

This rule was filed as 1 NMAC 2.3.

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 2 CONSUMER PROTECTION
PART 3 REQUIREMENTS FOR THE PROMOTION AND ADVERTISING OF SUBDIVIDED
LAND, TIME-SHARE INTERESTS, CONDOMINIUMS AND MEMBERSHIP
CAMPGROUNDS

12.2.3.1 ISSUING AGENCY: Office of the New Mexico Attorney General, Consumer Protection Division, Post Office Drawer 1508, Santa Fe, New Mexico 87504-1508.
[5/1/98; Recompiled 10/15/01]

12.2.3.2 SCOPE: Promoters and sellers of subdivided land, time-share interests, condominiums and membership campgrounds.
[5/1/98; Recompiled 10/15/01]

12.2.3.3 STATUTORY AUTHORITY: New Mexico Unfair Practices Act, Section 57-12-1 NMSA 1978 et seq. and New Mexico False Advertising Act, Section 57-15-1 NMSA 1978 et seq. This rule-making proceeding has been conducted in conformity with the Administrative Procedures Act, Section 12-8-1 NMSA 1978 et seq., and the rule-making procedures adopted in 1 NMAC 3.3.10 [now 1.24.10 NMAC] and 1 NMAC 2.1 [now 12.2.1 NMAC].
[5/1/98; Recompiled 10/15/01]

12.2.3.4 DURATION: Permanent.
[5/1/98; Recompiled 10/15/01]

12.2.3.5 EFFECTIVE DATE: Re-promulgated and reformatted in NMAC format effective as of May 1, 1998 unless a later date is cited at the end of a section or paragraph.
[5/1/98; Recompiled 10/15/01]
[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.2.3.6 OBJECTIVE: All promoters of any and all products, interests or services are always subject to the general proscriptions of the New Mexico Unfair Trade Practices Act and False Advertising Act. These regulations merely address those same general prohibitions against unfair or deceptive practices in the context of the specific issues raised by time-share and related promotions. The specificity of these regulations is designed to assist the industry in knowing precisely what practices have caused substantial concern and merit particularized guidelines. The scope of these regulations is thus rationally based.
[5/1/98; Recompiled 10/15/01]

12.2.3.7 DEFINITIONS: The following words when used in these regulations shall have the following meaning:

A. "Time share" means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with an estate or interest in a condominium or a specified portion thereof, or any other estate or interest in land.

B. "Membership campground" means any enterprise that has as one of its purposes camping or outdoor recreation, including the use of camping sites, which solicits memberships paid for by a fee or periodic payments, and which provides camping facilities primarily for the use of contractual members. "Membership campground" does not include:

- (1) a mobile home park as defined by Section 47-10-2 NMSA 1978;
- (2) camping or recreational trailer parks which are open to the general public and which provide camping sites only for a per use fee; or
- (3) any enterprise that is tax exempt under Section 501(c) (3) of the Internal Revenue Code of 1954, as amended. "Membership" in this context means the contractual right or license to use campground facilities for more than 14 days in a year.

C. "Subdivided land" constitutes an area of land in New Mexico that has been divided into five or more parcels within three years for the purpose of sale or lease.

D. "Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owner of those portions. Real estate is not a condominium unless the undivided interest in the common elements are vested in the unit owners.

E. "Game promotion" or "promotional" means any advertising or publicity of an enterprise on the basis of representations that prizes, awards or gifts will be given to a certain number of entrants without any regard for the recipient's skill, and based solely on chance, for the primary purpose of the direct or indirect promotion of the sale of subdivided land, condominiums, time-share interests or membership in campground organizations. Game promotions shall include, without limitation, such activities as a "sweepstakes", "giveaway", "contest", "drawing", "lotto" or "game".

F. A "giveaway" means that all recipients of the game promotion are guaranteed receipt of the gift or gifts described in a promotional piece.

G. "Sweepstakes" means that there is an element of chance involved to receive a gift described in the promotional piece, and that there will be winners and losers. A program or promotion is not a sweepstakes unless the sweepstakes is offered in addition to the items given to all recipients of promotional pieces.

