

981548112

HOUSE BILL NO. 1105

Offered January 26, 1998

A BILL to amend and reenact §§ 55-362, 55-366 through 55-371, 55-374 through 55-376, 55-380, 55-382, 55-386, 55-389, 55-391.1, 55-392.1, 55-394.1 and 55-396 of the Code of Virginia, relating to the Virginia Real Estate Time-Share Act.

Patron—Almand

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-362, 55-366 through 55-371, 55-374 through 55-376, 55-380, 55-382, 55-386, 55-389, 55-391.1, 55-392.1, 55-394.1 and 55-396 of the Code of Virginia are amended and reenacted as follows:

§ 55-362. Definitions.

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

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

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

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

"Board" means the Real Estate Board, an agency within the meaning of the Administrative Process Act (§ 9-6.14:1 et seq.);

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

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

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

"Conversion time-share project" means a ~~time-share project~~ *real estate improvement* which prior to the disposition of any time-share, was wholly or partially occupied by persons *as their permanent residence or on a transient pay-as-you-go basis* other than those who have contracted for the purchase of a time-share and those who occupy with the consent of such purchasers. "Conversion time-share project" includes a real estate improvement occupied as a hotel, apartment, or condominium unit. A campground shall not be considered a "conversion time-share project";

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

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

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

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

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

"Exchange program" means any opportunity or procedure for the assignment or exchange of time-shares among owners in the same or 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 include an opportunity or procedure whereby a

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60 time-share owner can exchange his time-share for another within the same time-share project;

61 "Incidental benefit" means anything valued in excess of \$100 provided by the developer which is
62 acquired by a purchaser upon acquisition of a time-share. An incidental benefit is not a time-share.
63 Incidental benefits include without limitation internal exchange rights, travel insurance, bonus weeks,
64 upgrade entitlements, travel coupons, referral awards, and golf and tennis packages *and shall not be*
65 *registered with the Board;*

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

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

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

73 "Material change" means a change *in any information or document disclosed in or attached to the*
74 *public offering statement* which renders inaccurate, incomplete or misleading any information or
75 document in such a way as to affect substantially a purchaser's rights or obligations, *but shall not*
76 *include a change (i) in the real estate tax assessment or rate, utility charges or deposits, maintenance*
77 *fees, association dues, assessments, special assessments or any recurring time-share expense item; (ii)*
78 *which is an aspect or result of the orderly development of the time-share project in accordance with the*
79 *time-share instrument; (iii) resulting from new, update, or amended information contained in the annual*
80 *report prepared and distributed pursuant to § 55-370.1; (iv) correcting spelling, grammar, omissions or*
81 *other similar errors not affecting the substance of the public offering statement; or (v) occurring in the*
82 *issuance of an exchange company's updated annual report or disclosure document, provided upon its*
83 *receipt by the developer, it shall be distributed in lieu of all others in order to satisfy § 55-374;*

84 "Nondisturbance clause" means *any instrument or portion thereof, executed by the lien holder which*
85 *subordinates the lien or ownership rights of such lien holder to the singular possessory right of each*
86 *purchaser to use the facilities of the time-share project. Unless such nondisturbance clause or*
87 *subordination agreement specifically so provides, the lien holder shall not, by the fact of such*
88 *ownership, assume any of the other obligations of the developer under this chapter or the time-share*
89 *contracts;*

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

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

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

98 "Project" means ~~and shall be synonymous with all of the real property subject to a project instrument~~
99 ~~and containing one or more units the same as the term "time-share project";~~

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

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

104 "Purchaser" means any person other than a developer or lender who owns or acquires a product, or
105 who otherwise enters into a ~~legally binding agreement contract~~ for the purchase of a product *which has*
106 *not been the subject of a previous disposition. A purchaser shall be either a purchaser of a time-share*
107 *or an alternative purchase, as appropriate;*

108 "Situs" means the place outside ~~this~~ *the* Commonwealth where a developer's time-share project is
109 located;

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

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

115 "Time-share estate" means a right to occupy a unit or any of several units during five or more
116 separated time periods over a period of at least five years, including renewal options, coupled with a
117 freehold estate or an estate for years in a time-share project or a specified portion thereof;

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

119 "Time-share expense" means *(i) expenditures, fees, charges, or liabilities (†) incurred with respect to*
120 ~~the time-shares by or on behalf of all time-share owners in one time-share project, and (ii) imposed on~~
121 ~~the time-share units by the time-share owners' association or managing entity, together with any~~

allocations to reserves 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" shall be synonymous with "project instrument"; means any document, however denominated, which creates the time-share project and program, and which may contain restrictions or covenants regulating the use, occupancy, or disposition of time-shares in a project;

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

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

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

"Time-share project" means any real property that is subject to a time-share program for which a developer seeks registration under this chapter all of the real property subject to a time-share program created by the execution of a time-share instrument;

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

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

§ 55-366. Time-sharing permitted.

