

# VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

## CHAPTER 653

*An Act to amend and reenact §§ 55-370, 55-373, 55-374, 55-374.1, 55-375, 55-383, and 55-394.1 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 55-370.01 and 55-376.2, relating to the Virginia Real Estate Time-Share Act; nonjudicial foreclosure; termination of time-share program; public offering statement; resale certificate.*

[H 693]

Approved April 5, 2006

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 55-370, 55-373, 55-374, 55-374.1, 55-375, 55-383, and 55-394.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 55-370.01 and 55-376.2 as follows:**

§ 55-370. Time-share estate owners' association control liens.

A. The board of directors of the association shall have the authority to adopt regular annual assessments and to levy periodic special assessments against each of the time-share estate unit owners and to collect the same from such owners according to law, if the purpose in so doing is determined by the board of directors to be in the best interest of the project and the proceeds are used to pay time-share expenses. In addition, the board of directors of the association shall have the authority to collect, on behalf of the developer or on its own account, the maintenance fee imposed by the developer pursuant to § 55-369. The authority hereby granted and conferred upon the association shall exist notwithstanding any covenants and restrictions of record applicable to the project stated to the contrary and any such covenants and restrictions are hereby declared void.

B. *The developer may provide that it not be obligated to pay all or a portion of any assessment, dues, or other charges of the association, however denominated, passed, or adopted, pursuant to subsection A, if such developer so provides, in bold type, in the time-share instrument for the time-share estate project. If no such provision exists, the developer shall be responsible to pay the same assessment, dues, or other charges that a time-share estate owner is obligated to pay for each of its unsold time-shares existing at the end of the fiscal year of the association and no more if the board of directors of the association so determines. In no event shall either a time-share expense or the dues, assessment, or charges of the association discriminate against the developer.*

C. The association shall have a lien on every time-share estate within its project for unpaid and past due regular or special assessments levied against that estate in accordance with the provisions of this chapter and for all unpaid and past due maintenance fees.

The association, in order to perfect the lien given by this subsection, shall file, before the expiration of four years from the time such special or regular assessment or maintenance fee became due and payable, in the clerk's office of the county or city in which the project is situated, a memorandum verified by the oath of any officer of the association or its managing agent and containing the following information:

1. The name and location of the project;
2. The name and address of each owner of the time-share on which the lien exists and a description of the unit in which the time-share is situated;
3. The amount of unpaid and past due special or regular assessments or unpaid and past due maintenance fees applicable to the time-share, together with the date when each became due;
4. The amount of any other charges owing occasioned by the failure of the owner to pay the assessments or maintenance fees, including late charges, interest, postage and handling, attorneys' fees, recording costs and release fees;
5. The name, address and telephone number of the association's trustee, *if known at the time*, who will be called upon by the association to foreclose on the lien upon the owner's failure to pay as provided in this subsection; and
6. The date of issuance of the memorandum.

Notwithstanding any other provision of this chapter, or any other provision of law requiring documents to be recorded in the deed books of the clerk's office of any court, from July 1, 1981, all memoranda of liens arising under this subsection shall be recorded in the deed books in such clerk's office. Any such memorandum shall be indexed in the general index to deeds, and such general index shall identify the lien as a lien for time-share estate regular or special assessments or maintenance fees.

It shall be the duty of the clerk in whose office such memorandum shall be filed as provided herein to record and index the same as provided in this subsection, in the names of the persons identified therein as well as in the name of the time-share estates owners' association. The cost of recording such memorandum shall be taxed against the owner of the time-share on which the lien is placed. The filing

with the clerk of one memorandum on which is listed two or more delinquent time-share estate unit owners is permitted in order to perfect the lien hereby allowed and the cost of filing in this event shall be the clerk's fee as prescribed in subdivision A. 2. of § 17.1-275.