H. "Promotional pieces" or "promotional materials" includes, but is not limited to, brochures, pamphlets, letters, envelopes, advertisements or other materials disseminated in connection with the sale of subdivided land, condominiums, time-share interests or memberships in campgrounds. This includes mail solicitations, advertising copy, testimonials and endorsements, telephone solicitations and offers of accommodations, meals or entertainment at no cost or at reduced cost, in whatever form.

I. "Property interest" means a time-share interest, a campground membership or any ownership interest in subdivided land or a condominium.

J. "Vacation certificates" means lodging certificates which include complimentary or discounted transportation, meals or other material benefits in addition to the mere use of accommodations and motel, hotel or campground facilities.

K. "Verifiable retail value" means either

(1) the price charged by a national or local retail outlet for an identical or substantially similar item; or

(2) an amount equal to no more than three times the cost paid by the seller or promoter for the item.

L. "Premium gift" means the gift which the majority of promotion recipients who claim their gifts will receive. It is usually the gift offered which is of the lowest value.

M. "Promoter" means any organization which authorizes or disseminates promotional material.
[5/1/98; Recompiled 10/15/01]

12.2.3.8 STATEMENT OF BASIS:

A. The attorney general's office is concerned about sweepstakes and giveaway promotions conducted in the course of the sale of subdivided land, condominiums, time-share interests and campground memberships. Since 1984, the attorney general's office has received numerous telephone calls and letters concerning the promotion of time-shares. Indeed, the complaints and questions have come in daily. They have reflected consumer dissatisfaction in a number of areas. For example, consumers have not received complete disclosure of the nature of promotions; to claim an offered gift, consumers have had to attend sales presentations of which they were not advised, including some where high-pressure sales tactics were reportedly employed; consumers have not understood the real odds of winning various gifts; the conditions placed on receiving gifts have not been adequately disclosed; consumers have reported that promised gifts were not available, or that gifts that were available did not have the characteristics described in the original promotional mailing or phone solicitation. It is precisely such concerns that these regulations address.

B. These regulations do not expressly or impliedly authorize any lottery prohibited by statute, including but not limited to Section 30-19-1 NMSA 1978. Neither do these regulations prohibit any otherwise lawful sweepstakes and giveaway promotions, except to the extent they are deceptive or misleading. These regulations do not supersede those set forth in 1 NMAC 2.2 [now 12.2.2 NMAC] entitled "Game Promotion Regulations Issued Pursuant to New Mexico Unfair Practices Act and False Advertising Act". Rather, these regulations supplement those regulations; these set forth additional requirements to apply specifically to promotional sales of subdivided land, condominiums, time-share interests and campground memberships in New

Mexico. The regulations apply so long as the promotion occurs in New Mexico, even if the property itself is located outside of New Mexico.

C. Advertising of subdivided land is governed by Section 47-6-18 NMSA 1978 of the New Mexico Subdivision Act, Section 47-6-1 NMSA 1978 et seq. The regulations promulgated here apply to subdivided land only when game promotions are used in connection with the sale of that land, and these regulations do not supersede the New Mexico Subdivision Act.

D. Before promulgating these regulations, three public hearings were held: on May 23, 1985 in Ruidoso; on June 10, 1985, in Santa Fe; and on June 11, 1985, in Albuquerque. All comments received at the hearings were considered in the revision of the regulations finally adopted. Consumers had already effectively spoken to this office and expressed their concern through their daily complaints and inquiries. Representatives of developers and advertisers who produce and disseminate promotional materials testified at the hearings to address their concerns. This office also solicited written comments on the regulations. The comments received reflected the interests of the American land development association, particular developers involved in the development of time-shares in New Mexico and the game promotion industry. All comments were considered.

E. Preamble to the regulations.

(1) The attorney general has concluded that regulation of the promotion and sale of subdivided land, condominium, time-share and campground memberships in New Mexico is in the best interest of the health, safety and general welfare of the citizens of New Mexico. Revisions have been made to the proposed regulations to reflect the input received from all concerned. The revised final regulations particularly reflect direct mail standards developed by the American land development association, the land development industry's own professional association and lobby organization.

