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SENATE BILL NO. 584

Offered January 8, 2020

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A BILL to amend and reenact §§ 55.1-2200, 55.1-2201, 55.1-2217, 55.1-2219, 55.1-2220, 55.1-2238, 55.1-2239, 55.1-2241, 55.1-2242, 55.1-2243, and 55.1-2247 of the Code of Virginia, relating to common interest communities; Virginia Real Estate Time-Share Act.

Patron—Mason

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 55.1-2200, 55.1-2201, 55.1-2217, 55.1-2219, 55.1-2220, 55.1-2238, 55.1-2239, 55.1-2241, 55.1-2242, 55.1-2243, and 55.1-2247 of the Code of Virginia are amended and reenacted as follows:

§ 55.1-2200. Definitions.

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

"Additional land" means all land that a time-share developer has identified as land that may be added to a time-share project.

"Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified.

"Alternative purchase" means anything valued in excess of $100 that is offered to a potential purchaser by the developer during the developer's sales presentation and that is purchased by such potential purchaser for more than $100, even though the purchaser did not purchase a time-share *interest*. An alternative purchase is not a time-share *interest*. 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 (§ 59.1-445 et seq.) and shall include vacation packages, however denominated, and exit programs, however denominated.

"Association" means the association organized under the provisions of § 55.1-2209.

"Board" means the Common Interest Community Board.

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

"Common elements" means the real estate, improvements on such real estate, and the personalty situated within the time-share project that are subject to the time-share program. "Common elements" does not include the *time-share* units and the ~~time-shares~~ *time-share interests*.

~~"Consumer documents" means the aggregate of the following documents: the reverter deed, the note, the deed of trust, and any document that is to be provided to consumers in connection with an offering.~~

"Contact information" means any information that can be used to contact ~~an owner~~ *a person*, including the ~~owner's~~ *person's* name, address, telephone number, email address, or user identity on any electronic networking service.

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

"Conversion time-share project" means a real estate improvement that, prior to the disposition of any time-share *interest*, 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 *interest* and those who occupy with the consent of such purchasers.

"Cost of ownership" means all of the owner's expenses related to a resale time-share due between the date of a resale transfer contract and the transfer of the resale time-share.

"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 that (i) offers to dispose of a

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time-share ~~or its~~ 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" means a period of time during which the developer or a managing agent selected by the developer manages and controls the time-share project and the common elements and units it comprises.

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

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

"Exchange ~~agent" or "exchange~~ company" means a person that exchanges or offers to exchange ~~time-shares~~ *time-share interests* in an exchange program with other ~~time-shares~~ *time-share interests*.

"Exchange program" means any opportunity or procedure for the assignment or exchange of ~~time-shares~~ *time-share interests* 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 by which a time-share owner can exchange his time-share *interest* for another time-share *interest* within either the same time-share *project* or another time-share project owned in part by the developer.

"Guest" means (i) a person who is on the *time-share* project, additional land, or development at the request of an owner, developer, association, or managing agent or (ii) a person otherwise legally entitled to be on ~~such~~ *the time-share* project, additional land, or development. "Guest" includes family members of owners; time-share exchange participants; merchants, purveyors, or vendors; and employees of such merchants, purveyors, and vendors; the developer; or the association.

"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 *interest* and includes 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 *interest* or an exchange program. An incidental benefit shall not be registered with the Board.

"Inherent risks of project activity" means those dangers or conditions that are an integral part of a project activity, including certain hazards, such as surface and subsurface conditions; natural conditions of land, vegetation, and waters; the behavior of wild or domestic animals; and ordinary dangers of structures or equipment ordinarily used in association or time-share *project* operations. "Inherent risks of project activity" also includes the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including failing to follow instructions given by the project professional or failing to exercise reasonable caution while engaging in the project activity.

"Lead dealer" means a person that sells or otherwise provides to any other person contact information concerning five or more owners to be used for a resale service. "Lead dealer" does not mean developers, managing entities, or exchange companies to the extent that such entities are providing other persons with personal contact information about time-share owners in their own time-share ~~plans~~ *programs* or members of their own exchange program.