Time-shares may be created in any unit; Time-sharing shall not be prohibited unless expressly prohibited by the project instruments or local governing laws; but this. This chapter shall not be construed to impose any obligation on the developer or affect the validity of any provisions of any time-share program or any expansion thereof, contract or amendment thereto, or time-share instrument recorded or in existence executed prior to July 1, 1981, notwithstanding the time-share instrument may be recorded after July 1, 1981.

§ 55-367. Instruments.

A. In order to create a time-share program for a time-share estate project, the developer shall execute a time-share instrument prepared and executed in accordance with this chapter and record it in the clerk's office where such time-share project is located. The time-share instrument shall contain the following:

1. The name of the time-share project, which name must include or be followed by a qualifying adjective or term outlined in § 55-364.1;

2. The name of the county or city/locality and the state or situs in which the time-share project is situated;

3. The legal description, street address, or other description sufficient to identify the time-share project;

4. A legally sufficient description of the real estate constituting the time-share project;

5. The A statement of the form of time-share program, i.e., whether it be is a time-share estate or time-share use;

6. Identification of time periods by letter, name, number or combination thereof;

7. Identification of time-shares and where applicable, the method whereby additional time-shares may be created or withdrawn;

8. The formula, fraction, or percentage of the common expenses and any voting rights assigned to each time-share;

9. Any restrictions on the use, occupancy, enjoyment, alteration, or alienation of time-shares;

10. The ownership interest, if any, in personal property available to time-share owners;

11. The program by which the managing entity, if any, will provide for maintenance management of the time-shares project;

12. The period for which units are designated and committed to the time-share program and the property classification of the units at the expiration of such period;

13. Any provision for amending the time-share instrument;

14. A description of the events, including but not limited to condemnation and damage or destruction, upon which the time-share program may or shall be terminated before the expiration of its full term and the consequences of such termination, including but not limited to the manner in which the

time-share project or the proceeds from the disposition thereof shall be held or distributed among owners;

15. A statement of whether or not the developer reserves the right to add to or delete any incidental benefit;

16. A statement of whether or not the developer reserves the right to add to or delete any alternative purchase; and

17. The extent to which a time-share project may be added to or deleted from the time-share program of a developer; and

18. Such other matters as the developer deems appropriate.

B. *In order to create a time-share program for a time-share use project, the developer shall either (i) execute and record a time-share instrument as required by subsection A or (ii) execute a time-share instrument that takes the form of and is a part of the contract which contains the information required by subsection A.*

C. If the ~~time-share instrument~~ developer explicitly reserves the right to develop additional time-shares, the time-share instrument shall also contain the following:

1. A legally sufficient description of all land which may be added to the time-share project which shall be referred to as "additional land";

2. A statement ~~fixing the boundaries of the portions of the additional land and regulating~~ outlining the order in which ~~these portions of the additional land~~ may be subjected to the exercise of each development right, or a statement that no assurances are made in that regard;

3. A statement of the time limit upon which the option to develop shall expire, together with a statement of the circumstances, if any, which will terminate that option prior to the expiration of the specified time limit;

4. A statement of the maximum number of units which may be added to the time-share project, *if known, and if not known, a statement to that effect*; and

5. A statement of the property classification of the additional land if the developer fails to exercise the development rights as reserved in the time-share instrument.

§ 55-368. Time-share instrument for time-share estate project.

In addition to the requirements of § 55-367, the time-share instrument for a time-share estate project shall outline or prescribe reasonable arrangements for the management and operation of the time-share estate program and for the maintenance, repair, and furnishing of units comprising it, which shall include, but need not be limited to, provisions for the following:

1. Creation of an association ~~consisting only of~~, *the members of which shall be* the time-share estate owners. The association ~~shall may~~ be formed pursuant to the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) ~~and~~; *however, the association must shall* be formed prior to the time ~~when the developer conveys the first time-share estate the project and program are registered with the Board.~~ Nothing shall affect the validity of the association, once formed, and the rights applicable to it as granted by this chapter, notwithstanding the time when such association was formed;

2. Payment of costs and expenses of operating the time-share estate program and owning and maintaining the units comprising it;

3. Employment and termination of employment of the managing agent for the project. Any agreement pertaining to the employment of the managing agent and executed during the developer control period shall be voidable by the association at any time after termination of the developer control period for the time-share project, and any provision in such agreement to the contrary is hereby declared to be void;

4. Termination of leases and contracts for goods and services for the time-share estate project, ~~such contracts having been which are~~ entered into during the developer control period. Any such contract shall become voidable at the option of the association upon termination of the developer control period for the entire time-share project, or sooner if the provisions of such *lease or* contract so state;

5. ~~Preparation and dissemination to time-share estate owners of the annual report required by § 55-370.1;~~

