

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 143

An Act to amend and reenact §§ 55-362 and 55-374 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 55-376.1, relating to the Virginia Real Estate Time-Share Act; possibility of reverter.

[H 448]

Approved March 16, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-362 and 55-374 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 55-376.1 as follows:

§ 55-362. Definitions.

When used in this chapter, or in a time-share instrument, unless the context requires a different meaning:

"Additional land" has the meaning ascribed to it in subsection C of § 55-367;

"Alternative purchase" means anything valued in excess of \$100 which is offered to a potential purchaser by the developer during the developer's sales presentation and which is purchased by such potential purchaser for more than \$100, even though the purchaser did not purchase a time-share. An alternative purchase is not a time-share. A membership camping contract as defined in § 59.1-313 is not an alternative purchase. An alternative purchase shall be registered with the Board unless it is otherwise registered as a travel service under the Virginia Travel Club Act (§ 59-445 et seq.), and shall include, without limitation, vacation packages (howsoever denominated) and exit programs (howsoever denominated);

"Association" means the association organized under the provisions of § 55-368;

"Board" means the Real Estate Board, an agency within the meaning of the Administrative Process Act (§ 2.2-4000 et seq.);

"Board of directors" means an executive and administrative entity, by whatever name denominated, designated in a time-share estate project instrument as the governing body of the time-share estate owners' association;

"Common elements" means the real estate, improvements thereon, and the personalty situate within the time-share project that are subject to the time-share program. "Common elements" shall not include the units and the time-shares;

"Consumer documents" means the aggregate of the following documents: the reverter deed, note, and the deed of trust. A consumer document shall be deemed one of the consumer documents;

"Contract," "sales contract," "purchase contract," "contract of purchase" or "contract to purchase" shall be interchangeable throughout this chapter and shall mean any legally binding instrument executed by the developer and a purchaser whereby the developer is obligated to sell and the purchaser is obligated to purchase either a time-share and its incidental benefits or an alternative purchase registered under this chapter;

"Conversion time-share project" means a real estate improvement, which prior to the disposition of any time-share, was wholly or partially occupied by persons as their permanent residence or on a transient pay-as-you-go basis other than those who have contracted for the purchase of a time-share and those who occupy with the consent of such purchasers;

"Deed" means the instrument by which title to a time-share estate is transferred from one person to another person;

"Deed of trust" means the instrument conveying the time-share estate that is given as security for the payment of the note;

"Default" means either a failure to have made any payment in full and on time or a violation of a performance obligation required by a consumer document for a period of no less than 60 days;

"Developer" means any person or group of persons acting in concert who (i) offers to dispose of a time-share or its or their interest in a time-share unit for which there has not been a previous disposition or (ii) applies for registration of the time-share program;

"Developer control period" has the meaning ascribed to it in § 55-369;

"Development right" means any right reserved by the developer to create additional units which may be dedicated to the time-share program;

"Dispose" or "disposition" means a transfer of a legal or equitable interest in a time-share, other than a transfer or release of security for a debt;

"Exchange agent" or "exchange company" means a person or persons who exchange or offer to exchange time-shares in an exchange program with other time-shares;

"Exchange program" means any opportunity or procedure for the assignment or exchange of

time-shares among owners in other time-share programs as evidenced by a past or present written agreement executed between an exchange company and the developer or the time-share estate association; however, an "exchange program" shall not be either an incidental benefit or an opportunity or procedure whereby a time-share owner can exchange his time-share for another time-share within either the same time-share or another time-share project owned in part by the developer;

"Incidental benefit" means anything valued in excess of \$100 provided by the developer that is acquired by a purchaser upon acquisition of a time-share and includes without limitation exchange rights, travel insurance, bonus weeks, upgrade entitlements, travel coupons, referral awards, and golf and tennis packages. An incidental benefit is not a time-share or an exchange program. An incidental benefit shall not be registered with the Board;

"Lien holder" means either a person who holds an interest in an encumbrance that is not released of record as to a purchaser or such person's successor in interest who acquires title to the time-share project at foreclosure or by deed in lieu of foreclosure, or other instrument however denominated;