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

"Managing agent" means a person that 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 that renders inaccurate, incomplete, or misleading any information or document in such a way as to affect substantially a purchaser's rights or obligations, but does 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 that such 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 12 months; (ii) that 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 § 55.1-2213; (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 that, upon its receipt by the developer, it shall be distributed in lieu of all others in order to satisfy § 55.1-2217.

"Note" means the instrument that evidences the debt occasioned by the deferred purchase of a

time-share *interest*.

"Offering" or "offer" means any act that originates in the Commonwealth to sell, solicit, induce, or advertise, whether by radio, television, telephone, newspaper, magazine, or mail, during which a person is given an opportunity to acquire a time-share *interest*.

"Participant" means any person, other than a project professional, that engages in a project activity.

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

"Possibility of reverter" means a provision contained in a reverter deed by which the time-share estate automatically reverts or transfers back to the developer upon satisfaction of the requirements imposed by § 55.1-2222.

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

"Project activity" means any activity carried out or conducted on a common element, within a time-share unit or elsewhere in the *time-share* project, additional land, or development, that allows owners, their guests, and members of the general public to view, observe, participate, or enjoy activities. "Project activity" includes swimming pools, spas, sporting venues, and cultural, historical, or harvest-your-own activities; other amenities and events; or natural activities and attractions for recreational, entertainment, educational, or social purposes. Such activity is a project activity whether or not the participant paid to participate in the activity.

"Project professional" means any person that is engaged in the business of providing one or more project activities, whether or not for compensation. For the purposes of this definition, the developer, association, and managing entity shall each be deemed a project professional.

"Public offering statement" means the statement required by § 55.1-2217.

"Purchaser" means any person other than a developer or lender that owns or acquires a ~~product~~ *time-share or alternative purchase* or that otherwise enters into a contract for the purchase of a ~~product~~ *time-share or alternative purchase*.

~~"Resale cost of ownership" means all of the owner's expenses related to a resale time-share due between the date of a resale transfer contract and the transfer of such resale time-share.~~

"Resale purchase contract" means an agreement negotiated by a reseller by which an owner or a reseller agrees to sell, and a subsequent purchaser agrees to buy, a resale time-share.

"Resale service" means engaging, directly or indirectly, for compensation, in any of the following either in person or by any medium of communication: (i) selling or offering to sell or list for sale for the owner a resale time-share, (ii) buying or offering to buy a resale time-share for transfer to a subsequent purchaser, (iii) transferring a resale time-share acquired from an owner to a subsequent purchaser or offering to assist in such transfer, (iv) invalidating or offering to invalidate for ~~an~~ *a time-share* owner the title of a resale time-share, or (v) advertising or soliciting to advertise or promote the transfer or invalidation of a resale time-share. Resale service does not include an individual's selling or offering to sell his own time-share unit.

"Resale time-share" means a time-share *interest*, wherever located, that has previously been sold to ~~an~~ *a time-share* owner who is a natural person for personal, family, or household use and that is transferred, or is intended to be transferred, through a resale service.

"Resale transfer contract" means an agreement between a reseller and the *time-share* owner by which the reseller agrees to transfer or assist in the transfer of the *time-share* owner's resale time-share.

"Reseller" means any person who, directly or indirectly, engages in a resale service.

"Reverter deed" means the deed from a 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.

"Subsequent purchaser" means the purchaser or transferee of a resale time-share.

"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 *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, coupled with a freehold estate or an estate for years in ~~a~~ *one or more* time-share ~~project~~ *units* or a specified portion of such time-share ~~project~~ *units*.

"Time-share estate occupancy expense" means all costs and expenses incurred in (i) the formation, organization, operation, and administration, including capital contributions thereto, of the association and both its board of directors and its members and (ii) all *time-share* owners' use and occupancy of the time-share estate project, including without limitation its completed and occupied time-share estate units and common elements available for use. Such costs and expenses include maintenance and housekeeping charges; repairs; refurbishing costs; insurance premiums, including the premium for comprehensive

general liability insurance required by subdivision 8 of § 55.1-2209; taxes; properly allocated labor, operational, and overhead costs; general and administrative expenses; the managing agent's fee; utility charges and deposits; the cost of periodic repair and replacement of walls and window treatments and furnishings, including furniture and appliances; filing fees and annual registration charges of the State Corporation Commission and the Board; attorney fees and accountant charges; and reserves for any of the foregoing.