The lien perfected under this subsection may be foreclosed upon by the association in the same manner as a deed of trust is foreclosed upon by a trustee, provided that the foreclosure occurs within five years from the perfection and is conducted pursuant to §§ ~~55-59, 55-59.1 through 55-59.4, and 55-60.~~

*D. At any time after perfecting the lien pursuant to this section, the association may sell the time-share estate at public sale, subject to prior liens. For purposes of this section, the association shall have the power both to sell and convey the time-share estate, and shall be deemed the time-share estate owner's statutory agent for the purpose of transferring title to the time-share estate. A nonjudicial foreclosure sale shall be conducted by a trustee and in accordance with the following:*

*1. The association shall give notice to the time-share estate owner, prior to advertisement, as required by subdivision 4. The notice shall specify (i) the debt secured by the perfected lien; (ii) the action required to satisfy the debt secured by the perfected lien; (iii) the date, not less than 60 days from the date the notice is given to the time-share estate owner, by which the debt secured by the lien must be satisfied; and (iv) that failure to satisfy the debt secured by the lien on or before the date specified in the notice may result in the sale of the time-share estate. The notice shall further inform the time-share estate owner of the right to bring a court action in the circuit court of the county or city where the time-share project is located to assert the nonexistence of a debt or any other defenses of the time-share estate owner to the sale.*

*2. After expiration of the 60-day notice period provided in subdivision 1, the association may appoint a trustee to conduct the sale. The appointment of the trustee shall be filed in the clerk's office of the circuit court in the county or city in which the time-share project is located. It shall be the duty of the clerk in whose office such appointment is filed to record and index the same, as provided in this subsection, in the names of the persons identified therein as well as in the name of the association. The association, at its option, may from time to time remove the trustee and appoint a successor trustee.*

*3. If the time-share estate owner meets the conditions specified in this subdivision prior to the date of the foreclosure sale, the time-share estate owner shall have the right to have enforcement of the perfected lien discontinued prior to the sale of the time-share estate. Such conditions are that the time-share estate owner: (i) satisfy the debt secured by lien that is the subject of the nonjudicial foreclosure sale and (ii) pay all expenses and costs incurred in perfecting and enforcing the lien, including but not limited to advertising costs and reasonable attorney fees.*

*4. In addition to the advertisement required by subdivision 5, the association shall give written notice of the time, date, and place of any proposed sale in execution of the lien, including the name, address, and telephone number of the trustee, by personal delivery or by mail to (i) the present owner of the time-share estate to be sold at his last known address as such owner and address appear in the records of the association, (ii) any lienholder who holds a note against the time-share estate secured by a deed of trust recorded at least 30 days prior to the proposed sale and whose address is recorded with the deed of trust, and (iii) any assignee of such a note secured by a deed of trust provided the assignment and address of the assignee are likewise recorded at least 30 days prior to the proposed sale. Mailing a copy of the advertisement or the notice containing the same information to the owner by certified or registered mail no less than 14 days prior to such sale and to the lienholders and their assigns, at the addresses noted in the memorandum of lien, by ordinary mail no less than 14 days prior to such sale shall be a sufficient compliance with the requirement of notice.*

*5. The advertisement of sale by the association shall be in a newspaper having a general circulation in the city or county wherein the time-share estate to be sold and the time-share project, or any portion thereof, lies pursuant to the following provisions:*

*a. The association shall advertise once a week for four successive weeks; however, if the time-share estate and the time-share project or some portion thereof is located in a city or in a county immediately contiguous to a city, publication of the advertisement five different days, which may be consecutive days, shall be deemed adequate. The sale shall be held on any day following the day of the last advertisement that is no earlier than eight days following the first advertisement nor more than 30 days following the last advertisement.*

*b. Such advertisement shall be placed in that section of the newspaper where legal notices appear or where the type of time-share estate being sold is generally advertised for sale. The advertisement of sale, in addition to such other matters as the association finds appropriate, shall set forth a description of the time-share estate to be sold, which description need not be as extensive as that contained in the deed of trust, but shall identify the time-share project by street address, if any, or, if none, shall give the general location of such time-share project with reference to streets, routes, or known landmarks with further identification of the time-share estate to be sold. Where available, tax map identification may be used but is not required. The advertisement shall also include the date, time, place, and terms of sale and the name of the association. It shall set forth the name, address, and telephone number of the representative, agent, or attorney who may be able to respond to inquiries concerning the sale.*

*c. In addition to the advertisement required by subdivisions 5 a and 5 b, the association may give such other further and different advertisement as the association finds appropriate.*

*6. In the event of postponement of the sale, which postponement shall be at the discretion of the association, advertisement of the postponed sale shall be in the same manner as the original advertisement of sale.*

*7. Failure to comply with the requirements for advertisement contained in this section shall, upon petition, render a sale of the property voidable by the court. Such petition shall be filed within 60 days of the sale or the right to do so shall lapse.*

*8. In the event of a sale, the association shall have the following powers and duties:*