(2) The revisions should make the regulations both more acceptable to the industry regulated and more readily enforceable by the office of the attorney general while preserving the primary focus of protecting consumers from unfair or deceptive acts or practices. Since these final regulations do not differ significantly from those that were proposed, and indeed since the vast majority of changes adopted conform to industry concerns, it was not necessary to issue these regulations in any revised proposed form or to hold any additional hearings.

(3) The following responds to a number of the particular comments received during the rule-making proceeding:

(a) This office has authority to promulgate these regulations pursuant to the New Mexico Unfair Practices Act, at Section 57-12-13 NMSA 1978, and the False Advertising Act, at Section 57-15-7 NMSA 1978. The fact that these regulations apply only to the promotion and sale of subdivided land, condominium, time share and campground interests does not mean these regulations are not authorized or that they unfairly and unlawfully discriminate against one particular industry. The attorney general is not required, as some commentors suggested, to regulate all promotional materials of every kind rather than limit the regulations, as done here, to the particular promotions targeted. These regulations address the specific concerns consumers have raised. They are drawn narrowly, to address the problems noted, and are not intended to be any broader than necessary. All promoters of any and all products, interests or services are always subject to the general proscriptions of the New Mexico Unfair Trade Practices Act and False Advertising Act. These regulations merely address those same general prohibitions against unfair or deceptive practices in the context of the specific issues raised by time-share and related promotions. The specificity of these regulations is designed to assist the industry in knowing precisely what practices have caused substantial concern and merit particularized guidelines. The scope of these regulations is thus rationally based.

(b) The need for these regulations has been emphasized repeatedly in the steady flow of complaints and inquiries the attorney general's office has received from consumers. Some opponents of the regulations have argued, however, that consumers who have been confused or misled by sweepstakes promotions have not been sophisticated enough to protect themselves and that regulations should not be adopted to protect them. We disagree. Consumer protection law is not designed only to protect the sophisticated and the educated. To the contrary, consumer protection law is geared to the entire general public. Indeed, it should provide special protections for the less educated and most vulnerable members of society. These regulations are designed to help provide that protection without imposing unreasonable burdens on the industry.

(c) Regulations such as these to address unfair trade practices and false advertising in the promotion and sale of property interests are not novel. Many of these provisions simply conform with requirements in many other states. The fact that these requirements are adopted by regulation, and not enacted by the legislature, also does not render them unlawful. The test is whether the regulations pursue the general prohibition against unfair and deceptive acts or practices. So long as they do, these regulations are authorized and appropriate. Contrary to

some industry critics, other industry representatives expressed interest in the establishment of these specific standards in New Mexico for promotional materials since similar standards are in effect in other states. For example, industry representatives concurred that these regulations should help protect the industry from violators who adversely affect the industry as a whole. Furthermore, the American land development association, a nationwide representative organization of land developers, recognized the similarity of these regulations with standards the industry has imposed on itself. These regulations should not, therefore, prove burdensome.

(d) This office recognizes the importance of tourism in New Mexico. These regulations are by no means intended to hinder that vital element of the state's economy. To the contrary, these regulations should help enhance state tourism by providing important protections and safeguards to visitors. These protections should help ensure favorable impressions and encourage visitors to suggest that other potential tourists visit New Mexico as well. The state's interest in tourism is not served by any unfair or misleading practices, and that is all these regulations are designed to prohibit.

(e) Specific changes made since the regulations were proposed include a change in the definition of the term "sweepstakes". The change makes the definition more acceptable to the industry by providing even more specific terminology, consistent with the federal trade commission's definition of the term. The definition of "verifiable retail value" has also been changed to conform to industry standards, as well as to the federal trade commission's definition of the term.