"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" or "project instrument" means any document, however denominated, that creates the time-share project and program and that may contain restrictions or covenants regulating the use, occupancy, or disposition of ~~time-shares~~ *time-share interests* in a project.

"Time-share interest" means the interest acquired by a purchaser in a time-share.

"Time-share owner" or "owner" means a person that is an owner or co-owner of a time-share *interest* other than as security for an obligation.

"Time-share program" or "program" means any arrangement of ~~time-shares~~ *time-share interests* in one or more time-share projects by which 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~~ *time-share interests* 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" or "project" means all of the real property subject to a time-share program created by the execution of a time-share instrument.

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

"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 of such time-share project. ~~"Time-share use" does not mean a right to use that 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.~~

"Transfer" means a voluntary conveyance of a resale time-share to a person other than the developer, association, or managing entity of the time-share program of which the resale time-share is a part or to a person taking ownership by gift, foreclosure, or deed in lieu of foreclosure.

§ 55.1-2201. Applicability.

A. This chapter shall have exclusive jurisdiction and shall apply to any product offering or disposition made within the Commonwealth after July 1, 1985, in a time-share project located within the Commonwealth. Sections 55.1-2200, 55.1-2201, 55.1-2202, 55.1-2203, 55.1-2204, 55.1-2206, 55.1-2210, 55.1-2211, 55.1-2213, 55.1-2215, 55.1-2216, 55.1-2220, 55.1-2227, 55.1-2229, 55.1-2230, 55.1-2232, 55.1-2233, 55.1-2237, and 55.1-2252 shall apply to a time-share project within the Commonwealth that was created prior to July 1, 1985.

B. This chapter shall not affect rights or obligations created by preexisting provisions of any time-share instrument that transfers an estate or interest in real property.

C. This chapter shall apply to any product offering or disposition in a time-share project located outside the Commonwealth and offered for sale in the Commonwealth with the exception that Articles 2 (§ 55.1-2207 et seq.), 3 (§ 55.1-2217 et seq.), and 4 (§ 55.1-2235 et seq.) shall apply only to the extent permitted by the laws of the situs.

D. This chapter shall apply to any product offering or disposition in a time-share program, and offered for sale in the Commonwealth, created under a situs time-sharing law in which the time-share interests in the time-share program are either direct or indirect beneficial interests in a trust created pursuant to the situs time-sharing law or other applicable law of the situs.

§ 55.1-2217. Public offering statement.

A. Prior to the execution of a contract ~~for the purchase of a time-share~~ *to purchase a time-share interest*, the developer shall prepare and distribute to each prospective purchaser a copy of the current public offering statement regarding the time-share *program*. The public offering statement shall (i) fully and accurately disclose the material characteristics of the time-share ~~project~~ *program* registered under this chapter and such time-share *interest* offered and (ii) make known to each prospective purchaser all material circumstances affecting such time-share ~~project~~ *program*. 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 that a given disclosure is applicable:

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~~ *included in the registration*;

c. The particulars of any indictment, conviction, judgment, 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 *sales of* time-share ~~sales~~ *interests*, 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 action 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 action, if any, of significance to any time-share project ~~registered with the Board~~ *included in the registration*; 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~~ *projects included in the time-share program* ~~registered with the Board and~~. *The description shall include the address of each time-share project,* the units, and common elements *for each project* promised available to purchasers, including the developer's estimated schedule of commencement and completion of all promised and incomplete *time-share* units and common elements.

3. As to ~~all time-shares~~ *the time-share interests* offered by the developer:

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

b. The types, duration, and number of units and ~~time-shares~~ *time-share interests* in the ~~project registered with the Board~~ *time-share program*;

c. Identification of *time-share* units that are subject to the time-share program;

d. The estimated number of *time-share* 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 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

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

4. In a time-share estate program, a copy of the annual report or budget required by § 55.1-2213, 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~~ *included in the time-share program,* the copy or exhibit may be in summary form.

5. In a time-share use program where the developer's net worth is no more 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 *interest* 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 *condominium* unit is certified as substantially complete in accordance with § 55.1-1920, a statement of the developer's obligation to complete the *condominium* 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 § 55.1-1921.