*a. The association may sell two or more time-share estates at the sale. Written one-price bids may be made and shall be received by the trustee from the association or any person for entry by announcement at the sale. Any person other than the trustee may bid at the foreclosure sale, including a person who has submitted a written one-price bid. Upon request to the trustee, any other bidder in attendance at a foreclosure sale shall be permitted to inspect written bids. Unless otherwise provided in the time-share instrument, the association may bid to purchase the time-share estate at a foreclosure sale. The association may own, lease, encumber, exchange, sell, or convey the time-share estate. Whenever the written bid of the association is the highest bid submitted at the sale, such written bid shall be filed by the trustee with his account of sale required under subdivision D 10 of this section and § 26-15. The written bid submitted pursuant to this subsection may be prepared by the association, its agent or attorney.*

*b. The association may require of any bidder at any sale a cash deposit of as much as 33.33% of the sale price before his bid is received, which shall be refunded to him if the time-share estate is not sold to him through action of the trustee. The deposit of the successful bidder shall be applied to his credit at settlement, or if such bidder fails to complete his purchase promptly, the deposit shall be applied to pay the costs and expenses of the sale, and the balance, if any, shall be retained by the association in connection with that sale.*

*c. The association shall receive and receipt for the proceeds of sale, no purchaser being required to see to the application of the proceeds, and apply the same in the following order: first, to the reasonable expenses of sale, including reasonable attorney fees; second, to the satisfaction of all taxes, levies, and assessments, with costs and interest; third, to the satisfaction of the lien for the time-share estate owners' assessments; forth, to the satisfaction in the order of priority of any remaining inferior claims of record; and fifth, to pay the residue of the proceeds to the time-share estate owner or his assigns; provided, however, that the association as to such residue shall not be bound by any inheritance, devise, conveyance, assignment or lien of or upon the unit owner's equity, without actual notice thereof prior to distribution.*

*9. The trustee shall deliver to the purchaser a trustee's deed conveying the time-share estate with special warranty of title. The trustee shall not be required to take possession of the time-share estate prior to the sale thereof or to deliver possession of the time-share estate to the purchaser at the sale.*

*10. The trustee shall file an accounting of the sale with the commissioner of accounts pursuant to § 26-15 and every account of a sale shall be recorded pursuant to § 26-16. In addition, the accounting shall be made available for inspection and copying pursuant to § 55-370.01 upon the written request of the prior time-share estate owner, current time-share estate owner, or any holder of a recorded lien against the time-share estate at the time of the sale. The association shall maintain a copy of the accounting for at least 12 months following the foreclosure sale.*

*11. If the sale of a time-share estate is made pursuant to this subsection and the accounting is made by the trustee, the title of the purchaser at such sale shall not be disturbed unless within six months from the date of foreclosure, the sale is set aside by the court or an appeal is allowed by the Supreme Court of Virginia, and a decree is therein entered requiring such sale to be set aside.*

When payment or satisfaction is made of a debt secured by the lien perfected by this subsection, such lien shall be released in accordance with the provisions of § 55-66.3. For the purposes of § 55-66.3, any officer of the time-share estate owners' association or its managing agent shall be deemed the duly authorized agent of the lien creditor.

€ E. The commissioner of accounts to whom an account of sale is returned in connection with the foreclosure of either a lien under subsection B C or a purchase money deed of trust taken back by the developer in the sale of a time-share in order to satisfy § 26-15 shall be entitled to a fee, not to exceed forty-five dollars, on each such sale.

Ð F. Any time-share owner within the project having executed a contract for the disposition of the time-share, shall be entitled, upon request, to a recordable statement setting forth the amount of unpaid regular or special assessments or maintenance fees currently levied against that time-share. Such request shall be in writing, directed to the president of the time-share estate owners' association, and delivered to the principal office of the association. Failure of the association to furnish or make available such statement within twenty days from the actual receipt of such written request shall extinguish the lien created by subsection B C as to the time-share involved. Payment of a fee reflecting the reasonable cost of materials and labor, not to exceed the actual cost thereof, may be required as a prerequisite to the

issuance of such a statement.

E. Notwithstanding any provisions of the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) to the contrary:

1. The bylaws of the association may prescribe different quorum requirements for meetings of its members;

2. A director of the association may be removed from the office pursuant to any procedure provided in its articles of incorporation and, if none is provided, may be removed at a meeting called expressly for that purpose, with or without cause, by such vote as would suffice for his election;

3. Books and records of the association shall be made available to members except for use in matters not concerning the membership of the time-share association. The association's membership list and addresses shall not be used for purposes of commercial solicitation.