"Managing agent" means a person who undertakes the duties, responsibilities, and obligations of the management of a time-share project;

"Managing entity" means the managing agent or, if there is no managing agent, the time-share owners' association in a time-share estate project and the developer in a time-share use project;

"Material change" means a change in any information or document disclosed in or attached to the public offering statement which renders inaccurate, incomplete or misleading any information or document in such a way as to affect substantially a purchaser's rights or obligations, but shall not include a change (i) in the real estate tax assessment or rate, utility charges or deposits, maintenance fees, association dues, assessments, special assessments or any recurring time-share expense item provided the change is made known (a) immediately to the prospective purchaser by a written addendum in the public offering statement and (b) to the Board by filing with the developer's annual report copies of the updated changes occurring over the immediately preceding ~~twelve~~ 12 months; (ii) which is an aspect or result of the orderly development of the time-share project in accordance with the time-share instrument; (iii) resulting from new, updated, or amended information contained in the annual report prepared and distributed pursuant to § 55-370.1; (iv) correcting spelling, grammar, omissions or other similar errors not affecting the substance of the public offering statement; or (v) occurring in the issuance of an exchange company's updated annual report or disclosure document, provided upon its receipt by the developer, it shall be distributed in lieu of all others in order to satisfy § 55-374;

"Note" means the instrument that evidences the debt occasioned by the deferred purchase of a time-share;

"Offering" or "offer" means any act to sell, solicit, induce, or advertise, which originates in this Commonwealth, whether by radio, television, telephone, newspaper, magazine, or mail, whereby a person is given an opportunity to acquire a time-share;

"Person" means one or more natural persons, corporations, partnerships, associations, trustees of a trust, limited liability companies, other entities, or any combination thereof capable of holding title to real property;

"Possibility of reverter" means a provision contained in a reverter deed whereby the time-share estate automatically reverts or transfers back to the developer upon satisfaction of the requirements imposed by § 55-376.1;

"Product" means each time-share and its incidental benefits and all alternative purchases ~~which~~ that are registered with the Board pursuant to this chapter;

"Project" means the same as the term "time-share project";

"Project instrument" means any recorded documents, by whatever name denominated, which create the time-share project and program and which may contain restrictions or covenants regulating the use, occupancy, or disposition of time-shares in a project;

"Public offering statement" means the statement required by § 55-374;

"Purchaser" means any person other than a developer or lender who owns or acquires a product, or who otherwise enters into a contract for the purchase of a product;

"Reverter deed" means the deed from developer to a grantee that contains a possibility of reverter;

"Sales person" means a person who sells or offers to sell time-share interests in a time-share program;

"Situs" means the place outside the Commonwealth where a developer's time-share project is located;

"Situs Time-Share Act" means the Act, howsoever denominated, that regulates the offering, disposition, and sale of time-shares applicable to the property outside the Commonwealth where the time-share project is located;

"Time-share" means either a time-share estate or a time-share use plus its incidental benefits;

"Time-share estate" 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, coupled with a freehold estate or an estate for years in a time-share project or a specified portion thereof;

"Time-share estate occupancy expense" has the meaning ascribed to it in § 55-369;

"Time-share estate subject to reverter" means a time-share estate (i) entitling the holder thereof to

occupy units not more than four weeks in any one year period; and (ii) for which the down payment is not more than 20 percent of the total purchase price of the time-share estate;

"Time-share expense" means (i) expenditures, fees, charges, or liabilities incurred with respect to the operation, maintenance, administration or insuring of the time-shares, units, and common elements comprising the entire time-share project, whether or not incurred for the repair, renovation, upgrade, refurbishing or capital improvements; and (ii) any allocations of reserves;

"Time-share instrument" means any document, however denominated, which creates the time-share project and program, and which may contain restrictions or covenants regulating the use, occupancy, or disposition of time-shares in a project;

"Time-share" means either a time-share estate or a time-share use plus its incidental benefits;

"Time-share owner" or "owner" means a person who is an owner or co-owner of a time-share other than as security for an obligation;