(f) These final regulations do not apply to radio and television advertising, as was initially proposed. Upon considering the comments tendered, it was decided that the time constraints of those media make such regulation impractical. These regulations do apply, however, to telephone solicitations, with a more limited standard for compliance consistent with the opportunities available in telephone conversations.

(g) A definition for "vacation certificates" has been added to the regulations, since substantial deception in utilizing this particular form of promotion has been brought to this office's attention since the regulations were originally proposed. Specific standards concerning vacation certificates, consistent with these regulations other provisions, have likewise been added to the regulations.

(h) A definition for "premium gift" has also been added. The "premium gift" is the gift which the majority of promotion recipients receive. It is the gift which creates the most controversy, in terms of its value and availability.

(i) The definition of "promoter" has been changed to be more specific by including any organization which either authorizes or disseminates the promotional material. Wording of specific regulations in 9.1.2.1.f [now Subparagraph (f) of Paragraph (1) of Subsection B of Section 12.2.3.9 NMAC] has also been clarified, giving examples of specified industry practices, such as characterizing time share weeks during seasons of the year as "high", "medium", and "low", "red", "white" and "blue", or "floating".

(j) The proposed requirement to disclose affirmatively that which is obvious - i.e., that consumers must bear the cost of travel to the site - has been eliminated. A clarification instead has been made to disclose conditions of eligibility for purchase of the property interest promoted.

(k) The regulations have been clarified so that all conditions or terms of sale of the property interest promoted do not have to be included on the game promotion piece itself; only the conditions of eligibility for purchase must be disclosed. Subject to applicable federal and state laws, promotions may request information regarding age, income level and marital status.

(l) Words such as "awards", "prizes", and "gifts" may not be used if the person must supply anything, other than his time to visit the property, in order to claim the award, prize or gift. Likewise, a recipient of a promotion shall not be described as a "winner" or a "finalist" and promotional pieces may not notify persons that they have won a "prize" unless the matters "won" or "prizes" to be received are given without condition. Conditions attached to the receipt of anything of value offered in a promotional piece must be prominently disclosed. This should help leave no reasonable probability that the offer will be misunderstood.

(m) The required disclosure of the time required to attend any sales presentation has been changed to allow for "a reasonable estimate of the least amount of time" required to attend such sales presentation. This responds to concerns seeking to provide reasonable time estimates, since individual circumstances may vary.

(n) Promotional material need not include the telephone number of the sponsor of the promoter, developer, broker or owner. The identity of the promoter and sponsor should continue to be disclosed, however, to respond to consumer inquiries and to assist this office's ability to enforce the regulations.

(o) Words and graphics which create a likelihood of confusion and misunderstanding that the promotion is connected with a government agency cannot be used. The final regulation addresses this general standard more flexibly than the proposed rule, which was geared to particular words and phrases.

(p) The manner in which winners are selected must be disclosed. The regulations do not intend, however, to prevent the use of preselection of winners by computer. They merely require disclosure of the particular method used.

(q) The definition of “verifiable retail value” and the obligations of the promoter or seller to substantiate this value have been revised to reflect the input of the industry and the practice of other states.

(r) A separate section has been included concerning the statements of the odds of winning various “prizes”. The regulations do not require that odds and values be stated on the front of the promotional piece, as the proposed regulation did, to conform with other state practices. The final regulations do encourage that format, though, and the suggested examples noted provide for this placement. The most important part of the requirement - namely, that odds and values be clearly and conspicuously disclosed - remains intact.

(s) The regulations impose special requirements for the so-called “premium” gifts that almost everyone wins. If gifts are not on hand, then they must be shipped within 30 days.

(t) The regulations have not changed the requirement to disclose whether a promotion is part of a national sweepstakes, and to state, where applicable, that all gifts will not be given at all locations. This follows an existing requirement in 1 NMAC 2.2 [now 12.2.2 NMAC] and could be confusing to consumers if not disclosed.

(u) The proposed requirement that the number of gifts be disclosed has been eliminated as duplicative of stating the odds. The proposal to require that the names of winners of previous gifts may not be used on a future promotional piece without their consent has been revised to require disclosure on the promotion that a person’s name might be so used if he or she wins. This enhances the regulation’s goals of full disclosure to consumers of all relevant terms and conditions.