F. Subject to the provisions of subdivision 3 of subsection E, all books and records kept by or on behalf of the association shall be available for examination and copying by a member in good standing or his authorized agent. This right of examination shall exist without reference to the duration of membership and may be exercised only during reasonable business hours or at a mutually convenient time and location and upon five days' written notice.

Books and records kept by or on behalf of an association may be withheld from inspection to the extent that they concern:

1. Personnel records;
2. An individual's medical records;
3. Records relating to business transactions that are currently in negotiation;
4. Privileged communications with legal counsel;
5. Complaints against an individual member of the association;
6. Agreements containing confidentiality requirements;
7. Pending litigation;
8. Disclosure of information in violation of law; or

9. Meeting minutes or other records of an executive session of the board of directors held in accordance with subsection G.

The association may impose and collect a charge, reflecting the actual costs of materials and labor, prior to providing copies of any books and records to a member in good standing under this section.

G. Meetings of the board of directors shall be open to all members of record who are eligible to vote and who are in good standing. Minutes shall be recorded and shall be available as provided in subdivision 3 of subsection F. The board of directors may convene in closed session to consider personnel matters; consult with legal counsel; discuss and consider contracts, potential or pending litigation and matters involving violations of the time-share instrument or rules and regulations adopted pursuant thereto for which a member, his family members, tenants, guests or other invitees are responsible; or discuss and consider the personal liability of members to the association upon the affirmative vote in open meeting to assemble in closed session. The motion shall state specifically the purpose for the closed session. Reference to the motion and the stated purpose for the closed session shall be included in the minutes. The board of directors shall restrict the consideration of matters during the closed portions of meetings only to those purposes specifically exempted and stated in the motion. No contract, motion or other action adopted, passed or agreed to in closed session shall become effective unless the board of directors, following the closed session, reconvenes in open meeting and takes a vote on such contract, motion or other action which shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law.

H. The developer may provide that it not be obligated to pay all or a portion of any assessment, dues, or other charges of the association, however denominated, passed or adopted, pursuant to subsection A, if such developer so provides, in bold type, in the time-share instrument for the time-share estate project. If no such provision exists, the developer shall be responsible to pay the same assessment, dues, or other charges that a time-share estate owner is obligated to pay for each of its unsold time-shares existing at the end of the fiscal year of the association and no more if the board of directors of the association so determines. In no event shall either a time-share expense or the dues, assessment, or charges of the association discriminate against the developer.

*§ 55-370.01. Time-share owners' association books and records; meetings.*

A. Subject to the provisions of subsection B, all books and records, or copies thereof, kept by or on behalf of the association shall be maintained so that such books and records, or portions thereof, are reasonably available for inspection after written request by a member in good standing or his authorized agent. The association may charge such member or his agent a reasonable fee for copying the requested information. No books or records shall be removed from their location by the examining member or his agent. The right of inspection shall exist without reference to the duration of membership and may be exercised only during reasonable business hours and at a mutually convenient time and location, under the supervision of the custodian, and upon 15 days' written notice.

For purposes of this subsection, the requested books and records shall be considered "reasonably

available" if copies thereof are delivered to the requesting member or his agent within seven business days of the date the association receives the written request. However, the requesting member or his agent shall be permitted to inspect the books and records wherever located at any reasonable time, under reasonable conditions, and under the supervision of the custodian of the records. The custodian shall supply copies of the records where requested and upon payment of the copying fee.

The association shall provide members of the association with the location of the books and records, along with the name and address of the custodian, by any reasonable method, which may include posting in a reasonable location at the situs of the time-share project or in the annual report required by § 55-370.1.

B. Books and records kept by or on behalf of an association may be withheld from inspection to the extent that they concern:

1. Personnel records;
2. An individual's medical records;
3. Records relating to business transactions that are currently in negotiation;
4. Privileged communications with legal counsel;
5. Complaints against an individual member of the association;
6. Agreements containing confidentiality requirements;
7. Pending litigation;
8. The name, address, phone number, electronic mail address, or other personal information of time-share owners or members of the association, unless such owner or member first approves of the disclosure in writing;
9. Disclosure of information in violation of law; or
10. Meeting minutes or other records of an executive session of the board of directors held in accordance with subsection D.

