



Province of Alberta

## CONSUMER PROTECTION ACT

# TIME SHARE AND POINTS-BASED CONTRACTS AND BUSINESS REGULATION

### **Alberta Regulation 105/2010**

With amendments up to and including Alberta Regulation 14/2019

Current as of January 25, 2019

### Office Consolidation

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(Consolidated up to 14/2019)

**ALBERTA REGULATION 105/2010**

**Consumer Protection Act**

**TIME SHARE AND POINTS-BASED CONTRACTS  
AND BUSINESS REGULATION**

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- (i) requiring the person to ensure that in the event of a receivership, sale or other transfer of the time share property caused by the exercise of any right of the person, the receiver, purchaser or other transferee assumes the obligations of the supplier under the Act, this Regulation and the contract to current and future consumers who have time share interests in the property,
  - (ii) providing that the time share interests of current and future consumers in the time share property take priority over the person's interest in the property, and
  - (iii) restraining the person from interfering, when exercising rights in relation to the person's interest or any financial encumbrance associated with it, with the use or enjoyment of the time share property by current and future consumers;
- (f) "ownership interest" means a legal interest in property, and includes a beneficial interest in a trust, whether held directly or as a shareholder or member of a body corporate;
- (g) "points" means points, credits or similar equivalencies that are assigned to a time share interest by or under a time share plan;
- (h) "points-based contract" means a contract in which a consumer acquires points and rights or options to exchange the points for a right to use, occupy or possess real or personal property, whether located in Alberta or not,
- (i) as part of a time share plan that provides for other participants in the plan to acquire and exchange points in the same manner, and
  - (ii) for a period of time determined under the time share plan,
- whether or not the consumer receives any other interest, right, privilege or benefit under the contract;
- (i) "supplier" means a person who, whether directly or through an employee, representative or agent, engages in the activities of a time share business;
- (j) "time share business" means the activity of offering, soliciting, negotiating or concluding time share contracts or points-based contracts;

- (k) “time share interest” means an ownership interest in real or personal property, or a right to use, occupy or possess such property, received by a consumer under a time share contract or a points-based contract;
  - (l) “time share plan” means a plan that provides participants in the plan with rights or options to use, occupy or possess real or personal property, and includes the following:
    - (i) a plan under which a right to use, occupy or possess a specific property circulates among the participants;
    - (ii) a plan that provides the participants with a right or option to exchange points for the right to use, occupy or possess real or personal property;
  - (m) “time share property” means property in which a consumer receives a time share interest under a time share contract or a points-based contract.
- (2) The definition of “goods” in section 1(1)(e) of the Act is broadened to include
- (a) an ownership interest in real or personal property, and
  - (b) a right to use, occupy or possess real or personal property
- received by a consumer under a time share contract or a points-based contract.
- (3) The broadening of the definition of “goods” in subsection (2) applies in this Regulation and for the purposes of applying the Act to the subject-matter of this Regulation.

## **Part 2**

### **Time Share Contracts and Points-based Contracts**

#### **Contract Requirements**

##### **Contents of contracts**

- 2(1)** Every time share contract and every points-based contract must be in writing and include the following:
- (a) the consumer’s name and address;
  - (b) the supplier’s name, business address including a street address, telephone number and, if applicable, fax number and e-mail address;

- (c) the name and position of any agent or employee who is representing the supplier in respect of the contract;
- (d) the date and place at which the contract is entered into;
- (e) in the case of a time share contract,
  - (i) a description of the time share property, including its legal description and precise location, and
  - (ii) a full description of the time share interest being purchased by the consumer under the contract, including a statement of any period during which, or any dates on which, the consumer is entitled to use, occupy or possess the time share property;
- (f) in the case of a points-based contract,
  - (i) an explanation of the options available to the consumer under the contract to exchange points for the right to use, occupy or possess real or personal property within the time share plan, and
  - (ii) a full description of the time share interest being purchased by the consumer under the contract and a statement of the terms of any trust or other arrangement under which the consumer's interest is to be held;
- (g) any financial conditions that must be met before the consumer may exercise a right under the contract, including any requirement that all or any portion of the purchase price be paid beforehand;
- (h) an itemized statement of
  - (i) the total cost of the time share interest being purchased by the consumer,
  - (ii) the number of points, if any, being acquired by the consumer,
  - (iii) any closing costs payable by the consumer in respect of the contract, and
  - (iv) any expense, fee, levy, assessment or cost to which the consumer is or may become subject under the contract, time share plan or exchange program, if any;
- (i) if credit is extended by the supplier,