11. Any restraints on alienation of any number or portion of any ~~time-shares~~ *time-share interests*.

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 *time-share* units and common elements that the time-share project comprises that have not begun or that have begun but have not yet been 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 *time-share* unit.

15. The name and address of the managing entity for ~~the~~ *each* project *in the time-share program*.

16. Copies of the ~~project~~ *time-share* 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 *time-share* owners, and the projected time-share expense liability attributable to each of those services or expenses for each time-share *interest*.

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 § 55.1-2219 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, the managing entity, or the time-share ~~project~~ *program*;

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 by which 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 *interest* 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 any building in the *time-share* project within the last three years. This information shall be set forth in a tabular manner within the proposed budget of the *time-share* project. If any such building has not been occupied for a period of three years, the information shall be set forth for the period during which such building was 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 *time-share* 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 *time-share* project, the developer shall give at least 90 days' notice to each of the tenants of any building that 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 *interest* from the unit he occupies, but only if such unit is to be retained in the conversion *time-share* 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 *time-share* project. Such notice may also constitute the notice to terminate the tenancy as provided for in § 55.1-1410, except that, despite the provisions of § 55.1-1410, a tenancy from month to month may only be terminated upon 120 days' notice as set forth in this subsection when such termination is in regard to the creation of a conversion *time-share* 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 § 55.1-1410.

The developer of a conversion *time-share* project shall, in addition to the requirements of § 55.1-2239, include with the application for registration a copy of the notice required by this subsection and a certified statement that such notice that 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 any building 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 of such benefits or purchases 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 prepare and distribute a public offering statement for each ~~product~~ *time-share program* offered or one public offering statement for all ~~products~~ *time-share programs* offered.

G. *The developer shall amend the public offering statement to reflect any addition of a time-share project to, or removal of a time-share project from, the existing time-share program.*

H. In the case of a time-share project located outside the Commonwealth, ~~(i) the developer may amend the public offering statement to reflect any additions or deletions of a time-share project to the existing time-share program registered in the Commonwealth and (ii)~~ similar disclosure statements required by other situs laws governing time-sharing may be ~~acceptable alternative disclosure statements~~ *accepted by the Board as alternative disclosure statements to satisfy the requirements of this section.*

~~H.~~ *I.* The public offering statement may be in any format, including any electronic format, provided that the prospective buyer has available for review, along with ample time for any questions and answers, a copy of the public offering statement prior to his execution of a contract.

§ 55.1-2219. Exchange programs.

A. Any exchange company that offers an exchange program in the Commonwealth shall prepare and register with the Board a disclosure document including the following:

1. The name and address of the exchange company;

2. The names and addresses of the top three officers and all directors of the exchange company and, if the exchange company is privately held, all shareholders owning five percent or more interest in the exchange company;

3. Whether the exchange company or any of its officers or directors has any legal or beneficial interest in any developer or managing agent for any time-share program participating in the exchange program and, if so, the name and location of the time-share project and the nature of the interest;

4. Unless the exchange company is also the developer or an affiliate, a statement that the purchaser's contract with the exchange company is a contract separate and distinct from the sales contract;

5. Whether the purchaser's participation in the exchange program is dependent upon the continued affiliation of the time-share ~~project~~ *program* with the exchange program;

6. Whether the purchaser's membership or participation, or both, in the exchange program is voluntary or mandatory;

7. A complete and accurate description of the terms and conditions of the purchaser's contractual relationship with the exchange company and the procedure by which changes in the terms and conditions of the exchange contract may be made;

8. A complete and accurate description of the procedure to qualify for and effectuate exchanges;

9. A complete and accurate description of all limitations, restrictions, or priorities employed in the operation of the exchange program, including limitations on exchanges based on seasonality, *time-share* unit size, or levels of occupancy, expressed in boldface type, and, in the event that such limitations, restrictions, or priorities are not uniformly applied by the exchange program, a clear description of the manner in which they are applied;

10. Whether exchanges are arranged on a space available basis and whether any guarantees of fulfillment of specific requests for exchanges are made by the exchange program;