The association shall be under no obligation to provide requested records to the extent that they are matters of public record or are otherwise readily obtainable from another source.

C. The association shall maintain among its records a complete, up-to-date list of the names and addresses of all current members in good standing who are owners of time-share estates in the time-share project. The association shall not publish such list or provide a copy of it to any time-share owner or to any third party except the board of directors or the developer. However, the association shall mail to those persons listed on the list materials provided by any member in good standing, upon written request of that member, if the purpose of the mailing is to advance legitimate association business. The use of any proxies solicited in this manner must comply with the provisions of the time-share instrument and this chapter. A mailing requested for the purpose of advancing legitimate association business shall occur within 45 days after receipt of a request from a member in good standing. The board of directors of the association shall be responsible for determining the appropriateness of any mailing requested pursuant to this subsection whose decision in this regard shall be final. The association shall be paid in advance for the association's actual costs in performing the mailing, including but not limited to postage, supplies, reasonable labor, and attorney fees.

D. Meetings of the board of directors shall be open to all members of record who are eligible to vote and who are in good standing. Minutes shall be recorded and shall be available as provided in subsection A. The board of directors may convene in closed session to consider personnel matters; consult with legal counsel; discuss and consider contracts, potential or pending litigation, and matters involving violations of the time-share instrument or rules and regulations adopted pursuant thereto for which a member, his family members, tenants, guests, or other invitees are responsible; or discuss and consider the personal liability of members to the association upon the affirmative vote in open meeting to assemble in closed session. The motion shall state specifically the purpose for the closed session. Reference to the motion and the stated purpose for the closed session shall be included in the minutes. The board of directors shall restrict the consideration of matters during the closed portions of meetings only to those purposes specifically exempted and stated in the motion. No contract, motion, or other action adopted, passed, or agreed to in closed session shall become effective unless the board of directors, following the closed session, reconvenes in open meeting and takes a vote on such contract, motion, or other action, which shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law.

E. Notwithstanding any provisions of the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) to the contrary:

1. The bylaws of the association may prescribe different quorum requirements for meetings of its members;
2. A director of the association may be removed from the office pursuant to any procedure provided in its articles of incorporation and, if none is provided, may be removed at a meeting called expressly for that purpose, with or without cause, by such vote as would suffice for his election.

§ 55-373. Termination of certain time-shares.

A. This section applies to all time-share estate programs and, when provided by the time-share instrument, to time-share use programs.

B. *A time-share project may be terminated in whole by the developer at any time and for any reason if such developer is the sole owner of all time-shares within the time-share project. Such termination shall be accomplished by the developer executing and recording a termination document where the time-share instrument is recorded.* Time-shares subject to this section *also* may be terminated ~~only~~ by written agreement of the time-share owners having at least fifty-one percent of the time-shares, or by such larger percentage as may otherwise be provided in the time-share instrument. The termination agreement shall specify a date upon which it shall become void, unless it is recorded before that date in the clerk's office of the appropriate court where the time-share project is located.

C. If the termination agreement sets forth the material terms of a contract or proposed contract under which an estate or interest in each time-share unit equal to the sum of the time-shares therein is to be sold and designates a trustee to effect the sale, the termination agreement becomes effective upon recordation, and title to that estate or interest vests upon termination in the trustee for the benefit of the time-share owners, to be transferred pursuant to the contract. If the termination agreement does not set forth the material terms of a contract or proposed contract under which an estate or interest in each time-share unit equal to the sum of the time-shares therein is to be sold and designates a trustee to effect the sale, the termination agreement becomes effective upon recordation, and title to an estate or interest in each time-share unit equal to the sum of the time-shares therein vests upon termination in the time-share owners thereof in proportion to their respective interests as provided in subsection F, and liens on the time-shares shall accordingly encumber those interests; and in this instance, any co-owner of that estate or interest may thereafter maintain an action for partition or for allotment or sale in lieu of partition pursuant to the laws of ~~this~~ *the* Commonwealth.

D. Except as otherwise specified in the termination agreement, so long as the former time-share owners or their trustee holds title to the estate or interest equal to the sum of the time-shares, each former time-share owner and his successor in interest have the same rights with respect to the use, enjoyment and occupancy in the former time-share unit that he would have had if termination had not occurred, together with the same liabilities and other obligations imposed by this act or the time-share instrument.