- (i) a statement of any security taken for payment, and
  - (ii) the disclosure statement required under Part 9 of the Act;
  - (j) a statement as to whether the number of points referred to in clause (h)(ii) or any expense, fee, levy, assessment or cost referred to in clause (h)(iv) is subject to change in the future, and if so, an explanation of how and when it may change;
  - (k) the terms of payment;
  - (l) unless the third party's interest and any financial encumbrance associated with it are the subjects of a non-disturbance clause, provisions warranting
    - (i) that the time share property and any other property or facility in respect of which the consumer has an interest or right under the contract are not subject to any leases or mortgages, liens, charges, money judgments, security agreements or other financial encumbrances of a third party,
    - (ii) that the supplier will not mortgage the property or facility, pledge it as security or lease or otherwise grant any interest in it to a third party, other than a time share interest, and
    - (iii) that the supplier will discharge any financial encumbrance or lease registered by a third party as soon as reasonably possible;
  - (m) full particulars of the time share plan under which the contract is made, or in which the consumer is to be a participant;
  - (n) a statement of the consumer's cancellation rights, in the form set out in the Schedule.
- (2)** The information required by subsection (1) must be set out legibly.
- (3)** The statement referred to in subsection (1)(n) or a notice indicating where that statement is located in the contract must be printed in not less than 12-point bold type on the front of the contract.
- (4)** A supplier shall notify the consumer and a consumer shall notify the supplier, in writing and without delay, of any change in

the information required to be provided under subsection (1)(a) or (b).

(5) A notification under subsection (4) is to be given to a person in accordance with the most recent information provided by the person under subsection (1)(a) or (b) or (4).

#### **Contract to be signed**

3 Every time share contract and every points-based contract must be signed by the supplier or the supplier's agent and by the consumer, and the name of each signatory to the contract must be printed legibly beside or below the signature.

#### **Contract to be provided to consumer**

4 A supplier who enters into a time share contract or a points-based contract with a consumer must provide the consumer with a copy of the signed contract at the time the contract is signed.

### **Cancellation of Contracts**

#### **Right to cancel within one year**

5 Every time share contract and every points-based contract must contain a provision allowing the consumer to cancel the contract at any time within one year after the date on which the contract is entered into if

- (a) the supplier does not hold a valid licence at the time the contract is entered into and is not excluded by section 13 from the requirement to hold a licence,
- (b) the supplier does not include the information required by section 2(1)(a) to (n) in the contract,
- (c) the contract is not signed by the consumer, or
- (d) the supplier does not provide a copy of the contract to the consumer as required by section 4.

#### **Absolute cancellation right — points-based contracts**

6(1) A points-based contract must contain a provision allowing the consumer to cancel the contract, without any reason, at any time from the date the contract is entered into until 10 days after the consumer receives a copy of the contract.

(2) A points-based contract is cancelled on the giving of a notice of cancellation in accordance with section 8.

**Exception**

**7** Sections 5 and 6 do not apply in respect of any contract to which the *Real Estate Act* applies.

**Method of cancellation**

**8(1)** A consumer who cancels a time share contract or a points-based contract shall give a written notice of cancellation to the supplier.

**(2)** A consumer who cancels a contract under section 5(a), (b), (c) or (d) shall state the reason for the cancellation in the notice of cancellation.

**(3)** A notice of cancellation may be sent by any method allowing for proof of service, including personal service and

- (a) registered mail sent to the most recent business address,
- (b) e-mail sent to the most recent e-mail address, or
- (c) facsimile sent to the most recent facsimile number

as provided by the supplier to the consumer under section 2(1)(b) or (4).

**Suppliers' Obligations****Funds to be held in trust**

**9(1)** If a time share contract or a points-based contract provides a consumer with a time share interest, the supplier shall hold in trust all funds received from the consumer in consideration for the transfer of the property until

- (a) the cancellation period provided by section 37(1) of the Act or section 6(1), whichever is applicable,
- (b) construction of the property is complete, or
- (c) the consumer has a legal right to use or occupy the property,

whichever is latest.

**(2)** A supplier shall

- (a) within 2 banking days after receiving funds referred to in subsection (1), deposit the funds into a trust account at a bank, treasury branch, credit union or trust corporation in Canada, and

- (b) continue to hold the funds in trust until they are releasable under subsection (1)(a), (b) or (c).

**(3)** Funds held in trust under this section must not be commingled with non-trust money.

#### **Inconsistent representations**

**10** No supplier shall, in respect of a time share contract or a points-based contract with a consumer, make a representation to the consumer that differs materially from the contract.