6. Adoption of standards and rules of conduct for the use, enjoyment, and occupancy of units by the time-share estate owners;

~~7. 6. Collection of regular assessments, fees or dues, and/or special assessments from time-share estate owners to defray the expenses of management of the time-share project and maintenance of the units comprising it, as well as for the repairs to and replacement of the personalty located in the time-share project owned by the association and used by such owners all time-share expenses;~~

8. 7. Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use and enjoyment of ~~units the project~~ by time-share estate owners, their guests and other users. The costs associated with securing and maintaining such insurance shall be deemed a time-share estate occupancy expense and paid for as prescribed by ~~§ 55-369 a time-share expense.~~ Nothing herein shall be construed to obligate the developer, during the developer control

period, *managing entity* to secure insurance on the conduct of the time-share estate owners, their guests and other users, or the personal effects or property of such owners, guests, and users;

9- 8. Methods for providing compensation or alternate use periods or monetary compensation to a time-share estate owner if his contracted-for unit cannot be made available for the period to which the owner is entitled by schedule or by confirmed reservation;

10- 9. Procedures for imposing a monetary penalty or suspension of a time-share estate owner's rights and privileges in the time-share estate program or time-share project for failure of such owner to comply with provisions of the time-share instrument or the rules and regulations of the association with respect to the use and enjoyment of the units and the time-share project. Under these procedures a time-share estate owner must be given reasonable notice and reasonable opportunity to be heard and explain the charges against him in person or in writing to the board of directors of the association before a decision to impose discipline is rendered; and

11- 10. Employment of attorneys, accountants, and other professional persons as necessary to assist in the management of the time-share estate program and the units comprising it.

§ 55-369. Developer control in time-share estate program.

A. The time-share instrument for a time-share estate program shall provide for a period of time, to be called the "developer control period," during which the developer or a managing agent selected by the developer shall manage and control the time-share estate project and the ~~amenities~~ *common elements* and units, or portions thereof, comprising it. All costs associated with the control, management, and operation of the time-share estate project during the developer control period shall belong to the developer, except for time-share estate occupancy expenses which shall be allocated only to and paid by time-share estate owners other than the developer. "Time-share estate occupancy expenses" means all costs and expenses incurred in ~~such~~ *all* owners' use and occupancy of the time-share estate project including without limitation its completed and occupied time-share estate units, *and* common elements; ~~and amenities~~ available for use. Such expenses include but are not limited to maintenance and housekeeping charges; repairs; refurbishing costs; insurance premiums, including the premium for comprehensive general liability insurance required by subdivision 8 7 of § 55-368; taxes; properly allocated labor, operational, and overhead costs; *managing agent's fee*; utility charges and deposits; and the cost of periodic repair and replacement of wall and window treatments and furnishings, including furniture and appliances. Nothing shall preclude the developer, during the developer control period, from collecting a periodic charge from ~~the~~ *each* time-share estate owner for the payment of the time-share estate occupancy expenses; however, any such funds received and not spent or any other funds received and allocated to the benefit of the association, shall be transferred to the association by the developer at the termination of the developer control period.

B. Fee simple title to the ~~time-share project, excluding the units comprising the time-share estate project~~ *common elements*, shall be transferred to the time-share estate owners' association, free of charge, no later than at such time as the developer either transfers to purchasers legal or equitable ownership of at least ninety percent of the time-share estates or completes all of the ~~amenities~~ *common elements* and facilities comprising the time-share estate project, whichever occurs later. The developer may, but shall not be required to, make such transfer when the period has ended for a phase or portion of the time-share estate project. The transfer herein required of the developer shall not exonerate it from the responsibility of completion of the ~~amenities and facilities~~ *promised and incomplete common elements* once the transfer occurs. Upon transfer of the time-share project or portion to the association, the developer control period for such project or portion thereof shall terminate.

§ 55-370. Time-share estate owners' association control liens; books and records; meetings.

A. Upon the termination of the developer control period described in § 55-369, the board of directors of the time-share estate owners' association shall have the authority to ~~pass~~ *adopt regular annual assessments and to levy periodic* special assessments against ~~and raise the annual fee or dues~~ *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 ~~primarily for the maintenance and upkeep, including capital expenditures, of the time-share project to pay time-share expenses.~~ 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 time-share estate owners' association shall have a lien on every time-share estate within its project for unpaid regular or special assessments levied against that estate in accordance with the provisions of this chapter.

The time-share estate owners' association, in order to perfect the lien given by this subsection, shall file, before the expiration of ~~150 days~~ *one year* from the time such special or regular assessment 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. ~~A description~~ *The name and location of the project;*

2. ~~The name or names of the persons constituting the owners of the time-share estate 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 situate;

3. The amount of unpaid special or regular assessments currently due or past due applicable to the time-share, together with the date when each fell due; and

4. 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.