(v) These regulations do not require submission of promotional material to the attorney general for prior review. Such promotional material certainly may be submitted, and promoters are encouraged to do so. Commenters suggested, however, that if promoters were required first to submit their materials to the attorney general’s office, then that office should be required to respond with approval or disapproval in a certain number of days, and that no response should be deemed to constitute approval. Those comments are not persuasive. Given limited resources, this office cannot review and respond to all promotions, and should not be required to do so. This office nevertheless has a valid state interest in receiving promotions before they are distributed to allow it to decide whether to seek injunctive relief. This office thus could have properly required prior submissions of promotions without binding itself to any time limits on when to respond. To avoid, however, even the potential appearance of imposing unfair burdens, the office has decided instead to encourage voluntary submissions of promotions before they are distributed, rather than to require such submissions.

[5/1/98; Recompiled 10/15/01]

12.2.3.9 REGULATIONS: It is an unfair or deceptive trade practice for any person to engage in a game promotion in connection with the sale or lease of subdivided land, condominiums, time-share interests or campground memberships unless the game promotion is in compliance with the following regulations:

A. General regulations.

(1) Claims or representations contained in any promotional material shall be accurate.

(2) Promotional materials shall state fully and clearly all factual material so as neither to misrepresent the facts nor to create misleading impressions.

B. Specific regulations.

(1) No promotional materials shall:

(a) misrepresent a fact or create a false or misleading impression;

(b) make a prediction of specific or immediate increases in the price or value of the property interest promoted, unless it is registered as a security with the securities division of the New Mexico department of regulation and licensing;

(c) contain a statement concerning future price increases by the seller of the property interest promoted which are nonspecific or not bona fide;

(d) describe any improvement to the property interest promoted that is not required to be completed or that is uncompleted unless the improvement is conspicuously labeled as, for example, “NEED NOT BE COMPLETED”, “PROPOSED” or “UNDER CONSTRUCTION”;

(e) misrepresent the size, nature, extent of development, qualities or characteristics of the offered accommodations or facilities;

(f) misrepresent the amount or period of time or nature of the period of time during which the accommodations or facilities will be available to any purchaser. (For example, time-share weeks are commonly

characterized with colors or other adjectives, such as “red”, “white” and “blue”, or “high”, “medium” and “low.” Prospective purchasers should know whether they have purchased the use of a specific week or a “floating week” during a specific period.);

(g) misrepresent the nature or extent of any services incident to the property interest being promoted;

(h) make any misleading or deceptive representation with respect to the contents of any disclosure statement, the contract or any other statement of the purchaser’s rights, privileges, benefits or obligations; or

(i) misrepresent the conditions under which a purchaser may exchange the right to use accommodations or facilities in one location for the right to use accommodations or facilities in another location. For example, if a consumer purchases a “red” or “high” week at the resort visited, but it will not be honored as a “red” or “high” week for exchange purposes, that fact should be disclosed.

(2) All promotional materials shall clearly and conspicuously disclose any and all conditions on or eligibility requirements for:

(a) the receipt of anything of value offered in connection with the promotion;

(b) and the sale or lease of the property being promoted.

(c) This does not mean that each and every term of sale must be included on a game promotion piece; only conditions of eligibility for purchase must be disclosed. Subject to applicable federal and state law, promotions may request information regarding age, income level and marital status. For example, the piece may contain a statement similar to the following: The recipient named in this letter is eligible to receive a gift in these sweepstakes. However, (resort name) is designed to be of particular interest to credit-worthy single persons or married couples between the ages of 21 and 60 who have an individual or combined income of at least \$20,000. We request that if you are married, husband and wife must be present. Both must also attend a sales presentation of at least one hour to claim the gift.

(3) Offers of anything of value at no cost or reduced cost made in connection with a promotion shall not be described as “awards”, “prizes”, “gifts” or by words of similar meaning if the recipient must purchase anything or give, or promise to give, any sum or other consideration, other than visiting the property to claim the gifts, in exchange for the item. The word “sweepstakes” should not be used if the offer is in fact a “giveaway”.