E. After termination of all time-shares in a time-share project and adequate provision for payment of the claims of the creditors for time-share expenses, distribution shall be made, in proportion to their respective interests as provided in subsection F, to the former time-share owners and their successors in interest of (i) the proceeds of any sale pursuant to this section, (ii) the proceeds of any personalty held for the use and benefit of the former time-share owners, and (iii) any other funds held for the use and benefit of the former time-share owners.

F. The time-share instrument may specify the respective fractional or percentage interest in the estate or interest in each unit equal to the sum of the time-share therein that will be owned by each former time-share owner. Otherwise, not more than 180 days prior to the termination, an appraisal shall be made of the fair market value of each time-share by 1 or more impartial qualified appraisers selected either by the trustee designated in the termination agreement, or by the managing entity if no trustee was so designated. The appraisal shall also state the corresponding fractional or percentage interests calculated in proportion to those values and in accordance with this subsection. A notice stating all of those values and corresponding interests and the return address of the sender shall be sent by certified or registered mail, by the managing entity or the trustee designated in the termination agreements, to all of the time-share owners. The appraisal governs the magnitude of each interest unless (i) at least twenty-five percent of the time-share owners deliver, within sixty days after the date the notices were mailed, written disapprovals to the return address of the sender of the notice, or (ii) the final judgment of a court of competent jurisdiction, entered during or after that period, holds that the appraisal should be set aside. The appraisal and the calculation of interests must be made in accordance with the following:

1. If the termination agreement sets forth the material terms of a contract or proposed contract for the sale of the estate or interests equal to the sum of the time-shares, each time-share conferring a right of occupancy during a limited number of time periods must be appraised as if the time until the date specified for the conveyance of the property had already elapsed. Otherwise, each time-share of that kind must be appraised as if the time until the date specified pursuant to subsection B had already elapsed.

2. The interest of each time-share owner is the value of the time-share he owned divided by the sum of the values of all time-shares in the unit or units to which his time-share applies.

G. Foreclosure or enforcement of a lien or encumbrance against all of the time-shares in a time-share project does not of itself terminate those time-shares.

§ 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 *material* 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 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;~~

~~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 g. 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 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 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 that the developer provides or expense it pays and 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 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 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 60 days of such 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~~ *the* 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 *material* 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, *if any*.

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.

§ 55-374.1. Certain advertising practices regulated.

A. Any offering which includes a gift or prize must disclose therein, with the same prominence as such offer:

1. The retail value of each gift or prize;
2. The approximate odds against any given person obtaining each gift or prize if all persons to whom the advertisement is disseminated do what is necessary to qualify for the award of the gift or prize;
3. If the number of gifts or prizes to be awarded is limited, a statement of the number of gifts or prizes to be awarded or in lieu thereof, the nature of such limitation;
4. All rules, terms, requirements, and conditions which must be fulfilled before a prospective purchaser may claim any gift or prize, including whether the prospective purchaser is required to attend a sales presentation in order to receive the gift or prize;
5. The date upon which the offer expires; and
6. A statement to the effect that the offer is being made for the purpose of soliciting the purchase of a time-share, time-share interest, interval ownership, interval ownership interest, vacation ownership, vacation ownership interest or product, as appropriate.

B. Any gift or prize offered in connection with an offering shall be delivered to the prospective purchaser no later than the day the purchaser attends a sales presentation, if required, and if not, on the day the purchaser appears to claim it, whether or not he purchases a time-share. In the event the supply of gifts or prizes is exhausted at the time required for delivery, the developer shall give the prospective purchaser a written, unconditional promise to deliver such gift or prize no later than thirty days from the date required for delivery. If such gift or prize is not obtainable, the developer shall deliver an item of equal or greater value.

C. The offering *or sale* of any product registered with the Board is exempt from the Virginia Travel Club Act (§ 59.1-445 et seq.), the Virginia Condominium Act (§ 55-79.39 et seq.), the Virginia Securities Act (§ 13.1-501 et seq.), the Virginia Home Solicitation Sales Act (§ 59.1-21.1 et seq.) ~~and~~, the Subdivided Land Sales Act (§ 55-336 et seq.), *and the Wet Settlement Act (§ 6.1-2.10 et seq.)*. If any provision of this section is in conflict with the provisions in the Prizes and Gifts Act (§ 59.1-415 et seq.), the provisions of the Prizes and Gifts Act shall control.