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 person found liable for any judgment or decree enforcing such lien. The filing with the clerk of one memorandum on which is listed all of the delinquent time-share estate unit owners shall be sufficient to create the lien hereby allowed and the cost of filing in this event shall be the clerk's fee as prescribed in subdivision (2) of § 14.1-112.

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 two years from the perfection and is conducted pursuant to §§ 55-59, 55-59.1 through 55-59.4, and 55-60.

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.

~~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 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 this subsection as to the time-share involved. Payment of a fee not exceeding twenty-five dollars may be required as a prerequisite to the issuance of such a statement if the bylaws of the time-share estate owners' association so provide.~~

C. 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 ~~meeting~~ 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.

D. Subject to the provisions of subdivision 3 of subsection C, 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 E.

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.

E. 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 C. 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.

F. 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 above, 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.

§ 55-370.1. Time-share estate owners' association annual report.

A. Commencing ~~with the time-share estate program and within~~ 120 days after the close of ~~each the~~ first fiscal year of the time-share program and each year thereafter, an annual report shall be prepared and distributed ~~by the association~~ to all time-share estate owners. The annual report required hereby shall be prepared and distributed for each time-share estate project registered with the Board. ~~During the developer control period, the annual report shall be prepared and distributed to all time-share purchasers by the developer or its designated managing entity and thereafter by the association.~~

B. The annual report shall contain the following:

1. A list of the names and mailing addresses of the members of the association's board of directors and the name of the person who prepared the report;

2. A balance sheet as of the end of the fiscal year;

3. An income statement as of the end of the fiscal year;

4. A statement of the net changes in the financial position of the association for the fiscal year just ended;

5. A statement of the time-share estates occupancy expenses, ~~dues, the regular assessment, any~~ special assessments or other charges due for the current year from each time-share estate owner; and

6. A copy of the current budget reflecting the anticipated time-share estate occupancy expenses along with:

a. A statement as to who prepared the budget;

b. A statement of the budgetary assumptions concerning occupancy factors;

c. A description of any provision made in the budget for reserves for repairs and replacement;

d. A statement of any other reserves;

e. The projected ~~common expense~~ financial liability for each time-share estate owner, including a statement of (i) the nature of all charges, ~~dues~~ assessments, maintenance fees, and other expenses which may be assessed, (ii) the current amounts assessed, and (iii) the method and formula for changing any such assessments; and

f. A statement of any services not reflected in the budget that the developer provides, or expenses that it pays, what it expects may become a ~~common expense of the association~~ time-share expense at any subsequent time, and the projected common expense assessment attributable to each of those services or expenses for the association and for each time-share.

C. *In lieu of the annual report required by subsection A for the first year of the time-share program, the developer or the association shall prepare a budget which shall contain the information contained in subdivision 6 of subsection B.*

429 § 55-371. Time-share instrument for project.

430 In addition to the requirements of § 55-367, the time-share instrument for a time-share use program
431 shall prescribe and outline reasonable arrangements for the management and operation of the time-share
432 use program and for the maintenance, repair, and furnishing of time-share use units comprising same,
433 which arrangements shall include, but need not be limited to, provisions for the following:

434 1. Standards and procedures for upkeep, repair and interior furnishing of time-share use units, for the
435 replacements of such furnishings, and for providing maid, cleaning, linen, and similar services to the
436 units during use and occupancy periods;

437 2. Adoption of standards and rules of conduct governing the use, enjoyment, and occupancy of
438 time-share use units by owners;

439 3. Payment by the developer of the costs and expenses of operating the time-share use program and
440 owning and maintaining the time-share use units comprising it;

441 4. Selection of a managing agent to act for and on behalf of the developer should the developer elect
442 not to undertake the duties, responsibilities, and obligations of the management of the time-share use
443 program;

444 5. Procedures for establishing the rights of time-share use owners to occupancy, use, and enjoyment
445 of time-share use units by prearrangement or under a first-reserved, first-served priority system;

446 6. Procedures for imposing and collecting regular and/or special assessments, maintenance, or use
447 fees from time-share use owners as necessary to defray ~~costs of management of the time-share use~~
448 ~~program~~ *all time-share expenses* and in providing materials and services to the units, as herein required
449 of the developer;

450 7. Comprehensive general liability insurance for death, bodily injury, and property damage arising
451 out of, or in connection with, the occupancy, use, and enjoyment of time-share use units by time-share
452 use owners, their guests, and other users. The costs associated with securing and maintaining such
453 insurance shall ~~belong to the developer~~ *be a time-share expense*. Nothing herein shall be construed to
454 obligate the developer to secure insurance on the conduct of the time-share use owners, their guests and
455 other users, or the personal effects or property of such owners, guests, and users;

456 8. Methods for providing, compensating or alternate use periods or monetary compensation to a
457 time-share use owner if a time-share use unit cannot be made available for the period to which the
458 owner is entitled by schedule or by a confirmed reservation; and

