

VIRGINIA ACTS OF ASSEMBLY -- 2012 RECONVENED SESSION

CHAPTER 751

An Act to amend and reenact §§ 55-362, 55-380, 55-396, 55-397, and 55-400 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 55-376.5, 55-380.1, 55-394.2, and 55-394.3, relating to the Virginia Real Estate Time-Share Act; resale of time-shares.

[H 233]

Approved April 18, 2012

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-362, 55-380, 55-396, 55-397, and 55-400 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 55-376.5, 55-380.1, 55-394.2, and 55-394.3 as follows:

§ 55-362. Definitions.

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

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

"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 which is offered to a potential purchaser by the developer during the developer's sales presentation and which is purchased by such potential purchaser for more than \$100, even though the purchaser did not purchase a time-share. An alternative purchase is not a time-share. A membership camping contract as defined in § 59.1-313 is not an alternative purchase. An alternative purchase shall be registered with the Board unless it is otherwise registered as a travel service under the Virginia Travel Club Act (§ 59.1-445 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 Common Interest Community Board, an agency within the meaning of the Administrative Process Act (§ 2.2-4000 et seq.).

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

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

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

"Contact information" means any information that can be used to contact an owner, including the owner'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" shall be interchangeable throughout this chapter and shall mean any legally binding instrument executed by the developer and a purchaser whereby the developer is obligated to sell and the purchaser is obligated to purchase either a time-share and its incidental benefits or an alternative purchase registered under this chapter.

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

"Cost of ownership" means all of the owner's expenses related to a resale time-share due and payable 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 who (i) offers to dispose of a time-share or its or their interest in a time-share unit for which there has not been a previous disposition or (ii) applies for registration of the time-share program.

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

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

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

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

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

"Guest" means a person who is on the project, additional land or development at the request of an owner, developer, association or managing agent, or a person otherwise legally entitled to be thereon. A guest includes, without limitation, family members of owners, time-share exchange participants, merchants, purveyors, vendors and employees thereof, and of the developer and 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 and includes without limitation exchange rights, travel insurance, bonus weeks, upgrade entitlements, travel coupons, referral awards, and golf and tennis packages. An incidental benefit is not a time-share or an exchange program. An incidental benefit shall not be registered with the Board.

"Inherent risks of project activity" mean 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 operations. Inherent risks of project activity also include 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 who sells or otherwise provides to any other person contact information concerning five or more owners to be used for a resale service, but excludes developers, managing entities, or exchange companies to the extent such entities are providing other persons with personal contact information about time-share owners in their own time-share plans or members of their own exchange program.

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

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

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

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

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

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

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

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

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

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

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

"Project activity" means any activity carried out or conducted on a common element, within a time-share unit or elsewhere in the project, additional land or development, that allows owners, their guests, and members of the general public to view, observe, participate or enjoy activities, including 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. An activity is a project activity whether or not the participant paid to participate in the activity.

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

"Project professional" means any person who 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 § 55-374.

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

"Resale cost of ownership" means all the owner's expenses related to a resale time-share due and payable 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 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 shall not include an individual selling or offering to sell his own time-share unit.

"Resale time-share" means a time-share, wherever located, that has previously been sold to an 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 owner by which the reseller agrees to transfer or assist in the transfer of the owner's resale time-share.

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

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

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

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

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

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

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

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

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

"Time-share estate subject to reverter" means a time-share estate (i) entitling the holder thereof to occupy units not more than four weeks in any one year period; and (ii) for which the down payment is not more than 20 percent of the total purchase price of the time-share estate.

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

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

disposition of time-shares in a project;

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

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

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

"Time-share 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; ~~and~~.

"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.

"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.

§ 55-376.5. Buyer's Acknowledgment.

A. Prior to the execution of a purchase contract, a purchaser shall be given a separate written document, titled "Buyer's Acknowledgment," to be signed by the purchaser and a representative of the developer other than the salesperson for the transaction.

B. The Buyer's Acknowledgment shall contain the following:

1. The name and address of the developer;
2. The name and address of the time-share project;
3. Whether the developer currently offers a resale or rental program or a buy-back program; and
4. The following statement in at least 10-point boldface type: "There is no assurance that a purchaser may resell a time-share for a certain price or on particular terms. By signing below, purchaser acknowledges that this purchase is (i) for personal use and enjoyment and not for commercial or investment purposes and (ii) not being made based upon any representation that the time-share has any future market value or resale potential."

§ 55-380. Resale of time-shares.