11. Whether and under what circumstances an owner, in dealing with the exchange company, may lose the use of occupancy of his time-share *interest* in any properly-applied-for exchange, without being provided with substitute accommodations by the exchange company;

12. The fees or range of fees for participation by *time-share* owners in the exchange program, a statement of whether any such fees may be altered by the exchange company, and the circumstances under which alterations may be made;

13. The name and address of the site of each time-share ~~property~~ *project*, accommodation, or facility participating in the exchange program;

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14. The number of *time-share* units in each property participating in the exchange program that are available for occupancy and that qualify for participation in the exchange program, expressed within the following numerical groupings: 1-5, 6-10, 11-20, 21-50, and 51 and over;

15. The number of owners with respect to each time-share program or other property who are eligible to participate in the exchange program, expressed within the numerical groupings 1-100, 101-249, 250-499, 500-999, and 1,000 and over, and a statement of the criteria used to determine those owners currently eligible to participate in the exchange program;

16. The disposition made by the exchange company of ~~time-shares~~ *time-share interests* deposited with the exchange program by owners eligible to participate in the exchange program and not used by the exchange company in effecting exchanges;

17. The following information, which, except as provided in subsection B, shall be independently audited by a certified public accountant or accounting firm in accordance with the standards of the Auditing Standards Board of the American Institute of Certified Public Accountants and reported for each year no later than July 1 of the succeeding year:

a. The number of owners enrolled in the exchange program. Such numbers shall disclose the relationship between the exchange company and owners as being either fee paying or gratuitous in nature;

b. The number of time-share ~~properties~~ *projects*, accommodations, or facilities eligible to participate in the exchange program;

c. The percentage of confirmed exchanges, which shall be the number of exchanges confirmed by the exchange company divided by the number of exchanges properly applied for, together with a complete and accurate statement of the criteria used to determine whether an exchange request was properly applied for;

d. The number of ~~time-shares~~ *time-share interests* for which the exchange company has an outstanding obligation to provide an exchange to an owner who relinquished a time-share during the year in exchange for a time-share in any future year; and

e. The number of exchanges confirmed by the exchange company during the year.

18. A statement in boldface type to the effect that the percentage described in subdivision 17 c is a summary of the exchange requests entered with the exchange company in the period reported and that the percentage does not indicate a purchaser's or owner's probabilities of being confirmed to any specific choice or range of choices, since availability at individual locations may vary.

B. The information required by subsection A shall be accurate as of a date that is no more than 30 days prior to the date on which the information is delivered to the purchaser, except that the information required by subdivisions A 2, 12, 13, 14, 15, and 16 shall be accurate as of December 31 of the preceding year if the information is delivered between July 1 and December 31 of any year; information delivered between January 1 and June 30 of any year shall be accurate as of December 31 of the year prior to the preceding year. At no time shall such information be accurate as of a date that is more than 18 months prior to the date of delivery. As used in this section, "year" means calendar year.

C. In the event that an exchange company offers an exchange program directly to the purchaser, the exchange company shall deliver to such purchaser, simultaneously with such offering and prior to the execution of any contract between the purchaser and the exchange company, the information set forth in subsection A. The requirements of this subsection shall not apply to any renewal of a contract between a purchaser and an exchange company.

D. Each exchange company shall include the statement set forth in subdivision A 18 on all promotional brochures, pamphlets, advertisements, or other materials disseminated by the exchange company that also contain the percentage of confirmed exchanges described in subdivision A 17 c.

E. An exchange company shall, on or before July 1 of each year, file with the Board and the association for the time-share program in which the ~~time-shares~~ *time-share interests* are offered or disposed the information required by this section with respect to the preceding year. If the Board determines that any of the information supplied fails to meet the requirements of this section, the Board may undertake enforcement action against the exchange company in accordance with the provisions of Article 6 (§ 55.1-2247 et seq.). No developer shall have any liability arising out of the use, delivery, or publication by the developer of written information provided to it by the exchange company pursuant to this section. Except for written information provided to the developer by the exchange company, no exchange company shall have any liability with respect to (i) any representation made by the developer relating to the exchange program or exchange company or (ii) the use, delivery, or publication by the developer of any information relating to the exchange program or exchange company. The failure of the exchange company to observe the requirements of this section, or the use by it of any unfair or deceptive act or practice in connection with the operation of the exchange program, shall be a violation of this section.