#### **Records**

**11(1)** In addition to the records required to be kept under section 132(1) of the Act and section 9 of the *General Licensing and Security Regulation* (AR 187/99), every licensee and former licensee shall create and maintain records of

- (a) every time share contract and every points-based contract entered into, including cancelled contracts,
- (b) any assessment of the monetary value of a time share interest sold under any time share contract or points-based contract entered into by the licensee and, if applicable, the number of points assigned to the interest,
- (c) all marketing and advertising materials used in relation to a time share plan, time share contract or points-based contract, and
- (d) all refunds given to consumers in respect of time share contracts and points-based contracts.

**(2)** Records referred to in subsection (1)(a) to (d) must be kept for at least 3 years after they are made.

#### **Obligation of supplier on cancellation**

**12(1)** Within 15 days after a points-based contract is cancelled, the supplier must refund to the consumer all money paid by the consumer.

**(2)** If a points-based contract is cancelled after the consumer has exercised a right or option under the contract, the supplier is entitled to reasonable compensation for the exercise of the right or option by the consumer, but the supplier's rights under this section do not arise until after the supplier complies with subsection (1).

### Part 3

## Time Share Business Licence

#### Application

**13** This Part does not apply in respect of the offering, soliciting, negotiating or concluding of time share contracts or points-based contracts by an industry member as defined in the *Real Estate Act* who is acting in the course of a profession or calling to which that Act applies.

#### Classes of licence established

**14(1)** The following classes of time share business licence are established:

- (a) Right to Use Licence;
- (b) Personal Property Ownership Licence;
- (c) Real Property Ownership Licence.

**(2)** Subject to the Act and this Regulation,

- (a) a Right to Use Licence authorizes the holder to engage in the activities of offering, soliciting, negotiating and concluding time share contracts and points-based contracts that provide a consumer with the right to use, occupy or possess real or personal property but that do not provide the consumer with an ownership interest in any property,
- (b) a Personal Property Ownership Licence authorizes the holder to engage in the activities of offering, soliciting, negotiating and concluding time share contracts and points-based contracts that provide a consumer with an ownership interest in personal property but that do not provide the consumer with any right or interest in respect of real property, and
- (c) a Real Property Ownership Licence authorizes the holder to engage in the activities of offering, soliciting, negotiating and concluding time share contracts and points-based contracts that provide a consumer with an ownership interest in all the real property that is subject to the time share plan, whether or not the consumer receives any other interest, right, privilege or benefit under the contract.

**(3)** A licensee may hold more than one class of licence.

**Application for licence**

**15** A person may apply for a time share business licence by submitting to the Director an application in the form approved by the Director.

**Term of licence and renewal**

**16** Subject to this Regulation, a time share business licence expires at the end of the last day of the 12th month after it is issued or renewed.

**Fee**

**17** The fee to issue or renew a time share business licence is \$200.

**Security**

**18(1)** No time share business licence may be issued or renewed unless the applicant provides security to the Director in the form and amount approved by the Director.

**(2)** Before the term of a time share business licence expires, the Director may, if the Director considers additional security to be necessary, require the licensee to provide additional security in the amount specified by the Director.

**Representations**

**19(1)** No licensee shall represent, expressly or by implication, that a time share business licence is an endorsement or approval of the licensee by the Government of Alberta.

**(2)** Subsection (1) does not preclude a licensee from representing that the licensee is licensed under this Regulation.

**General Licensing and Security Regulation applies**

**20** The *General Licensing and Security Regulation* (AR 187/99) applies to the time share business.

## **Part 4**

### **Unfair Practices and Other Offences**

**Unfair practices**

**21** It is an unfair practice for a supplier to do any of the following:

- (a) in respect of a time share contract or a points-based contract, make any false or misleading representation regarding the contents of the contract, the time share plan, any exchange program or any interest, right, privilege, benefit or obligation of a consumer under the contract or the Act or its regulations;
- (b) misrepresent the availability of any prize, gift or other promotional item or discount offered in connection with a time share contract or a points-based contract;
- (c) offer, solicit, negotiate or conclude a time share contract if A exceeds B, where
  - (i) A is the combined total amount of time that all participants in the time share plan are entitled to use, occupy or possess the time share property in any one-year period, and
  - (ii) B is the total amount of time that the time share property is available for use, occupation or possession in the one-year period referred to in subclause (i);
- (d) offer, solicit, negotiate or conclude a points-based contract if A exceeds B, where
  - (i) A is the total number of points held by all the time share plan participants in any one-year period, and
  - (ii) B is the total number of points required to use, occupy or possess the time share property for the one-year period referred to in subclause (i);
- (e) use an asterisk or other reference symbol in marketing or advertising material as a means of obscuring a material fact or of contradicting or substantially changing a statement made in the material;
- (f) offer, negotiate or conclude a time share contract or a points-based contract that provides a consumer with a right to use, occupy or possess, or with an ownership interest in, any real or personal property that is subject to a lease or a mortgage, lien, charge, money judgment, security interest or other financial encumbrance, unless the lease or financial encumbrance is the subject of a non-disturbance clause;
- (g) lease, mortgage, pledge as security or otherwise grant to a third party any interest, other than a time share interest, in real or personal property in respect of which a consumer

has an ownership interest or a right of use, occupation or possession under a time share contract or a points-based contract, unless the interest and any financial encumbrance associated with it are the subject of a non-disturbance clause;