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

1. A statement disclosing the effect on the proposed transfer of any right of first refusal or other restraint on transfer of the time-share or any portion thereof;
2. A copy of the time-share instrument;
3. A copy of the current bylaws and rules and regulations of the time-share estate owners' association, if any, and the amendments thereto;
4. A copy of the current annual report prepared pursuant to § 55-370.1;
5. A statement setting forth the amount of any expense liability and unpaid time-share expense or special assessment currently due and payable from the selling time-share owner, including the disclosures of any liens against the time-share due to the nonpayment of such fees or charges; ~~and~~
6. A statement of the nature and status of any known and pending suits or judgments against the developer, managing entity, or time-share owners' association with reference to the time-share project; ~~and~~

7. A copy of a Buyer's Acknowledgment form required by § 55-376.5.

B. The developer, managing agent, or such officer of the time-share owners' association as the bylaws may specify, shall furnish the certificate of resale prescribed by subsection A hereof upon the written request of any purchaser within ~~thirty~~ 30 days of the receipt of such request. Payment of the reasonable costs of preparing the certificate may be required as a prerequisite to the issuance of the certificate, but such fee shall not exceed ~~fifty dollars~~ \$50.

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

D. A purchaser is not liable for any unpaid time-share expense liability or fee greater than the amount set forth in the certificate prepared in conformity with subsection A. A time-share owner is not liable to a purchaser for the failure or delay of the provider to provide the certificate in a timely

manner, but the purchase contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until transfer, whichever occurs first.

E. All rights of redress of a purchaser against a selling time-share owner, the developer, managing agent, or the association for the failure to obtain or receive the statement required by subsection A are conclusively waived upon settlement on the time-share occurring.

F. The responsibilities imposed by this section on the developer, managing agent, time-share estate owners' association, or selling time-share owner shall not be waived.

§ 55-380.1. Required resale disclosures.

A. In addition to the requirements of § 55-394.1, before receiving anything of value for providing or offering to provide a resale service, a reseller shall disclose in writing to the owner of a resale time-share:

1. The name and permanent business address of the reseller;
2. A commencement and transaction date for such resale service;
3. The names and addresses of any affiliates and the primary website address used by the reseller and such affiliates to be used to promote the resale time-share;
4. Whether the reseller's rights are exclusive and, if so, the scope of such rights and length of the exclusivity period;
5. Whether any person, other than the owner, may occupy, rent, exchange, or use the resale time-share during the resale service;
6. The name of any person other than the owner who will receive any rent or other consideration from the use of the resale time-share during the resale service;
7. A description of each resale service to be provided and the fees, costs, or commissions for each;
8. A description sufficient to identify the resale time-share;
9. The jurisdiction issuing the license for any services by a licensed real estate broker or salesperson; and
10. The following in at least 10-point conspicuous type:
 - a. The ratio of (i) the number of resale time-shares listed for sale to the number of resale time-shares actually sold by the reseller for each of the past two calendar years or (ii) the total amount of advance fees collected compared with the total amount of fees and commissions received by the reseller upon sale of resale time-shares for the past two calendar years and followed by this statement: "Do not rely on past performance as an indicator of the likelihood of sale of your time-share."; and
 - b. If the retail service is limited to the placement of advertisements: "There is no guarantee that you will sell your time-share at all or within any period of time by placing this advertisement. Our only obligation to you is to post your advertisement on our website for the agreed length of time and forward all inquiries we receive to you."

B. A resale transfer contract shall include the following disclosures by the reseller:

1. The disclosures required by subdivisions A 1 through A 7;
2. A description legally sufficient for the transfer of the resale time-share;
3. A description of the document by which the owner is to (i) grant rights in the resale time-share to the reseller or any other person, including a power of attorney or similar document, and (ii) transfer the resale time-share to a subsequent purchaser;
4. Any fees or costs the time-share owner is required to pay or reimburse to the reseller or transfer company to complete the transfer;
5. The date by which the transfer of the resale time-share from the owner to the reseller, a third person, or a subsequent purchaser will be completed, not to exceed 180 days from the effective date of the resale transfer contract;
6. If the resale time-share will be transferred to a transferee other than a subsequent purchaser, the contact information of such transferee;
7. A statement that the reseller will (i) provide the owner written evidence of transfer of the resale time-share to a subsequent purchaser within 30 days of such transfer and (ii) send notice of the transfer to the association and managing entity of the time-share program for the resale transfer and any exchange company in which the resale time-share was enrolled; and
8. The following in 10-point boldface type:
 - a. "No later than 180 days from the date of this agreement, we will transfer your time-share to another person. If transfer does not occur within that period, we will pay or reimburse to you the cost of ownership of your time-share for that period. If we breach our agreement, you will continue to be responsible for such cost of ownership."; and
 - b. "Your time-share may be sold at any price by us without your approval. If sold for a price in excess of our fee, we have no obligation to send you the excess."