F. The Board may establish by regulation reasonable fees for registration of the exchange ~~company disclosure document~~ *program*. All fees shall be remitted by the Board to the State Treasurer and shall

be placed to the credit of the Common Interest Community Management Information Fund established pursuant to § 54.1-2354.2.

§ 55.1-2220. Escrow of deposits; use of corporate surety bond or irrevocable letter of credit.

A. Any deposit made in connection with the purchase or reservation of a ~~product~~ *time-share interest* shall be held in escrow. 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 *interest*, or (iii) refunded to the purchaser. Such funds shall be deposited in a separate account designated for this purpose that is federally insured and located in the Commonwealth; except where such deposits are being held by a real estate broker or attorney licensed under the laws of the Commonwealth, such funds may be placed in that broker's or attorney's regular escrow account and need not be placed in a separate designated account. Such escrow funds shall not be subject to attachment by the creditors of either the purchaser or the developer.

B. In lieu of escrowing deposits as provided in subsection A, the developer of a time-share project consisting of more than 25 units may:

1. Obtain and maintain a corporate surety bond issued by a surety authorized to do business in the Commonwealth, in the form and amount set forth in subsection C; or

2. Obtain and maintain an irrevocable letter of credit issued by a financial institution whose accounts are insured by the FDIC, in the form and amount set forth in subsection D.

The surety bond or letter of credit shall be maintained until (i) the expiration of the purchaser's cancellation period, (ii) the purchaser's default under a purchase contract for the time-share estate entitling the developer to retain the deposit, or (iii) the refund of the deposit to the time-share purchaser, whichever occurs first.

C. The surety bond shall be payable to the Commonwealth for the use and benefit of every person protected under the provisions of this chapter. The developer shall file the bond with the Board. The surety bond may be either in the form of an individual bond for each deposit accepted by the developer or, if the total amount of the deposits accepted by the developer under this chapter exceeds $10,000, it may be in the form of a blanket bond. If the bond is a blanket bond, the amount shall be as follows. If the amount of such deposits is:

1. More than $10,000 but not more than $75,000, the blanket bond shall be $75,000;
2. More than $75,000 but less than $200,000, the blanket bond shall be $200,000;
3. $200,000 or more but less than $500,000, the blanket bond shall be $500,000;
4. $500,000 or more but less than $1 million, the blanket bond shall be $1 million; and
5. $1 million or more, the blanket bond shall be 100 percent of the amount of such deposits.

D. The letter of credit shall be payable to the Commonwealth for the use and benefit of every person protected under this chapter. The developer shall file the letter of credit with the Board. The letter of credit may be either in the form of an individual letter of credit for each deposit accepted by the developer or, if the total amount of the deposits accepted by the developer under this chapter exceeds $10,000, it may be in the form of a blanket letter of credit. If the letter of credit is a blanket letter of credit, the amount shall be as follows. If the amount of such deposits is:

1. More than $10,000 but not more than $75,000, the blanket letter of credit shall be $75,000;
2. More than $75,000 but less than $200,000, the blanket letter of credit shall be $200,000;
3. $200,000 or more but less than $500,000, the blanket letter of credit shall be $500,000;
4. $500,000 or more but less than $1 million, the blanket letter of credit shall be $1 million; and
5. $1 million or more, the blanket letter of credit shall be 100 percent of the amount of such deposits.

For the purposes of determining the amount of any blanket letter of credit that a developer maintains in any calendar year, the total amount of deposits considered held by the developer shall be determined as of May 31 in each calendar year and the amount of the letter of credit shall be in accordance with the amount of deposits held as of May 31.

E. The developer shall disclose in the contract or in the public offering that the deposit may not be held in escrow or protected by a surety bond or letter of credit 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 boldface type of a minimum size of 10 points.

§ 55.1-2238. Registration of time-share program required.