"Time-share program" or "program" means any arrangement of time-shares in one or more time-share projects whereby the use, occupancy, or possession of real property has been made subject to either a time-share estate or time-share use in which such use, occupancy, or possession circulates among owners of the time-shares according to a fixed or floating time schedule on a periodic basis occurring over any period of time in excess of five years;

"Time-share project" means all of the real property subject to a time-share program created by the execution of a time-share instrument;

"Time-share use" means a right to occupy a time-share unit or any of several time-share units during five or more separated time periods over a period of at least five years, including renewal options, not coupled with a freehold estate or an estate for years in a time-share project or a specified portion thereof. "Time-share use" shall not mean a right to use which is subject to a first-come, first-served, space-available basis as might exist in a country club, motel, hotel, health spa, campground, or membership or resort facility;

"Time-share unit" or "unit" means the real property or real property improvement in a project which is divided into time-shares and designated for separate occupancy and use.

§ 55-374. Public offering statement.

A. The developer shall prepare and distribute to each prospective purchaser prior to the execution of a contract for the purchase of a time-share, a copy of the current public offering statement about which the time-share relates. The public offering statement shall fully and accurately disclose the characteristics of the time-share project registered under this chapter and such time-share offered, and shall make known to each prospective purchaser all material circumstances affecting such time-share project. A developer need not make joint disclosures concerning two or more time-share projects owned by the developer or any related entity unless such projects are included in the same time-share program and marketed jointly at any of the time-share projects. The proposed public offering statement shall be filed with the Board, and shall be in a form prescribed by its regulations. The public offering statement may limit the information provided for the specific time-share project to which the developer's registration relates. The public offering statement shall include the following only to the extent a given disclosure is applicable; otherwise no reference shall be required of the developer or contained in the public offering statement:

1. The name and principal address of the developer and the time-share project registered with the Board about which the public offering statement relates, including:

a. The name, principal occupation and address of every director, partner, limited liability company manager, or trustee of the developer;

b. The name and address of each person owning or controlling an interest of ~~twenty~~ 20 percent or more in each time-share project registered with the Board;

c. The particulars of any indictment, conviction, judgment, decree or order of any court or administrative agency against the developer or managing entity for violation of a federal, state, local or foreign country law or regulation in connection with activities relating to time-share sales, land sales, land investments, security sales, construction or sale of homes or improvements or any similar or related activity;

d. The nature of each unsatisfied judgment, if any, against the developer or the managing entity, the status of each pending suit involving the sale or management of real estate to which the developer, the managing entity, or any general partner, executive officer, director, limited liability company manager, or majority stockholder thereof, is a defending party, and the status of each pending suit, if any, of significance to any time-share project registered with the Board; and

e. The name and address of the developer's agent for service of any notice permitted by this chapter.

2. A general description of the time-share project registered with the Board and the units and common elements promised available to purchasers, including without limitation, the developer's estimated schedule of commencement and completion of all promised and incomplete units and common elements.

3. As to all time-shares offered by the developer:

a. The form of time-share ownership offered in the project registered with the Board;

- b. The types, duration, and number of units and time-shares in the project registered with the Board;
- c. Identification of units that are subject to the time-share program;
- d. The estimated number of units that may become subject to the time-share program;
- e. Provisions, if any, that have been made for public utilities in the time-share project including water, electricity, telephone, and sewerage facilities;

f. A general description of each incidental benefit and each alternative purchase offered by the developer including the significant rights the purchaser acquires, and the significant obligations undertaken thereby; ~~and~~

g. A statement to the effect of whether or not the developer has reserved the right to add to or delete from the time-share program a time-share project or any incidental benefit or alternative purchase; *and*

h. If the developer utilizes the possibility of reverter, a statement to that effect referring the purchaser to the reverter deed for an explanation thereof.

4. In a time-share estate program, a copy of the annual report or budget required by § 55-370.1, which copy may take the form of an exhibit to the public offering statement. In the case where multiple time-share projects are registered with the Board, the copy or exhibit may be in summary form.