C. A resale purchase contract shall require the reseller to obtain the certificate of resale described in subsection A of § 55-380 and shall also include the following:

1. A description legally sufficient for transfer of the resale time-share;
2. The name and address of the developer or managing agent for a time-share use project or the association for a time-share estate project;

3. Identification of the party responsible for notifying the developer, managing entity, association, or exchange company, as the case may be, of the transfer of the resale time-share;

4. Identification of the first year in which the subsequent purchaser is entitled to use and occupy the resale time-share; and

5. The following statement in 10-point boldface type: "A certificate of resale is required to be provided to you containing important documents concerning the time-share project for your review. Settlement waives the right to receipt of such information."

§ 55-394.2. Registration required for time-share resellers; exemptions; prohibited practices.

A. A reseller shall not provide or offer to provide any resale service unless he is registered with the Board.

B. The application for registration shall be filed in a form prescribed by the Board's regulations and shall include such information as required by the Board. A reseller shall immediately report to the Board any material changes in the information contained in an application for registration. The Board may by regulation establish reasonable fees for registration under this section. All fees shall be remitted by the Board to the Treasurer of Virginia, and shall be placed to the credit of the Common Interest Community Management Information Fund established pursuant to § 55-529.

C. The registration requirements shall not apply to:

1. A person who solely or with affiliates engages in a resale service with respect to an aggregate of no more than 12 resale time-shares per calendar year;

2. A person who owns or acquires more than 12 resale time-shares and who subsequently transfers all such resale time-shares to a single purchaser in a single transaction;

3. The owner, its agents, and employees of a regularly published newspaper, magazine, or other periodical publication of general circulation; broadcast station; website; or billboard, to the extent their activities are limited to solicitation and publication of advertisements and the transmission of responses to the persons who place the advertisements. Any person who would otherwise be exempt from this chapter pursuant to this section shall not be exempt if the person (i) solicits the placement of the advertisement by representing that the advertisement will generate cash, a certain price, or a similar type of representation for the time-share owner's resale time-share, (ii) makes a recommendation as to the sales price for which to advertise the resale time-share, (iii) makes any representations to the person placing the advertisement regarding the success rate for selling resale time-shares advertised with such person, or (iv) makes any misrepresentations as described in this chapter;

4. Sale by a developer or a party acting on its behalf of a resale time-share under a current registration of the time-share program in which the resale time-share is included;

5. Sale by an association, managing entity, or a party acting on its behalf of a resale time-share owned by the association provided the sale is in compliance with subsection C of § 55-380.1; or

6. Attorneys, title agents, title companies, or escrow companies providing closing services in connection with the transfer of a resale time-share.

D. No reseller shall:

1. Fail to disclose information in writing concerning the marketing, sale, or transfer of resale time-shares required by this chapter prior to accepting any consideration or with the expectation of receiving consideration from any time-share owner, seller, or buyer.

2. Make false or misleading statements concerning offers to buy or rent; the value, pricing, timing, or availability of resale time-shares; or numbers of sellers, renters, or buyers when engaged in time-share resale activities.

3. Misrepresent the likelihood of selling a resale time-share interest.

4. Misrepresent the method by or source from which the reseller or lead dealer obtained the contact information of any time-share owner.

5. Misrepresent price or value increases or decreases, assessments, special assessments, maintenance fees, or taxes or guaranteeing sales or rentals in order to obtain money or property.

6. Make false or misleading statements concerning the identity of the reseller or any of its affiliates or the time-share resale entity's or any of its affiliate's experience, performance, guarantees, services, fees, or commissions, availability of refunds, length of time in business, or endorsements by or affiliations with developers, management companies, or any other third parties.

7. Misrepresent whether or not the reseller or its affiliates, employees, or agents hold, in any state or jurisdiction, a current real estate sales or broker's license or other government-required license.

8. Misrepresent how funds will be utilized in any time-share resale activity conducted by the reseller.

9. Misrepresent that the reseller or its affiliates, employees, or agents have specialized education, professional affiliations, expertise, licenses, certifications, or other specialized knowledge or qualifications.

10. Make false or misleading statements concerning the conditions under which a time-share owner, seller, or buyer may exchange or occupy the resale time-share interest.

11. Represent that any gift, prize, membership, or other benefit or service will be provided to any time-share owner, seller, or buyer without providing such gift, prize, membership, or other benefit or service in the manner represented.