A. A developer may not offer or dispose of any interest in a time-share program unless the time-share ~~project and its~~ program ~~have~~ *has* been properly registered with the Board. A developer may accept a nonbinding reservation together with a deposit if the deposit is placed in an escrow account with an institution having trust powers within the Commonwealth and is refundable at any time at the

purchaser's option. In all cases, the reservation shall require a subsequent affirmative act by the purchaser via a separate instrument to create a binding obligation. A developer may not dispose of or transfer a time-share *interest* while an order revoking or suspending the registration of the time-share program is in effect. ~~In the case of a time-share project located outside the Commonwealth and properly registered in the situs, the Board may accept a substitute application for registration.~~

B. The developer shall maintain records of names and addresses of current independent contractors employed by it for ~~time-share~~ sales ~~purposes~~ *of time-share interests*.

§ 55.1-2239. Application for registration.

A. The application for registration shall be filed in a form prescribed by the Board's regulations and shall include the following:

1. An irrevocable appointment to the Board to receive service of process in any proceeding arising under this chapter against the developer or the developer's agent if nonresidents of the Commonwealth;

2. The states or jurisdictions in which an application for registration or similar document has been filed and any adverse order or judgment entered in connection with the time-share ~~project~~ *program* by the regulatory authorities in each jurisdiction or by any court;

3. The applicant's name, address, and the organizational form, including the date and jurisdiction under which the applicant was organized, and the address of its principal office and each of its sales offices in the Commonwealth;

4. The name, address, and principal occupation for the past five years of every officer of the applicant or person occupying a similar status or performing similar functions and the extent and nature of his interest in the applicant or the time-share ~~project~~ *program* as of a specified date within 30 days of the filing of the application;

5. A statement, in a form acceptable to the Board, of the condition of the title to ~~the~~ *each* time-share project *included in the time-share program*, including encumbrances as of a specified date within 30 days of the date of application, by a title opinion of a licensed attorney not a salaried employee, officer, or director of the applicant or owner, or by other evidence of a title acceptable to the Board;

6. A copy of the instruments that will be delivered to a purchaser ~~to evidence his interest in the time-share~~ and copies of the contracts and other agreements that a purchaser will be required to agree or to sign;

7. A copy of any management agreements, employment contracts, or other contracts or agreements affecting the use, maintenance, or access of all or any part of the time-share ~~project~~ *program*;

8. A statement of the zoning and other governmental regulations affecting the use of ~~the~~ *a* time-share *project in a time-share program*, including the site plans and building permits and their status and any existing tax and existing or proposed special taxes or assessments that affect the time-share *interest*;

9. A narrative description of the promotional plan for the disposition of ~~the time-shares~~ *time-share interests*;

10. The proposed public offering statement and its exhibits;

11. Any bonds required to be posted pursuant to the provisions of this chapter;

12. The time-share *estate* owners' *association* annual report or budget required by § 55.1-2213 to the extent available;

13. A description of ~~each product the developer seeks to register with the Board~~ *the time-share program being submitted for registration*; and

14. Any other information that the Board believes necessary to assure full and fair disclosure.

B. The developer shall immediately report to the Board any material changes in the information contained in an application for registration.

C. Nothing shall prevent a developer from ~~registering with the Board~~ *including in the registration* a time-share project where construction is yet to begin or, if construction has begun, where construction is not yet complete.

§ 55.1-2241. Receipt of application; effectiveness of registration.

A. Upon receipt of the application for registration in proper form, the Board, within five business days, shall issue a notice of filing to the applicant. Within 20 days after receipt of the application, the Board shall review the application to determine whether the application and supporting documents satisfy the requirements of this chapter and the Board's regulations. Within 60 days from the date of the notice of filing, the Board shall enter an order registering or rejecting the application. If no order of rejection is entered within 60 days from the date of the notice of filing, the time-share ~~project~~ *program* shall be deemed registered unless the applicant has consented in writing to a delay.

B. If the Board determines after review of the application and documents provided by the applicant that the requirements of § 55.1-2239 have been met, it shall issue an order registering the time-share ~~project~~ *program* and shall designate the form of the public offering statement.

