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HOUSE BILL NO. 233

Offered January 11, 2012

Prefiled January 10, 2012

A BILL to amend and reenact §§ 55-361.1, 55-362, 55-363, 55-366 through 55-371, 55-374 through 55-376.1, 55-380, 55-383, 55-385, 55-386, 55-390, 55-394.1, 55-396, and 55-400 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 55-370.1:1, 55-376.5, 55-380.1 through 55-380.4, and 55-396.1, and to repeal § 55-398 of the Code of Virginia, relating to time-shares.

Patron—Cosgrove

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-361.1, 55-362, 55-363, 55-366 through 55-371, 55-374 through 55-376.1, 55-380, 55-383, 55-385, 55-386, 55-390, 55-394.1, 55-396, and 55-400 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 55-370.1:1, 55-376.5, 55-380.1 through 55-380.4, and 55-396.1 as follows:

§ 55-361.1. Applicability.

A. This chapter shall have exclusive jurisdiction and shall apply to any product offering or disposition made within this Commonwealth after July 1, 1985, in a time-share project located within this Commonwealth. Sections 55-360, 55-361.1, 55-362, 55-362.1, 55-363, 55-364, 55-365.1, 55-369, 55-370, 55-370.1, 55-372, 55-373, 55-375, 55-380, 55-381, 55-382, 55-384, 55-385, 55-389, and 55-400 of this chapter shall apply to a time-share project within this the Commonwealth which was created prior to July 1, 1985.

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

C. This chapter shall apply to any product offering or disposition in a time-share project located outside the Commonwealth and offered for sale in the Commonwealth with the exception that Articles 2 (§ 55-366 et seq.), 3 (§ 55-374 et seq.), and 4 (§ 55-387 et seq.) of this chapter shall apply only to the extent permitted by the laws of the situs.

D. This chapter shall not apply to any product offering or disposition of a time-share estate in a time-share project located outside the Commonwealth to a purchaser who is a resident of the Commonwealth and who currently owns a time-share estate from the same developer from an affiliated entity under common ownership and control with the same developer if:

1. The developer or affiliated entity has a time-share project currently registered with the Board that was originally approved within the previous seven years from the date of the offering or disposition; and

2. The developer or affiliated entity making such offering or disposition:

a. Complies in all material respects with the provisions of § 55-374.1, subsections A and B of § 55-375, and subsections B and D of § 55-376;

b. Provides the purchaser with all time-share disclosure documents required to be provided to purchasers as if the offering or disposition occurred in the situs state;

c. Includes a notice in the contract to purchase that is the same as or substantially similar to that required in subsection E of § 55-376 and a right of rescission of not less than seven days; and

d. Provides the purchaser, either in the disclosure documents provided pursuant to subdivision b or in supplementary or additional materials, all of the following if the situs state where the time-share project is located does not require such disclosure documents: (i) a description of the type of time-share program offered, including the duration and operation of the program; (ii) a description of the existing or proposed time-share units and common elements, including the type and number of time-share estates in the time-share units expressed in use increments applicable to the time-share program, a categorization by numbers of bedrooms for each type of time-share unit, and, if the time-share units or common elements are proposed or incomplete, a schedule for commencement, completion, and availability of the units; (iii) a description of the method and timing for performing maintenance on the time-share units; (iv) copies of the time-share instrument, association formation documents, association bylaws, and association rules and regulations, if applicable; and (v) the current annual budget for the time-share project.

E. By making any offering or disposition pursuant to subsection D, the developer is deemed to consent to the jurisdiction of the Board in the event of a dispute with the purchaser in connection with

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59 *the offering or disposition.*

60 § 55-362. Definitions.

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

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

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

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

74 "Association" means the association organized under the provisions of § 55-368. *For purposes of the*
75 *Virginia Nonstock Corporation Act (§ 13.1-801 et seq.), the association shall be deemed to be the*
76 *corporation and each time-share owner shall be deemed to be a member.*

77 "Association formation documents" means all documents constituting, at any particular time, the
78 charter and includes (i) the articles of incorporation as defined in the Virginia Nonstock Corporation
79 Act (§ 13.1-801 et seq.), (ii) the articles of incorporation as defined in the Virginia Stock Corporation
80 Act (§ 13.1-601 et seq.), and (iii) the articles of organization under the Virginia Limited Liability
81 Company Act (§ 13.1-1000 et seq.).

82 "Board" or "CICB" means the Common Interest Community Board, an agency within the meaning of
83 the Administrative Process Act (§ 2.2-4000 et seq.).

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

87 "Common elements" means *in the case of a time-share estate project and program* the real estate,
88 improvements thereon, and the personalty situate within the time-share project that are subject to the
89 time-share program. ~~"Common elements" shall not include the units and the time-shares, excluding~~
90 ~~time-share units and the time-shares therein.~~ "Common elements" means *in the case of a time-share use*
91 *project and program* the real estate, improvements thereon, and the personalty situate within the
92 time-share project that are subject to the time-share program, including all time-share units and the
93 time-shares therein.