(4) Recipients of any promotion offer shall not be described as “winners” or “finalists” or notified that they have “won a prize” unless either:

(a) the prizes that have been won are to be given to the recipients without condition (i.e., there are no eligibility requirements, sales tours or other requirements to receive the gifts or prizes); or

(b) any conditions attached to the receipt of anything of value offered in such a promotional piece are clearly and conspicuously disclosed in the offer and leave no reasonable possibility that the offer will be misunderstood.

(5) All promotional materials must specifically and affirmatively disclose in boldface type that the purpose of the promotion is the sale of interests in subdivided land, condominiums, time-shares or membership campgrounds. If the recipient of the promotional material must attend any sales presentation, this fact must be prominently stated in boldface type, together with a reasonable estimate of the least amount of time required to attend the sales presentation. (For example: **YOU MUST ATTEND A SALES PRESENTATION OF AT LEAST ONE HOUR BEFORE YOU WILL RECEIVE YOUR GIFT.**)

(6) It is unlawful to make offers of anything of value in connection with a promotion unless contemporaneously, with the offer, all expenses the recipient must pay, excluding the cost of travel to the area being promoted, are disclosed to the recipient in the offer.

(7) In the case of vacation certificates, all conditions of the vacation must be clearly and conspicuously disclosed in the promotional piece, including any required deposits, points of departure if outside of New Mexico, the nature of the accommodation and all items and conditions of the trip. For example, if two persons must take the trip, but free airfare is provided for only one person, this should be clearly disclosed. Vacation certificates must be redeemable within a reasonable period of time, which should be disclosed, and they must not include unduly burdensome or unreasonable procedures which must be followed in order to take the trip.

(8) Complete rules and procedures for any contest or drawing advertised in connection with a promotion shall be included clearly and conspicuously in promotional materials.

(9) All written promotional materials shall contain the name and address of the entity conducting the promotion, and of the sponsor, developer, broker or owner, as applicable, on whose behalf the promotional material is distributed.

(10) Promotional materials shall not employ any term that creates confusion, misunderstanding or a reasonable impression that the promotion is connected with a government agency.

(11) Promotional pieces shall not include any words or graphics which simulate a notary "seal" or which otherwise tend to mislead the recipient as to the legal significance of the document.

(12) The manner in which winners are selected must be accurately disclosed. The following are examples of such disclosures:

(a) The prize which you receive has been randomly pre-selected by computer. You must match your number to numbers on the official gift list at the resort to determine the particular gift you will receive.

(b) Every person visiting the resort will receive the set of luggage. In addition, your number will be placed in a container at the resort. When there are 1,000 numbers in the container, an independent accounting firm will draw three numbers, the holders of which will receive the car, the \$500 and the TV set, in that order.

(13) It is unlawful to represent that a promotion is a "survey" or a "research project" if it is not, and if the primary purpose of the promotion is to lease or sell a property interest.

(14) Promotional material shall not describe any gift to be given in terms which are confusing or misleading. The verifiable retail value must be clearly disclosed in arabic numbers following a dollar sign. In disclosing the verifiable retail value of any gift, the promoter or seller must be able to substantiate it at the time the alleged value is asserted. Such substantiation may be provided with the following:

(a) the name and address of the retail outlet at which the product or a substantially similar product is or has been sold, the price at which the product was advertised or sold and the dates on which the product was advertised or sold at that place or places; or

(b) proof that the value stated is no more than three times the price paid for the item by the promoting entity or developer.

(15) The odds of receiving each gift must be clearly and conspicuously disclosed.

(a) An example of stating the odds clearly for any gift other than a premium gift is as follows: "Your chances of winning the _____ (gift) are one in 100,000."

(b) An example of stating odds clearly for a premium gift is as follows: "Out of 100,000 persons who respond to this mailing, 99,997 persons will receive the (premium gift)."