§ 55-375. Escrow of deposits.

A. Any deposit made in connection with the purchase or reservation of a product shall be held in escrow. All cash deposits shall be held in a separate bank account labeled and designated solely for that purpose.

Such escrow account shall be insured by an instrumentality of the federal government and located in Virginia. All deposits shall be held in escrow until (i) delivered to the developer upon expiration of the purchaser's cancellation period provided the purchaser's right of cancellation has not been exercised, (ii) delivered to the developer because of the purchaser's default under a contract to purchase a time-share, or (iii) refunded to the purchaser. Failure to establish escrow accounts or to make the deposits as required by this section is prima facie evidence of willful violation of this section.

B. The developer shall disclose in the contract or in the public offering that the deposit may not be held in escrow after expiration of the cancellation period and that such deposit is not protected as an escrow after expiration of the cancellation period. This disclosure shall include a statement of whether or not the developer reserves the option to sell or assign any promissory note given by a purchaser to

another entity, whether or not such entity is affiliated with the developer. Both disclosures shall appear in boldfaced type of a minimum size of ten points.

C. There shall be posted a fidelity bond, written so as to protect all deposits escrowed pursuant to subsection A, in favor of the time-share purchasers. The bond shall be in an amount equal to the total of the deposits in escrow at any given time or \$25,000, whichever is greater. Such bond shall be filed with the Real Estate Board and shall be maintained for so long as the developer offers time-shares in the project. The bond shall be with a surety company authorized to do business in Virginia filed with the Real Estate Board a bond, letter of credit, or cash for the purpose of protecting all deposits escrowed pursuant to subsection A, in favor of the time-share purchasers. The bond, letter of credit, or cash shall be in an amount equal to the total of the deposits in escrow at any given time or \$25,000, whichever is greater. Such bond, letter of credit, or cash shall be maintained for so long as the developer offers time-shares in the project. The bond shall be with a surety company authorized to do business in Virginia.

*§ 55-376.2. Recording and delivery of deed.*

At such time as the time-share estate purchaser has fulfilled all of his obligations under the contract and is entitled to a deed for his time-share estate, the developer shall file or cause to be filed within 180 days therefrom, with the clerk of the circuit court where the time-share project is located, such deed for recordation. Upon receipt of the recorded deed returned from the clerk's office, the developer shall, within 45 days therefrom, send or cause to be sent the original deed to the time-share estate purchaser.

*§ 55-383. Statute of limitations; actions.*

A. A judicial proceeding where the accuracy of the public offering statement or validity of any contract of purchase is in issue and a rescission of the contract or damages is sought must be commenced within two years after the date of the contract of purchase, notwithstanding that the purchaser's terms of payments may extend beyond this period of limitation; however, with respect to the enforcement of provisions in the contract of purchase which require the continued furnishing of services and the reciprocal payments to be made by the purchaser, the period of bringing a judicial proceeding will continue for a period of two years for each breach.

B. If a developer has substantially complied in good faith with the provisions of this chapter, a nonmaterial error or omission shall not be actionable. A nonmaterial error or omission shall not be sufficient to permit a purchaser to cancel a contract after the cancellation period provided by § 55-376 has expired.

*§ 55-394.1. Annual report; amendments; termination of registration.*

A. The developer shall file a report in the form prescribed by the Board's regulations by June 30 of each year the registration is effective. The developer of any time-share project initially registered with the Board between January and April June shall not be required to file an annual report for the year in which it was initially registered. The report shall reflect any material changes in information contained in the original application for registration or in the immediately preceding annual report, whichever is later, and shall be accompanied by the appropriate fee established by the Board's regulations or pursuant to § 55-392.1.

B. During the developer control period in a time-share estate program, the developer shall file a copy of the unit owners' association annual report required by § 55-370.1 along with the annual report required by this section.

C. The developer shall amend or supplement its registration with the Board to report any material change in the information required by §§ 55-374 and 55-391.1. Such amendments or supplemental information shall be filed with the Board within twenty business days after the occurrence of the material change.

D. In a time-share estate program, if the annual report indicates that the developer has transferred title to the time-share owners' association and that no further development rights exist, the Board shall issue an order terminating the registration of time-share projects.

E. The Board shall issue an order terminating the registration of a time-share project upon application by the developer in which the developer states that no further development right of the project is anticipated and that the developer has ceased sales of time-shares at the project.