94 "Common expenses" means all charges or costs incurred or to be incurred to operate, maintain,
95 repair, renew, alter, or renovate the time-share project (including all time-share units and common
96 elements therein), including any reserves therefor. During the developer control period, common
97 expenses and time-share estate occupancy expenses shall be synonymous and interchangeable terms;
98 thereafter, common expenses and time-share program expenses shall be synonymous and
99 interchangeable terms.

100 "Consumer documents" means the aggregate of the following documents, *including but not limited*
101 *to the purchase agreement, deed, reverter deed, note, and the deed of trust, settlement statement, and*
102 *any other document customarily associated with a consumer loan.* A consumer document ~~shall be~~
103 ~~deemed~~ is one of the consumer documents.

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

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

112 "Conversion time-share project" means a real estate improvement, which prior to the disposition of
113 any time-share, was wholly or partially occupied by persons as their permanent residence or on a
114 transient pay-as-you-go basis other than those who have contracted for the purchase of a time-share and
115 those who occupy with the consent of such purchasers. *A conversion time-share project shall not mean*
116 *a real estate improvement that has been substantially renovated or renewed prior to its registration with*
117 *the Board.*

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

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

121 payment of the note;

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

124 "Deliver" or "delivery" means any method of delivery used in conventional commercial practice,
125 including delivery by hand, United States mail, commercial delivery, and electronic transmission.

126 "Developer" means any person or group of persons acting in concert who (i) offers to dispose of a
127 time-share or its or their interest in a time-share unit ~~for which there has not been~~ regardless of whether
128 there has been a previous disposition ~~of~~ and who (ii) applies with the Board for registration of the
129 time-share project or time-share program or (iii) is or was required to file for registration under
130 § 55-390.

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

132 "Development right" means any right reserved by the developer to create *one or more* additional
133 time-share units ~~which may be dedicated that are committed to the time-share program; project~~.

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

136 "Electronic transmission" has the meaning ascribed to it in § 13.1-1002.

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

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

145 "Guest" means a person who is on the project, additional land or development at the request of an
146 owner, developer, association or managing agent, or a person otherwise legally entitled to be thereon. A
147 guest includes, without limitation, family members of owners, time-share exchange participants,
148 merchants, purveyors, vendors and employees thereof, and of the developer and association;

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

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

161 "Lead dealer" means a person who sells or otherwise provides to any other person contact
162 information concerning five or more owners to be used for a resale service, but excludes developers,
163 managing entities, or exchange companies to the extent such entities are providing other persons with
164 personal contact information about time-share owners in their own time-share plans or members of their
165 own exchange program.

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

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

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

173 "Material change" means a change in any information or document disclosed in or attached to the
174 public offering statement which renders inaccurate, incomplete or misleading any information or
175 document in such a way as to affect substantially a purchaser's rights or obligations, but shall not
176 include a change (i) in the real estate tax assessment or rate, utility charges or deposits, maintenance
177 fees, association dues, assessments, special assessments or any recurring time-share expense item
178 provided the change is made known (a) immediately to the prospective purchaser by a written addendum
179 in the public offering statement and (b) to the Board by filing with the developer's annual report copies
180 of the updated changes occurring over the immediately preceding 12 months; (ii) which is an aspect or
181 result of the orderly development of the time-share project in accordance with the time-share instrument;

182 (iii) resulting from new, updated, or amended information contained in the annual report prepared and
183 distributed pursuant to § 55-370.1; (iv) correcting spelling, grammar, omissions or other similar errors
184 not affecting the substance of the public offering statement; or (v) occurring in the issuance of an
185 exchange company's updated annual report or disclosure document, provided upon its receipt by the
186 developer, it shall be distributed in lieu of all others in order to satisfy § 55-374.

187 *"Member" means an owner of a time-share that has membership rights in the association in*
188 *accordance with the provisions of (i) association formation documents (ii) association bylaws or (iii) the*
189 *time-share instrument.*

190 *"Memorandum of lien" has the meaning ascribed to it in subsection C of § 55-370.*

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

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

196 *"Owner" means purchaser.*

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

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

201 *"Possibility of reverter" means a provision contained in a reverter deed whereby the time-share estate*
202 *automatically reverts or transfers back to the developer upon satisfaction of the requirements imposed by*
203 *§ 55-376.1.*