C. If the Board determines that any of the requirements of § 55.1-2239 have not been met, the Board shall notify the applicant that the application for registration shall be corrected in the particulars specified within 20 days. If the requirements are not met within the time allowed, the Board shall enter

an order rejecting the registration, which shall include the findings of fact upon which the order is based. The order rejecting the registration shall become effective 20 days after issuance. During this 20-day period, the applicant may petition for reconsideration and shall be entitled to a hearing or to correct the particulars specified in the Board's notice. Such order of rejection shall not take effect, in any event, until such time as the hearing, if requested, is given to the applicant.

§ 55.1-2242. Annual report; amendments.

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~~ *program* initially registered with the Board between January and 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 § 55.1-2240.

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 § 55.1-2213 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 §§ 55.1-2217 and 55.1-2239. Such amendments or supplemental information shall be filed with the Board within 20 business days after the occurrence of the material change.

§ 55.1-2243. Termination of registration.

A. 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 the time-share ~~project~~ *program*.

B. The Board shall issue an order terminating the registration of a time-share ~~project~~ *program* 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~~ *time-share interests in* the ~~project~~ *time-share program*.

C. Notwithstanding any other provisions of this chapter, the Board may administratively terminate the registration of a time-share ~~project~~ *program* if:

1. The developer has not filed an annual report in accordance with § 55.1-2242 for three or more consecutive years; or

2. The developer's registration with the State Corporation Commission, if applicable, has not been active for five or more consecutive years.

§ 55.1-2247. General powers and duties of Board.

A. The Board may adopt, amend, and repeal rules and regulations and issue orders consistent with and in furtherance of the objectives of this chapter. The Board may prescribe forms and procedures for submitting information to the Board.

B. The Board may accept grants in aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions, in furtherance of the objectives of this chapter.

C. The Board may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices and may develop information that may be useful in the discharge of the Board's duties.

D. 1. The Board may issue an order requiring the developer or reseller to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the Board will carry out the purposes of this chapter if it determines after legal notice and opportunity for hearing that a developer or reseller or an agent of a developer or reseller has:

a. Made any representation in any document or information filed with the Board that is false or misleading;

b. Engaged or is engaging in any unlawful act or practice;

c. Disseminated or caused to be disseminated orally, or in writing, any false or misleading promotional materials in connection with a time-share program;

d. Concealed, diverted, or disposed of any funds or assets of any person in a manner impairing rights of purchasers of ~~time-shares~~ *time-share interests* in the time-share program;

e. Failed to perform any stipulation or agreement made to induce the Board to issue an order relating to that time-share program;

f. Otherwise violated any provision of this chapter or any of the Board's rules and regulations or orders; or

g. Disposed of any time-share *interests* in a ~~project~~ *time-share program* without first complying with

the requirements of this chapter.

2. If the Board makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, as prescribed in subdivision 1, it may issue a temporary order to cease and desist or to take such affirmative action as may be deemed appropriate by the agency. Prior to issuing the temporary order, the Board shall give notice of the proposal to issue a temporary order to the developer or the reseller. Every temporary order shall include in its terms:

a. A provision clearly stating the reasons for issuing such order and the nature and extent of the facts and findings on which the order is based;

b. A provision that a failure to comply with such temporary order will be a violation of this chapter; and

c. A provision that upon request a hearing will be held promptly to determine whether or not the order shall become permanent.

The Board shall not issue more than one temporary order with reference to such finding of fact as prescribed in this subsection.

E. The Board may also issue a cease and desist order if the developer has not registered the time-share program as required by this chapter or if a reseller has not registered as required by this chapter.

F. The Board, after notice and hearing, may issue an order revoking the registration of the developer's time-share program or the registration of a reseller upon determination that such developer, reseller, or agent of such developer or reseller has failed to comply with a cease and desist order issued by the Board affecting the developer's time-share program or the reseller.

G. If it appears that any person has engaged, is engaging, or is about to engage in any act or practice in violation of this chapter or any of the Board's rules, regulations, or orders applicable to this chapter, the Board, without prior administrative proceedings, may bring an action in the circuit court of the county or city in which any portion of the time-share project is located to enjoin that act or practice or for other appropriate relief. The Board is not required to post a bond or prove that no adequate remedy at law exists.

H. Upon request of a time-share owner, the Board shall, in accordance with subsection B of § 55.1-2230, issue its determination whether compliance with § 55.1-2220 or 55.1-2234 has occurred.