5. In a time-share use program where the developer's net worth is less than \$250,000, a current audited balance sheet and where the developer's net worth exceeds such amount, a statement by such developer that its equity in the time-share program exceeds that amount.

6. Any initial or special fee due from the purchaser at settlement together with a description of the purpose and method of calculating the fee.

7. A description of any liens, defects, or encumbrances affecting the time-share project and in particular the time-share offered to the purchaser.

8. A general description of any financing offered by or available through the developer.

9. A statement that the purchaser has a nonwaivable right of cancellation, referring such purchaser to that portion of the contract in which such right may be found.

10. If the ~~time-share~~ *time-share* interest in a condominium unit may be conveyed before that unit is certified as substantially complete in accordance with § 55-79.58, a statement of the developer's obligation to complete the unit. Such statement shall include the approximate date by which the condominium unit shall be completed, together with the form and amount of the bond filed in accordance with subsection B of § 55-79.58:1.

11. Any restraints on alienation of any number or portion of any time-shares.

12. A description of the insurance coverage provided for the benefit of time-share owners.

13. The extent to which financial arrangements, if any, have been provided for completion of any incomplete but promised time-share unit or common element being then offered for sale, including a statement of the developer's obligation to complete the promised units and common elements comprising the time-share project ~~which that~~ have not begun, or begun but not yet completed.

14. The extent to which a time-share unit may become subject to a tax or other lien arising out of claims against other owners of the same unit.

15. The name and address of the managing entity for the project.

16. Copies of the project instrument and the association's articles of incorporation and bylaws, each of which may be a supplement to the public offering statement.

17. Any services ~~which that~~ the developer provides or expense it pays and ~~which that~~ it expects may become at any subsequent time a time-share expense of the owners, and the projected time-share expense liability attributable to each of those services or expenses for each time-share.

18. A description of the terms of the deposit escrow requirements, including a statement that deposits may be removed from escrow at the termination of the cancellation period.

19. A description of the facilities, if any, provided by the developer to the association in a time-share estate project for the management of the project.

20. Any other information required by the Board to assure full and fair meaningful disclosure to prospective purchasers.

B. If any prospective purchaser is offered the opportunity to subscribe to or participate in any exchange program, the public offering statement shall include as an exhibit or supplement, the disclosure document prepared by the exchange company in accordance with § 55-374.2 and a brief narrative description of the exchange program which shall include the following:

1. A statement of whether membership or participation in the program is voluntary or mandatory;

2. The name and address of the exchange company together with the names of its top three officers and directors;

3. A statement of whether the exchange company or any of its top three officers, directors, or holders of a ~~ten~~ 10 percent or greater interest in the exchange company has any interest in the developer, managing entity or the time-share project;

4. A statement that the purchaser's contract with the exchange company is a contract separate and distinct from the purchaser's contract with the developer; and

5. A brief narrative description of the procedure whereby exchanges are conducted.

C. The public offering statement of a conversion time-share project shall also include the following,

which may take the form of an exhibit to the public offering statement:

1. A specific statement of the amount of any initial or special fee, if any, due from the purchaser of a time-share on or before settlement of the purchase contract and the basis of such fee occasioned by the fact that the project is a conversion time-share project;

2. Information on the actual expenditures, if available, made on all repairs, maintenance, operation, or upkeep of the building or buildings within the last three years. This information shall be set forth in a tabular manner within the proposed budget of the project. If such building or buildings have not been occupied for a period of three years then the information shall be set forth for the period during which such building or buildings were occupied;

3. A description of any provisions made in the budget for reserves for capital expenditures and an explanation of the basis for such reserves occasioned by the fact that the project is a conversion time-share project, or, if no provision is made for such reserves, a statement to that effect; and

4. A statement of the present condition of all structural components and major utility installations in the building, which statement shall include the approximate dates of construction, installations, and major repairs as well as the expected useful life of each such item, together with the estimated cost, in current dollars, of replacing each such component.

