of  
6 calculating the fee.

7 (10) A description of any financing offered by or available  
8 through the developer.

9 (11) A description of any liens, defects, or encumbrances on or  
10 affecting the title to the time-share interests.

11 (12) A description of any bankruptcies, pending civil or criminal  
12 suits, adjudications, or disciplinary actions of which the developer  
13 has knowledge, that would have a material effect on the developer's  
14 ability to perform its obligations.

15 (13) Any current or expected fees or charges to be paid by  
16 time-share purchasers for the use of any amenities related to the  
17 time-share plan.

18 (14) A description and amount of insurance coverage provided  
19 for the protection of the purchaser.

20 (15) The extent to which a time-share interest may become  
21 subject to a tax lien or other lien arising out of claims against  
22 purchasers of different time-share interests.

23 (16) A statement disclosing any right of first refusal or other  
24 restraint on the transfer of all or any portion of a time-share interest.

25 (17) A statement disclosing that a deposit made in connection  
26 with the purchase of a time-share interest shall be held by an  
27 escrow agent until expiration of any right to cancel the contract  
28 and that a deposit shall be returned to the purchaser if he or she  
29 elects to exercise his or her right of cancellation. Alternatively, if  
30 the commissioner has accepted from the developer a surety bond,  
31 irrevocable letter of credit, or other financial assurance, each of  
32 which shall be enforceable by the association, in lieu of placing  
33 deposits in an escrow account: (A) a statement disclosing that the  
34 developer has provided a surety bond, irrevocable letter of credit,  
35 or other financial assurance in an amount equal to or in excess of  
36 the funds that would otherwise be placed in an escrow account,  
37 (B) a description of the type of financial assurance that has been  
38 obtained, (C) a statement that if the purchaser elects to exercise  
39 his or her right of cancellation as provided in the contract, the

1 developer shall return the deposit, and (D) a description of the  
2 person or entity to whom the purchaser should apply for payment.

3 (18) A statement that the assessments collected from the  
4 purchasers will be kept in a segregated account separate from the  
5 assessments collected from the purchasers of other time-share  
6 plans managed by the same managing entity, along with a statement  
7 identifying the location of the account and a disclosure of the rights  
8 of owners to inspect the records pertaining to their accounts.

9 (19) If the time-share plan provides purchasers with the  
10 opportunity to participate in an exchange program, a description  
11 of the name and address of the exchange company and the method  
12 by which a purchaser accesses the exchange program.

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

15 (21) Any other information reasonably requested by the  
16 commissioner.

17 (b) Public reports for specific time-share interest multisite  
18 time-share plans shall include the following additional disclosures:

19 (1) A description of each component site, including the name  
20 and address of each component site.

21 (2) The number of accommodations and time-share interests,  
22 expressed in periods of seven-day use availability or other time  
23 increments applicable to each component site of the time-share  
24 plan, committed to the multisite time-share plan and available for  
25 use by purchasers and a representation about the percentage of  
26 useable time authorized for sale, and if that percentage is 100  
27 percent, then a statement describing how adequate periods of time  
28 for maintenance and repair will be provided.

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

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

37 (5) A description of the reservation system, which shall include  
38 the following:

1 (A) The entity responsible for operating the reservation system,  
2 its relationship to the developer, and the duration of any agreement  
3 for operation of the reservation system.

4 (B) A summary of the rules and regulations governing access  
5 to and use of the reservation system.

6 (C) The existence of and an explanation regarding any priority  
7 reservation features that affect a purchaser's ability to make  
8 reservations for the use of a given accommodation on a  
9 first-come-first-served basis.

10 (6) The name and principal address of the managing entity for  
11 the multisite time-share plan and a description of the procedures,  
12 if any, for altering the powers and responsibilities of the managing  
13 entity and for removing or replacing it.

14 (7) A description of any right to make any additions,  
15 substitutions, or deletions of accommodations, amenities, or  
16 component sites, and a description of the basis upon which  
17 accommodations, amenities, or component sites may be added to,  
18 substituted in, or deleted from the multisite time-share plan.

19 (8) A description of the purchaser's liability for any fees  
20 associated with the multisite time-share plan.

21 (9) The location of each component site of the multisite  
22 time-share plan, the historical occupancy of each component site  
23 for the prior 12-month period, if the component site was part of  
24 the multisite time-share plan during the 12-month time period, as  
25 well as any periodic adjustment or amendment to the reservation  
26 system that may be needed in order to respond to actual purchaser  
27 use patterns and changes in purchaser use demand for the  
28 accommodations existing at that time within the multisite  
29 time-share plan.

30 (10) Any other information that the developer, with the approval  
31 of the commissioner, desires to include in the time-share disclosure  
32 statement.

33 (c) Public reports for nonspecific time-share interest multisite  
34 time-share plans shall include the following:

35 (1) The name and address of the developer.

36 (2) A description of the type of interest and usage rights the  
37 purchaser will receive.

38 (3) A description of the duration and operation of the time-share  
39 plan.