459 9. Procedures for imposing a monetary penalty or suspension of a time-share use owner's rights and
460 privileges in the time-share use program or project or termination of the time-share use itself for failure
461 of the time-share use owner to comply with the provisions of the time-share use instrument, the rules
462 and regulations established by the developer with respect to the occupancy, use and enjoyment of the
463 time-share use units, or the failure to pay the charges imposed by the developer against the time-share
464 use owner for providing the materials and services as herein required of the developer. Except in matters
465 where the time-share use owner has failed to pay the charge imposed by the developer for a period of
466 less than sixty days after it has become due and payable, the owner shall be given notice and the
467 opportunity to be heard.

468 § 55-374. Public offering statement.

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

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

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

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

489 c. The particulars of any indictment, conviction, judgment, decree or order of any court or
490 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 ~~process~~ *any notice permitted by this chapter*.

2. A general description of ~~each~~ *the* time-share project registered with the Board and the units and ~~amenities 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 ~~amenities or, if the units and amenities have been completed, the year of such completion common elements~~.

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

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

b. The types, duration, and number of units and time-shares in each 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; *and*

e. Provisions, if any, that have been made for public utilities in ~~each~~ *the* time-share project registered with the Board including water, electricity, telephone, and sewerage facilities;

f. A description of each incidental benefit and each alternative purchase which is registered with the Board and offered by the developer including all rights the purchaser acquires, all obligations undertaken thereby, and all other significant characteristics of such benefits; and

g. A statement to the effect of whether or not the developer has reserved the right to add to or delete from the time-share program a time-share project or any incidental benefit or alternative purchase that has been registered with the Board.

4. In a time-share estate program ~~where the developer control period has not terminated~~, 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 of ~~the purchaser's nonwaivable right of cancellation provided by § 55-376 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. Any restraints on alienation of any number or portion of any time-shares.

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

12. 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 ~~planned improvements to the promised units and common elements comprising~~ the time-share project which have not begun, or begun but not yet completed.

13. 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.

14. The name *and address* of the managing entity ~~and the significant terms of any management contract, including but not limited to, the manner whereby the developer or the time-share estate owners' association may terminate the management contract for the project.~~

15. 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.

16. Any services which the developer provides or expense it pays and which 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.

552 17. A description of the terms of the deposit escrow requirements, including a statement that deposits
553 may be removed from escrow at the termination of the cancellation period *The disclosure required by*
554 *subsection B of § 55-375 when such disclosure does not appear in the purchase contract.*

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

557 19. A statement of whether the developer has reserved the right to add to or from the time-share
558 program, a time-share project or any incidental benefit or alternative purchase which has been
559 registered with the Board; and

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

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

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

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

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

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

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

575 C. The public offering statement of a conversion time-share project shall also include the following,
576 which may take the form of an exhibit to the public offering statement:

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

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

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

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

592 D. In the case of a conversion project, the developer shall give at least ninety days' notice to each of
593 the tenants of the building or buildings which the developer intends to submit to the provisions of this
594 chapter. During the first sixty days of such ninety-day period, each of these tenants shall have the
595 exclusive right to contract for the purchase of a time-share from the unit he occupies, but only if such
596 unit is to be retained in the conversion project without substantial alteration in its physical layout. Such
597 notice shall be hand delivered or sent by first-class mail, return receipt requested, and shall inform the
598 tenants of the developer's intent to create a conversion project. Such notice may also constitute the
599 notice to terminate the tenancy as provided for in § 55-222, except that, despite the provisions of
600 § 55-222, a tenancy from month to month may only be terminated upon 120 days' notice as set forth
601 herein when such termination is in regard to the creation of a conversion project. If, however, a tenant
602 so notified remains in possession of the unit he occupies after the expiration of the 120-day period with
603 the permission of the developer, in order to then terminate the tenancy, such developer shall give the
604 tenant a further notice as provided in § 55-222.

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

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

offering statement amended to reflect any material change.

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

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

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

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

§ 55-374.1. 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 ~~time-shares~~ *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 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.), ~~and the Virginia Securities Act (§ 13.1-501 et seq.), the Virginia Home Solicitation Sales Act (§ 59.1-21.1 et seq.) and the Prizes and Gifts Act (§ 59.1-415 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.*

§ 55-374.2. Exchange programs.