D. In the case of a conversion project, the developer shall give at least ~~ninety~~ 90 days' notice to each of the tenants of the building or buildings which the developer intends to submit to the provisions of this chapter. During the first ~~sixty~~ 60 days of such ~~ninety~~ 90-day period, each of these tenants shall have the exclusive right to contract for the purchase of a time-share from the unit he occupies, but only if such unit is to be retained in the conversion project without substantial alteration in its physical layout. Such notice shall be hand delivered or sent by first-class mail, return receipt requested, and shall inform the tenants of the developer's intent to create a conversion project. Such notice may also constitute the notice to terminate the tenancy as provided for in § 55-222, except that, despite the provisions of § 55-222, a tenancy from month to month may only be terminated upon 120 days' notice as set forth herein when such termination is in regard to the creation of a conversion project. If, however, a tenant so notified remains in possession of the unit he occupies after the expiration of the 120-day period with the permission of the developer, in order to then terminate the tenancy, such developer shall give the tenant a further notice as provided in § 55-222.

The developer of a conversion project, shall, in addition to the requirements of § 55-391.1, include with the application for registration a copy of the notice required by this subsection and a certified statement that such notice which fully complies with the provisions of this subsection shall be, at the time of the registration of the conversion project, mailed or delivered to each of the tenants in the building or buildings for which registration is sought.

E. The developer shall amend the public offering statement to reflect any material change in the time-share program or time-share project. If the developer has reserved in the time-share instrument the right to add to or delete incidental benefits or alternative purchases, the addition or deletion thereof shall not constitute a material change. Prior to distribution, the developer shall file with the Board the public offering statement amended to reflect any material change.

F. The Board may at any time require a developer to alter or supplement the form or substance of the public offering statement to assure full and fair disclosure to prospective purchasers. A developer may, in its discretion, prepare and distribute a public offering statement for each product offered or one public offering statement for all products offered.

G. In the case of a time-share project located outside this Commonwealth, similar disclosure statements required by other situs laws governing time-sharing may be acceptable alternative disclosure statements.

H. The developer shall prepare and distribute to each prospective purchaser prior to the execution of a purchase contract for a registered alternative purchase, a copy of the public offering statement about which such alternative purchase relates. The public offering statement shall fully and accurately disclose the characteristics of such alternative purchase. The public offering statement for an alternative purchase shall be filed with the Board and shall be in a form prescribed by its regulations.

The public offering statement for an alternative purchase need not contain any information about the time-share project, time-share program or the time-shares offered by the developer which was initially offered to such purchaser by the developer. If the developer so elects, the public offering statement for an alternative purchase is not required to have any exhibits.

§ 55-376.1. Possibility of reverter.

A. A possibility of reverter contained in a reverter deed for a time-share estate subject to reverter is valid, enforceable in law and in equity, and shall operate to transfer title to the time-share estate from each grantee therein back to the developer provided the following conditions are satisfied:

1. The reverter deed from the developer contains the possibility of reverter by insertion of the language required by subsection E;

2. A grantee in the reverter deed is in default and has been provided thereafter with at least two written notices to this effect with no less than a 10-calendar day right to cure in each notice;

3. A grantee in the reverter deed has been provided with no less than 30 calendar days within which

to cure the default before exercise of the possibility of reverter occurs;

4. At the time of exercise of the possibility of reverter, the developer is the sole holder of the note and the sole beneficiary under the deed of trust;

5. The exercise by the developer of the possibility of reverter is evidenced by an affidavit duly recorded where the reverter deed was recorded which contains the following information:

a. A description of the time-share project and time-share estate and a statement that upon recordation of the affidavit, title to such time-share estate reverts back to the developer;

b. A description and recitation of the reverter deed which contained the possibility of reverter and a reference of when and where such deed was recorded and its recording information;

c. A recitation that the purchaser defaulted in or violated a consumer document and failed to cure such default or violation within a period of no less than 30 calendar days;

d. A description of the note and deed of trust with a recitation that (i) the developer is the sole holder of the note and the sole beneficiary under the deed of trust, (ii) such note is cancelled and declared void, and (iii) such deed of trust is automatically released;

e. A recitation that such purchaser's rights and entitlements in the time-share estate, the time-share project and the time-share program are extinguished effective the date of recordation of the affidavit;

f. The signature of a duly authorized representative of the developer verified under oath as to its truth of the statements contained therein; and

6. A copy of the recorded affidavit described in subdivision A 5 is sent by the developer to each purchaser at his address as maintained by developer or the association, along with the statement from the developer explaining the consequences of such affidavit with emphasis on subparts a, d and e of subdivision A 5.