- (h) sell or otherwise transfer ownership of any real or personal property in respect of which a consumer has an ownership interest or a right of use, occupation or possession under a time share contract or a points-based contract, unless
  - (i) the buyer or other transferee of the property assumes all of the supplier's obligations to the consumer under the Act, this Regulation and the contract, or
  - (ii) the consumer has consented in writing to any terms of the sale or transfer that provide for a person other than the buyer or other transferee to assume the supplier's obligations to the consumer or that provide for the supplier to retain those obligations;
- (i) fail to discharge a financial encumbrance or lease in accordance with section 2(1)(l)(iii);
- (j) invite a consumer to any event, function or location where sales or promotional activity will occur unless the invitation and any correspondence regarding it clearly indicates that the sales or promotional activity will occur.

#### **Offences**

**22** For the purposes of section 162 of the Act, a contravention of any provision of section 2, 3, 4, 5, 6(1), 9, 10, 11, 12(1) or 19(1) is designated as an offence.

#### **Vicarious responsibility**

**23** For the purposes of this Regulation, an act or omission by an employee, agent or contractor of a licensee in the course of that person's employment, agency or contractual relationship is deemed also to be an act or omission by the licensee.

## **Part 5 General**

#### **Transitional – existing contracts**

**24** Notwithstanding section 28, the *Time Share Contracts Regulation* (AR 199/99) continues to apply, and this Regulation does not apply, in respect of a time share contract or a points-based

contract that is entered into before the coming into force of this Regulation.

**Amends AR 187/99**

**25 The *General Licensing and Security Regulation* (AR 187/99) is amended**

- (a) **in section 22(1) by repealing clause (b) and substituting the following:**
  - (b) the claim is based on the cancellation of a direct sales contract under section 27 or 28 of the Act,
  - (b.1) the claim is based on the cancellation of a time share contract or a points-based contract under section 5 or 6 of the *Time Share and Points-based Contracts and Business Regulation*, or
- (b) **in section 23(1) by striking out “and” at the end of clause (b), adding “and” at the end of clause (c) and adding the following after clause (c):**
  - (d) the claim is not based on the cancellation of a time share contract or a points-based contract under section 5 or 6 of the *Time Share and Points-based Contracts and Business Regulation*.

**Amends AR 81/2001**

**26 The *Internet Sales Contract Regulation* (AR 81/2001) is amended by adding the following before section 3(q):**

- (p.1) the activities of offering, soliciting, negotiating or concluding time share contracts or points-based contracts by a person who is licensed under the *Time Share and Points-based Contracts and Business Regulation*;

**Amends AR 56/2002**

**27 The *Travel Clubs Regulation* (AR 56/2002) is amended by repealing section 1(c) and substituting the following:**

- (c) “travel club business” means the business of soliciting, negotiating, concluding and performing travel club contracts, but does not include offering, soliciting, negotiating or concluding points-based contracts pursuant to a licence issued under the *Time Share and Points-based Contracts and Business Regulation*;

**Repeal**

**28** The *Time Share Contracts Regulation* (AR 199/99) is repealed.

**Expiry**

**29** For the purpose of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on June 30, 2022.

AR 105/2010 s29;36/2014;14/2019

**Coming into force**

**30** This Regulation comes into force on November 1, 2010.

**Schedule****Form****Statutory Right to Cancel**

The *Fair Trading Act* and its regulations provide that:

1. A consumer (buyer) may cancel a time share contract or a points-based contract at any time from the day it is entered into until 10 days after the consumer receives a copy of the contract.
2. In addition, a consumer may cancel the contract at any time within one year after the day on which the contract is entered into if section 37(2) of the *Fair Trading Act* or section 5 of the *Time Share and Points-based Contracts and Business Regulation* applies.
3. To cancel the contract, the consumer must give a written notice of cancellation to the supplier at the most recent business address, e-mail address or facsimile number provided by the supplier. If the contract is being cancelled more than 10 days after it was made, the notice must state the reason for the cancellation.
4. After the consumer cancels the contract, the supplier has 15 days to refund the consumer's money.

The *Fair Trading Act* provides other remedies that may apply in addition to cancellation.







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