A. Any exchange company which offers an exchange program in ~~this~~ *the* Commonwealth shall prepare and register with the Board a disclosure document including, but not limited to, the following:

1. The name and address of the exchange company;

2. The names and addresses of ~~all the top three~~ *all the top three* officers, ~~and all~~ *and all* directors, and ~~if the exchange company is privately held, all~~ *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 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

675 relationship with the exchange company and the procedure by which changes in the terms and
676 conditions of the exchange contract may be made;

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

678 9. A complete and accurate description of all limitations, restrictions, or priorities employed in the
679 operation of the exchange program including, but not limited to, limitations on exchanges based on
680 seasonality, unit size, or levels of occupancy, expressed in boldfaced type, and, in the event that such
681 limitations, restrictions, or priorities are not uniformly applied by the exchange program, a clear
682 description of the manner in which they are applied;

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

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

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

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

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

696 15. The number of owners with respect to each time-share program or other property who are
697 eligible to participate in the exchange program, expressed within the following numerical groupings:
698 1-100, 101-249, 250-499, 500-999, and 1,000 and over, and a statement of the criteria used to determine
699 those owners currently eligible to participate in the exchange program;

700 16. The disposition made by the exchange company of time-shares deposited with the exchange
701 program by owners eligible to participate in the exchange program and not used by the exchange
702 company in effecting exchanges;

703 17. The following information, which, except as provided in subsection B of this section, shall be
704 independently audited by a certified public accountant or accounting firm in accordance with the
705 standards of the Accounting Standards Board of the American Institute of Certified Public Accountants
706 and reported for each year no later than July 1 of the succeeding year, beginning no later than July 1,
707 1985:

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

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

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

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

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

721 18. A statement in boldfaced type to the effect that the percentage described in ~~paragraph~~ *subdivision*
722 17 c of this subsection is a summary of the exchange requests entered with the exchange company in
723 the period reported and that the percentage does not indicate a purchaser's or owner's probabilities of
724 being confirmed to any specific choice or range of choices, since availability at individual locations may
725 vary.

726 B. The information required by subsection A shall be accurate as of a date which is no more than
727 thirty days prior to the date on which the information is delivered to the purchaser, except that the
728 information required by subsection A, ~~paragraphs~~ *subdivisions* 2, 12, 13, 14, 15 and 16 shall be accurate
729 as of December 31 of the preceding year if the information is delivered between July 1 and December
730 31 of any year; information delivered between January 1 and June 30 of any year shall be accurate as of
731 December 31 of the year prior to the preceding year. At no time shall such information be accurate as
732 of a date which is more than eighteen months prior to the date of delivery. All references in this section
733 to the word "year" shall mean calendar year.

734 C. In the event an exchange company offers an exchange program directly to the purchaser, the
735 exchange company shall deliver to such purchaser, simultaneously with such offering and prior to the
736 execution of any contract between the purchaser and the exchange company, the information set forth in

subsection A, above. 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 must include the statement set forth in ~~paragraph~~ *subdivision* 18 of subsection A on all promotional brochures, pamphlets, advertisements, or other materials disseminated by the exchange company which also contain the percentage of confirmed exchanges described in ~~subparagraph~~ *subdivision* 17 c of subsection A.

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 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 (§ 55-396 et seq.) of this chapter. 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. All fees shall be remitted by the Board to the Treasurer of the Commonwealth, and shall be placed to the credit of the special fund of the Real Estate Board.

§ 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. *The developer may receive and hold, without immediate deposit into escrow, any post-dated draft or credit memo until such time as the draft or memo matures.*

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.

§ 55-376. Purchaser's rights of cancellation.

A. A purchaser shall have the right to cancel the contract until midnight of the seventh calendar day following the execution of such contract. If the seventh calendar day falls on a Sunday or legal holiday, then the right to cancel the contract shall expire on the day immediately following that Sunday or legal holiday. Cancellation is to be without penalty, and all payments made by the purchaser before cancellation must be refunded within forty-five days after receipt of the notice of cancellation.

B. If the purchaser elects to cancel a contract pursuant to subsection A ~~herein~~, he shall only do so either (i) by hand-delivering *the* notice to the developer at its principal office or at the project or (ii) by mailing *the* notice by certified United States mail, return receipt requested, to the developer or its agent ~~for service of process~~ designated in the ~~public offering statement~~ *contract*. Any such notice sent by certified mail shall be effective on the date postmarked.

C. If, because of the occurrence of a material change, the public offering statement is amended between the time of contracting to purchase a time-share and the time of settlement, the developer shall provide the amended public offering statement to the purchaser and the right of cancellation shall renew from the date of delivery of such amended public offering statement. This subsection shall not apply if the public offering statement is amended by the developer because of a change which is not material or

798 to disclose any change which is an aspect or result of the orderly development of the time-share project
799 in accordance with the project instrument.

800 D. The right to cancel the contract as provided by this section shall not be waivable by the
801 time-share purchaser and any provision in the contract or time-share documents indicating a waiver shall
802 be deemed void.

803 E. A statement of the purchaser's right of cancellation as set forth in this section shall appear in the
804 contract above the purchaser's signature line. Such statement shall appear in type no smaller than ~~the any~~
805 other provisions of the contract, and the caption "PURCHASER'S NONWAIVABLE RIGHT TO
806 CANCEL" shall appear immediately preceding it in *conspicuous*, bold-face type of a ~~minimum size of~~
807 ~~ten points~~.