- 1 (4) A description of the type of insurance coverage provided  
2 for each component site.
- 3 (5) An explanation of who holds title to the accommodations  
4 of each component site.
- 5 (6) A description of each component site, including the name  
6 and address of each component site.
- 7 (7) The number of accommodations and time-share interests,  
8 expressed in periods of seven-day use availability or other time  
9 increments applicable to the multisite time-share plan for each  
10 component site committed to the multisite time-share plan and  
11 available for use by purchasers and a representation about the  
12 percentage of useable time authorized for sale, and if that  
13 percentage is 100 percent, then a statement describing how  
14 adequate periods of time for maintenance and repair will be  
15 provided.
- 16 (8) Each type of accommodation in terms of the number of  
17 bedrooms, bathrooms, and sleeping capacity, and a statement of  
18 whether or not the accommodation contains a full kitchen. For  
19 purposes of this description, a “full kitchen” means a kitchen  
20 having a minimum of a dishwasher, range, sink, oven, and  
21 refrigerator.
- 22 (9) A description of amenities available for use by the purchaser  
23 at each component site.
- 24 (10) A description of any incomplete amenities at any of the  
25 component sites along with a statement as to any assurance for  
26 completion and the estimated date the amenities will be available.
- 27 (11) The location of each component site of the multisite  
28 time-share plan, the historical occupancy of each component site  
29 for the prior 12-month period, if the component site was part of  
30 the multisite time-share plan during such 12-month time period,  
31 as well as any periodic adjustment or amendment to the reservation  
32 system that may be needed in order to respond to actual purchaser  
33 use patterns and changes in purchaser use demand for the  
34 accommodations existing at that time within the multisite  
35 time-share plan.
- 36 (12) A description of any right to make any additions,  
37 substitutions, or deletions of accommodations, amenities, or  
38 component sites, and a description of the basis upon which  
39 accommodations, amenities, or component sites may be added to,  
40 substituted in, or deleted from the multisite time-share plan.

1 (13) A description of the reservation system that shall include  
2 all of the following:

3 (A) The entity responsible for operating the reservation system,  
4 its relationship to the developer, and the duration of any agreement  
5 for operation of the reservation system.

6 (B) A summary of the rules and regulations governing access  
7 to and use of the reservation system.

8 (C) The existence of and an explanation regarding any priority  
9 reservation features that affect a purchaser's ability to make  
10 reservations for the use of a given accommodation on a  
11 first-come-first-served basis.

12 (14) A description of any liens, defects, or encumbrances that  
13 materially affect the purchaser's use rights.

14 (15) The name and principal address of the managing entity for  
15 the multisite time-share plan and a description of the procedures,  
16 if any, for altering the powers and responsibilities of the managing  
17 entity and for removing or replacing it, and a description of the  
18 relationship between a multisite time-share plan managing entity  
19 and the managing entity of the component sites of a multisite  
20 time-share plan, if different from the multisite time-share plan  
21 managing entity.

22 (16) The current annual budget as provided in Section 11240,  
23 along with the projected assessments and a description of the  
24 method for calculating and apportioning the assessments among  
25 purchasers, all of which shall be attached as an exhibit to the public  
26 report.

27 (17) Any current fees or charges to be paid by time-share  
28 purchasers for the use of any amenities related to the time-share  
29 plan and a statement that the fees or charges are subject to change.

30 (18) Any initial or special fee due from the purchaser at closing,  
31 together with a description of the purpose and method of  
32 calculating the fee.

33 (19) A description of any financing offered by or available  
34 through the developer.

35 (20) A description of any bankruptcies, pending civil or criminal  
36 suits, adjudications, or disciplinary actions of which the developer  
37 has knowledge, which would have a material effect on the  
38 developer's ability to perform its obligations.

39 (21) A statement disclosing any right of first refusal or other  
40 restraint on the transfer of all or any portion of a time-share interest.

1 (22) A statement disclosing that a deposit made in connection  
2 with the purchase of a time-share interest shall be held by an  
3 escrow agent until expiration of any right to cancel the contract  
4 and that a deposit shall be returned to the purchaser if he or she  
5 elects to exercise his or her right of cancellation. Alternatively, if  
6 the commissioner has accepted from the developer a surety bond,  
7 irrevocable letter of credit, or other financial assurance in lieu of  
8 placing deposits in an escrow account: (A) a statement disclosing  
9 that the developer has provided a surety bond, irrevocable letter  
10 of credit, or other financial assurance in an amount equal to or in  
11 excess of the funds that would otherwise be placed in an escrow  
12 account, (B) a description of the type of financial assurance that  
13 has been arranged, (C) a statement that if the purchaser elects to  
14 exercise his or her right of cancellation as provided in the contract,  
15 the developer shall return the deposit, and (D) a description of the  
16 person or entity to whom the purchaser should apply for payment.

17 (23) If the time-share plan provides purchasers with the  
18 opportunity to participate in an exchange program, a description  
19 of the name and address of the exchange company and the method  
20 by which a purchaser accesses the exchange program.

21 (24) Any other information that the developer, with the approval  
22 of the commissioner, desires to include in the time-share disclosure  
23 statement.

24 (d) The commissioner may establish by regulation provisions  
25 regarding the delivery of the public report and other required  
26 information through alternative media forms.

27 (e) The commissioner may, upon finding that the subject matter  
28 is otherwise adequately covered or the information is unnecessary  
29 or inapplicable, waive any requirement set forth in this section.

30 SEC. 3. Section 2079.6 of the Civil Code is amended to read:

31 2079.6. This article does not apply to transfers which are  
32 required to be preceded by the furnishing, to a prospective  
33 transferee, of a copy of a public report pursuant to Section 11018.1  
34 or *Section 11234* of the Business and Professions Code and  
35 transfers ~~which~~ *that* can be made without a public report pursuant  
36 to Section 11010.4 of the Business and Professions Code, unless  
37 the property has been previously occupied.

38 SEC. 4. No reimbursement is required by this act pursuant to  
39 Section 6 of Article XIII B of the California Constitution because  
40 the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or  
2 infraction, eliminates a crime or infraction, or changes the penalty  
3 for a crime or infraction, within the meaning of Section 17556 of  
4 the Government Code, or changes the definition of a crime within  
5 the meaning of Section 6 of Article XIII B of the California  
6 Constitution.

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