B. The recordation of the affidavit referred to in subdivision A 5 shall automatically:

1. Transfer title to the time-share estate from each grantee in the reverter deed to the developer without the need of a deed to the developer or consent from such grantee;

2. Declare null and void and act as an automatic release of the deed of trust or mortgage given by such grantee to finance a portion of the purchase price of the time-share estate with no deficiency resulting;

3. Void and act as an automatic release of any debt from such grantee to the developer arising out of the purchase or financing of the time-share estate as evidenced by the note; and

4. Extinguish any ownership or other property right or entitlements such grantee has in and to the time-share estate, the time-share project and the time-share program.

C. The clerk of court shall record such affidavit in the land books where the time-share project is located indexing the purchaser in the grantor indices and the developer in the grantee indices. For indexing purposes only, the purchaser shall be referred to as the grantor and the developer as the grantee. The cost of recording the affidavit shall be limited to the clerk's fee only.

D. In the exercise of the possibility of reverter, the developer shall be liable to the purchaser for his failure to comply with the provisions of this section; however, such failure shall not operate to defeat or diminish the transfer of title to the time-share estate from each grantee in the reverter deed to the developer upon recordation of the affidavit referred to subdivision A 5. The developer's liability shall be limited to the amount paid by such purchaser towards the purchase price of the time-share estate exclusive of interest and closing costs but without offset for the purchaser's utilization of the time-share program. The court shall award court costs and reasonable attorney's fees to the prevailing party.

E. The reverter deed shall contain the following statement in order to possess the possibility of reverter. The opening phrase shall be in bold face, 10-point type as follows:

Loss of Time-Share Estate. Developer has inserted into this deed a "possibility of reverter." By this concept, should a grantee of this reverter deed default in or violate an obligation imposed by a consumer document for a period of at least 60 days and fail to cure such violation or default within no less than 30 calendar days thereafter, title to the time-share will revert back to the developer upon the developer recording an affidavit to this effect where this reverter deed is recorded. Only the developer can elect to exercise the possibility of reverter. Each grantee in this reverter deed will be sent at least two notices of default or violation within the 30-day period with no less than 10 days to cure in each instance. The notice will be sent to the address of each grantee maintained at the office of the developer or the association. After the cure period has lapsed and the developer records the affidavit, title to the time-share estate will automatically vest in the developer and any note executed by grantee will be deemed canceled and any recorded deed of trust securing such note shall be automatically released. The possibility of reverter will itself lapse and become null and void at the soonest to occur of the following: (i) the deed of trust is released of record, (ii) a statement that the deed of trust is released of record is executed and recorded by the developer with a date of when the possibility of reverter was or is to lapse, or (iii) when the time-share program terminates pursuant to either the Virginia Real Estate Time-Share Act or the time-share instrument which created such program.

F. The filing of the affidavit referred to in subdivision A 5 shall not result in the requirement of any filing under Chapter 2 (§ 26-8 et seq.) of Title 26.

G. Any possibility of reverter not otherwise exercised by the developer pursuant to this section shall

itself lapse and become null and void at the soonest to occur of the following: (i) the deed of trust is released of record, (ii) a statement that the deed of trust is released of record is executed and recorded by the developer with a date of when the possibility of reverter was or is to lapse, or (iii) when the time-share program terminates pursuant to either this chapter or the time-share instrument.

H. In exercising the possibility of reverter, the developer shall be entitled to retain as liquidated damages all monies paid by the purchaser in conformity with any consumer document.

I. The exercise of the possibility of reverter shall not operate to diminish or eliminate (i) any debt of the purchaser to the time-share association or other third party occasioned by ownership of the time-share estate or participation in the time-share program or (ii) any recorded lien junior in priority to the deed of trust lien referred to in this section.