808 § 55-380. Resale of time-shares.

809 A. In the event of any resale of a time-share by a time-share owner, other than the developer, such
810 owner shall obtain from the developer or managing agent in the case of a time-share use program or
811 from the time-share estate owners' association in the case of a time-share estate program and furnish to
812 the purchaser prior to ~~execution of the settlement on an executed~~ agreement to purchase the time-share,
813 a certificate of resale which shall include the following:

814 1. A statement disclosing the effect on the proposed transfer of any right of first refusal or other
815 restraint on transfer of the time-share or any portion thereof;

816 2. A copy of the time-share instrument;

817 3. A copy of the current bylaws and rules and regulations of the time-share estate owners'
818 association, if any, and the amendments thereto;

819 4. A copy of the current annual report prepared pursuant to § 55-370.1;

820 5. A statement setting forth the amount of any expense liability and unpaid time-share expense or
821 special assessment currently due and payable from the selling time-share owner, including the
822 disclosures of any liens against the time-share due to the nonpayment of such fees or charges; and

823 6. A statement of the nature and status of any known and pending suits or judgments against the
824 developer, managing entity, or time-share owners' association with reference to the time-share project.

825 B. The developer, managing agent, or such officer of the time-share owners' association as the
826 bylaws may specify, shall furnish the certificate of resale prescribed by subsection A hereof upon the
827 written request of any purchaser within thirty days of the receipt of such request. Payment of the
828 reasonable costs of preparing the certificate may be required as a prerequisite to the issuance of the
829 certificate, but such fee shall not exceed fifty dollars.

830 C. A time-share owner providing a certificate pursuant to subsection A is not liable to the purchaser
831 for any erroneous information included in the certificate, other than for judgment liens against the
832 time-share or ~~time-share unit being sold~~.

833 D. A purchaser is not liable for any unpaid time-share expense liability or fee greater than the
834 amount set forth in the certificate prepared in conformity with subsection A. A time-share owner is not
835 liable to a purchaser for the failure or delay of the provider to provide the certificate in a timely
836 manner, but the purchase contract is voidable by the purchaser until the certificate has been provided
837 and for five days thereafter or until transfer, whichever occurs first.

838 E. All rights of redress of a ~~buyer purchaser~~ against a selling time-share owner, *the developer,*
839 *managing agent, or the association* for the failure to obtain and issue a ~~certificate or receive the~~
840 ~~statement required by subsection A~~ are *conclusively* waived upon settlement *on the time-share*
841 *occurring*.

842 § 55-382. Effect of violations on rights of action; attorney's fees.

843 If a developer or any other person subject to this chapter violates any provision hereof or any
844 provision of the ~~project time-share~~ instrument, any person or class of persons adversely affected by the
845 violation has a claim for appropriate relief. The court may also award reasonable attorney's fees to the
846 prevailing party.

847 § 55-386. Developer's obligation to complete.

848 A. The developer shall complete all promised ~~improvements and incomplete units and common~~
849 ~~elements~~ being offered as *and* described in the project instrument, the time-share instrument, and the
850 public offering statement. The developer shall be excused for the period or periods of delay in the
851 completion of *such* promised ~~improvements units and common elements~~ when delayed, hindered, or
852 prevented from doing so by causes beyond the developer's control which shall include: (i) labor disputes
853 not caused by the developer; (ii) riots; (iii) civil commotion or insurrection; (iv) war or warlike
854 operations; (v) governmental restrictions, regulations or control; (vi) inability to obtain any materials or
855 services; (vii) fire or other casualties; (viii) acts of God; or (ix) forces not under the control or
856 supervision of the developer.

857 B. The developer shall file with the Board a payment and performance bond in the sum equal to 100
858 percent of the estimated cost of completing all *promised and incomplete improvements within units and*
859 *common elements comprising the time-share project promised in the project instrument, described in the*

time-share instrument and the public offering statement. Such bond shall be conditioned upon the completion of ~~the improvements~~ *such units and common elements* in conformity with the plans and specifications for such improvements. The bond shall be with a surety company authorized to do business in the Commonwealth. The Board may accept cash or an irrevocable letter of credit in lieu of the bond required by this section. The Board shall be the sole determiner of the form, amount, content, obligee and conditions of the letter of credit. Should it become necessary for the Board to call upon the letter of credit in order to assure completion of the improvements, the Board shall have the authority to petition a court of competent jurisdiction to appoint a receiver to administer such completion.

§ 55-389. Protection of lien holder.