12. *Misrepresent the nature of any resale time-share interest or the related time-share plan.*

13. *Misrepresent the amount of the proceeds, or fail to pay the proceeds, of any rental or sale of a resale time-share interest as offered by a potential renter or buyer to the time-share owner who made such resale time-share interest available for rental or sale through the reseller.*

14. *Fail to transfer any resale time-share interests as represented and required by this chapter or to provide written evidence to the time-share owner of the recording or transfer of such time-share owner's resale time-share interest as required by this chapter.*

15. *Fail to pay any annual assessments, special assessments, personal property or real estate taxes, or other fees relating to an owner's resale time-share interest as represented or required by this chapter.*

16. *Misrepresent or misuse the intended purpose of a power of attorney or similar document to the detriment of any grantor of such power of attorney.*

§ 55-394.3. *Recordkeeping by resellers.*

A. *If contact information has been obtained by a reseller from any source, including a lead dealer, the reseller and lead dealer shall maintain the following records for a period of five years from the last date of contact between the reseller and the owner:*

1. *The name; home address; work address, if different; telephone number; email address, if any; and a copy of a current government-issued photographic identification (e.g., driver's license, passport, or military identification card) of the lead dealer who provided the contact information;*

2. *The date, time, and place of the transaction at which the contact information was obtained, along with the amount of consideration paid and a signed receipt from the lead dealer or copy of a cancelled check; and*

3. *A copy of the contact information obtained in the exact form and media in which received.*

B. *A reseller shall maintain records for at least five years after each transaction involving resale service including resale transfer agreements and resale purchase agreements.*

C. *In any civil or criminal action based on a violation of this section, there shall be a presumption that contact information was wrongfully obtained if a reseller or lead dealer fails to produce the records required by this section.*

D. *Any person who establishes that a reseller or lead dealer wrongfully obtained or wrongfully used contact information with respect to time-share owners or members of an exchange program shall, in addition to any other remedies that may be available in law or equity, be entitled to recover from such reseller or lead dealer an amount equal to \$1,000 for each time-share owner or member about whom contact information was wrongfully obtained or used. The prevailing person in any such action shall also be entitled to recover reasonable attorney fees and costs.*

§ 55-396. *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. *If the Board 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 which 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 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 in a project without first complying with the requirements of this chapter, it may issue an order requiring the developer 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.*

2. *If the Board makes a finding of fact at a hearing that the public interest will be irreparably harmed by delay in issuing an order, as prescribed in subdivision 1 of this subsection, it may issue a*

temporary cease and desist order. With the issuance of a temporary cease and desist order, the Board, by registered mail or other personal written service, shall give notice of the issuance to the developer *or the reseller*. Every temporary cease and desist order shall include in its terms:

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

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 subdivision 1 of this subsection is to be issued, whichever shall occur first; and

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 *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 thereof 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 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.

H. Upon request of a time-share owner, the Board shall, in accordance with subsection B of § 55-382, issue its determination whether compliance with § 55-375 or 55-386 has occurred.

§ 55-397. Cancellation of cease and desist order; reinstatement of registration of developer.

A. The Board shall stipulate to the developer *or reseller* the reason for any cease and desist order, or revocation of registration as outlined in § 55-396, by no later than the time such order or revocation is to become effective.

B. Should the developer *or reseller* satisfy the Board that it has corrected the reasons for the cease and desist order or revocation of registration, then the Board shall promptly cancel such order or reinstate the registration, and thereafter the developer *or reseller* may continue its offering or disposition of time-shares.

§ 55-400. Penalties.

A. Any person who willfully violates any of the provisions of §§ 55-374, 55-374.1, 55-374.2, 55-375, 55-376, 55-381, 55-385, or 55-390, or any order issued pursuant to §§ 55-396 through 55-399 shall be guilty of a Class 5 felony.

Any person who willfully violates any of the provisions of § 55-376.5, 55-380.1, or 55-394.2 or any order issued pursuant to §§ 55-396 through 55-399 regarding a violation of § 55-376.5, 55-380.1, or 55-394.2 shall be guilty of a Class 1 misdemeanor.

Each violation shall be deemed a separate offense.

B. Any developer, member, agent or affiliate of any developer of time-shares registered pursuant to § 55-393.1, *or any reseller*, who violates any provision of this chapter or regulations promulgated pursuant to this chapter, and who is not criminally prosecuted, may be subject to a monetary penalty. If it has been determined by the Board upon or after a hearing that a respondent has violated this chapter or the Board's rules and regulations, the Board shall proceed to determine the amount of the monetary penalty for such violation, which shall not exceed \$2,000 for each violation. Such penalty may be sued for and recovered in the name of the Commonwealth.