(16) Offered gifts must be delivered on site when the recipient appears and establishes his/her eligibility for the gift. If the gift is of a kind not capable of immediate delivery (e.g., a vacation, automobile, etc.), then the recipient must be given specific documentation to enable him to claim the gift. Promoters and owners shall have an adequate supply of premium gifts on site and if an item cannot be supplied to an eligible recipient, it must be shipped within 30 days to the recipient's address without additional cost or burden to the recipient.

(17) The geographic area covered by the promotional mailing must be clearly and conspicuously stated in the promotional piece. If the promotion is part of a national sweepstakes, it must be clearly and conspicuously stated that the described prizes may be awarded to people outside of the geographical area within which that particular promotional piece is distributed, with a corresponding explanation that every gift may not be given away at every location.

(18) Names of winners of previous gifts may not be used on a future promotion unless disclosure of future use is made known to the recipient on the original promotional piece, or unless the recipient provides written consent for such disclosure. Every promotional piece must also include an explanation of the procedure by which the consumer may receive a list of names and addresses of major gift recipients who have consented to have their names made available to recipients of promotional pieces.

(19) The date upon which the promotion begins and the date upon which it terminates must be clearly stated.

(20) Promotional pieces shall not represent that there is a limited time in which to accept the terms of the offer, or that a gift is only available on the day the recipient visits the resort, if such is not the case.

(21) Promotional pieces shall disclose that the supplier reserves the right to substitute gifts of greater or equal value or to give rain checks if such is the case.

(22) No offer shall be made of items commonly given recipients if there is reason to know that the items are not or will not be readily available at the time and place the recipient is to receive them.

(23) Items shall not be represented by way of description, name, pricing, narrative copy or graphic depiction so as to mislead or deceive the recipient as to the true nature, size or kind of an item.

(24) Promotional pieces shall not use any type size, style, location, color, layout, headline or illustration which renders misleading any material fact of the offer, including but not limited to using excessively small size type and/or an inconspicuous location for eligibility conditions, odds or value.

(25) Telephone solicitations which involve game promotions need not disclose all information described herein but they must disclose at least the following information:

- (a) that the purpose of the solicitation is the sale of a time-share, subdivided land, condominium or membership campground interest;
- (b) that to claim an offered gift, the listener must visit the resort and hear a sales presentation, including a reasonable estimate of the least amount of time that the sales presentation will take;
- (c) the principal conditions attached to claiming the gift;
- (d) the verifiable retail value of any gift promoted and the odds of receiving each such gift offered if the promotion is a sweepstakes, as set forth in paragraph 9.1.2.15 above [now Paragraph (15) of Subsection B of 12.2.3.9 NMAC].

(26) All promotional material may be submitted to the attorney general for review before distribution in this state. The attorney general may comment on the legal sufficiency of the material or take such other action as he deems appropriate. The attorney general's failure to respond shall not be construed, however, as an approval, exemption or waiver of any statutory or other enforcement authority by the attorney general. No person shall use or refer to any correspondence to or received from the attorney general in any promotional piece or in any sales presentation. It shall be an unfair or deceptive trade practice to state directly or indirectly that the attorney general or the state of New Mexico has approved, sanctioned, authorized or given any favorable opinion concerning the legality of any game promotion.
[5/1/98; Recompiled 10/15/01]

12.2.3.10 SIGNATURE:
Original Adoption and Promulgation
Paul Bardacke
Attorney General
Date: 9/3/85

Readoption and Repromulgation
Tom Udall
Attorney General
Date: 4/9/98

Tom Udall
Attorney General
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HISTORY OF 12.2.3 NMAC:

Pre-NMAC Regulatory Filing History. The material in this part is derived from that previously filed with the State Records Center and Archives under:
AG REG 85-1, Regulations for the Promotion and Advertising of Subdivided Land, Time-Share Interests, Condominiums and Membership Campgrounds Issued Pursuant to New Mexico's Unfair Practices Act and False Advertising Act, filed 9/3/85.

History of Repealed Material: [RESERVED]