Any lien holder of a time-share interest in any time-share program shall have the following rights:

1. The lien holder shall have its lien rights preserved as against any purchaser of a time-share who claims that the time-share instrument is invalid, void or voidable, thirty days after written notice by certified mail or personal delivery has been given by the developer *or lien holder* to the purchaser. The notice must state that the developer has assigned the receivables to the lien holder and that the purchaser has thirty days within which to object and specify the invalidity or defect contained within such time-share instrument. *The notice required by this section may be included in the blanket encumbrance, in the contract, or in any note, deed of trust or mortgage executed by the purchaser in connection with the purchaser's deferred purchase of a time-share.*

2. Any purchaser who fails to indicate that the time-share instrument is invalid, void, or voidable as provided in ~~paragraph~~ *subdivision 1* waives, or is estopped to raise, the same in any subsequent enforcement of the collection of the receivable by the lien holder.

§ 55-391.1. 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;

2. The states or jurisdictions in which an application for registration or similar document has been filed and any adverse order, judgment, or decree entered in connection with the time-share project 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 ~~this~~ *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 as of a specified date within thirty 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 time-share project including encumbrances as of a specified date within thirty 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 which will be delivered to a purchaser to evidence his interest in the time-share and copies of the contracts and other agreements which 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;

8. A statement of the zoning and other governmental regulations affecting the use of the time-share, including the site plans and building permits and their status, any existing tax and existing or proposed special taxes or assessments which affect the time-share;

9. A narrative description of the promotional plan for the disposition of the time-shares;

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 owners' annual report *or budget* required by § 55-370.1 to the extent available;

13. A description of each product the developer seeks to register with the Board; and

14. Any other information which 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 a time-share project where construction is yet to begin, or if begun, is not yet complete.

§ 55-392.1. Filing fees.

The Board may by regulation establish reasonable fees for registration. Until such regulations are adopted by the Board, the fee shall be in an amount equal to \$1 per time-share, except that the initial

921 application fee shall not be less than \$500 nor more than \$1,500, and the fee for any application for
922 registration of additional units shall be not less than \$200. *The filing fee for an amendment to the*
923 *developer's registration shall be \$250. The filing fees for the annual report filed by the developer shall*
924 *be \$500. The filing fee for an original application for registration for an exchange company shall be*
925 *\$1,000. The filing fee for the annual report of an exchange company shall be \$250.* All fees shall be
926 remitted by the Board to the Treasurer of the Commonwealth, and shall be placed to the credit of the
927 special fund of the Real Estate Board.

928 § 55-394.1. Annual report; amendments; termination of registration.

929 A. The developer shall file a report in the form prescribed by the Board's regulations ~~within thirty~~
930 ~~days prior to each anniversary date of the order registering the time-share project by June 30 of each~~
931 ~~year the registration is effective. The developer of any time-share project initially registered with the~~
932 ~~Board between January and April shall not be required to file an annual report for the year in which it~~
933 ~~was initially registered.~~ The report shall reflect any material changes in information contained in the
934 original application for registration and shall be accompanied by a *the appropriate fee to be established*
935 *by the Board's regulations or pursuant to § 55-392.1.*

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

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

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

946 § 55-396. General powers and duties of Board.

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

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

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

957 D. 1. If the Board determines after legal notice and opportunity for hearing that a developer or agent
958 of developer has:

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

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

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

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

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

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

970 g. Disposed of any time-share in a project without first complying with the requirements of this
971 chapter, it may issue an order requiring the developer to cease and desist from the unlawful practice and
972 to take such affirmative action as in the judgment of the Board will carry out the purposes of this
973 chapter.

974 2. If the Board makes a finding of fact at a hearing that the public interest will be irreparably
975 harmed by delay in issuing an order, as prescribed in ~~the immediately preceding subdivision 1 of this~~
976 ~~subsection,~~ it may issue a temporary cease and desist order. With the issuance of a temporary cease and
977 desist order, the Board, by registered mail or other personal written service, shall give notice of the
978 issuance to the developer. Every temporary cease and desist order shall include in its terms:

979 a. A provision clearly stating the reasons for issuing such cease and desist order, the date of the
980 hearing on its issuance, and the nature and extent of the facts and findings on which the order was
981 based;

982 b. A provision that a hearing by the Board may be held, after due notice but not more than fifteen

days from the date such temporary cease and desist order is effective, to determine whether or not a cease and desist order as called for in the immediately preceding subsection shall be issued;

c. A provision that such temporary cease and desist order may remain in full force for a period of not more than fifteen days from the date of its issuance or the date on which the Board has determined that an order as prescribed in ~~paragraph~~ *subdivision* 1 of this ~~section~~ *subsection* is to be issued, whichever shall occur first;

d. A provision that a failure to comply with such temporary cease and desist order will be a violation of this chapter. The Board shall not issue more than one temporary cease and desist 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.

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

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 or orders applicable thereto, the Board, without prior administrative proceedings, may bring suit in the circuit court of the city or county 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.