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

206 *"Program" means the same as the term "time-share program."*

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

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

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

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

221 *"Public offering statement" means the statement required by § 55-374.*

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

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

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

228 *"Resale service" means engaging, directly or indirectly, for consideration, in any of the following*
229 *either in person or by any medium of communication: (i) selling or offering to sell or list for sale for*
230 *the owner a resale time-share, (ii) buying or offering to buy a resale time-share for transfer to a*
231 *subsequent purchaser, (iii) transferring a resale time-share acquired from an owner to a subsequent*
232 *purchaser or offering to assist in such transfer, (iv) invalidating or offering to invalidate for an owner*
233 *the title of a resale time-share, or (v) advertising or soliciting to advertise or promote the transfer or*
234 *invalidation of a resale time-share.*

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

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

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

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

242 *"Sales person" means a person an individual who sells or offers to sell time-share interests in a*
243 *time-share program; one or more time-shares on behalf of the developer.*

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

"Situs Time-Share Act" means the ~~Act~~ *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 ~~one or more time-share project units~~ or a specified portion thereof; *The term means an interest that complies in all respects with the requirements of the term "trust" as defined in this section.*

"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 that~~ *which* creates both the time-share project and the time-share program, and which may contain restrictions or covenants regulating the use, occupancy, or disposition of time-shares, ~~time-share units, and common elements in a such project and program~~;

"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 a~~ *one or more* time-share ~~projects project~~ whereby the use, occupancy, or possession of ~~real property time-share units~~ 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; ~~but nonetheless terminating at a certain date.~~

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

"Time-share unit" or "unit" means the real property or real property improvement in a project ~~which that~~ 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.

"Trust" means an arrangement wherein the subject accommodations or all use rights therein are transferred into a trust pursuant to the following:

1. Such accommodations shall be conveyed free and clear of all blanket liens, or a nondisturbance agreement or other agreement is in place to ensure the title to such accommodations will not be divested by foreclosure of any blanket lien on such accommodations. Those assurances may consist of nondisturbance instruments and recorded instruments advising third parties of the existence of purchaser use rights and providing for subordination of future liens;

2. The trustee must be independent of any developer or managing entity of the time-share program or any interest holder of any accommodation of such program;

3. The trust shall be irrevocable so long as any purchaser has a right to occupy any portion of the time-share property pursuant to the time-share program;

4. The trustee shall not convey, hypothecate, mortgage, assign, lease, or otherwise transfer or encumber in any fashion any interest in or portion of the accommodations to which any purchaser has a right of use or occupancy unless the time-share program is terminated pursuant to the time-share instrument, or such conveyance, hypothecation, mortgage, assignment, lease, transfer, or encumbrance is

305 approved by a vote of two-thirds of all voting interests of the time-share program and such decision is
306 declared by a court of competent jurisdiction to be in the best interests of the purchasers of the
307 time-share program;

308 5. All purchasers of the time-share program or the owners' association of the time-share program
309 shall be the express beneficiaries of the trust. The trustee shall act as a fiduciary to the beneficiaries of
310 the trust. The agreement establishing the trust shall set forth the duties of the trustee. All expenses
311 reasonably incurred by the trustee in the performance of its duties, together with any reasonable
312 compensation of the trustee, shall be common expenses of the time-share program;

313 6. The trustee shall not resign upon less than 90 days' prior written notice to the managing entity
314 and the Common Interest Communities Board;

315 7. The documents establishing the trust arrangement shall constitute a part of the time-share
316 instrument;

317 8. For trusts holding property in a time-share program located outside the Commonwealth, the trust
318 and trustee holding such property shall be deemed in compliance with the requirements of this
319 subsection if such trust and trustee are authorized and qualified to conduct trust business under the laws
320 of such jurisdiction and the agreement or law governing such trust arrangement provides substantially
321 similar protections for the purchaser as are required in this subdivision for trusts holding property in a
322 time-share program in the Commonwealth; and

323 9. The trustee shall have appointed a registered agent in the Commonwealth for service of process.

324 § 55-363. Status of time-share estates with respect to real property interests.

325 A. A document transferring or encumbering a time-share estate shall not be rejected for recordation
326 within this Commonwealth because of the nature or duration of that estate or interest, provided the
327 document complies with all other recordation requirements.

328 B. Each time-share estate constitutes for purposes of title a separate estate or interest in a unit.

329 C. For purposes of local real property taxation, each time-share unit, other than a unit operated for
330 time-share use, shall be valued in the same manner as if such unit were owned by a single taxpayer.
331 The total cumulative purchase price paid by the time-share owners for a unit shall not be utilized by the
332 commissioner of revenue or other local assessing officer as a factor in determining the assessed value of
333 such unit. A unit operated as a time-share use, however, may be assessed the same as other income
334 producing and investment property. The commissioner of revenue or other local assessing officer shall
335 list in the land book a time-share unit in the name of the association. *No assessment of a time-share unit*
336 *or a common element may occur until a permanent certificate of occupancy is issued therefor.*

337 D. *No developer or association shall operate to transfer title unless such deed is executed and*
338 *notarized by all grantors and accepted by the developer or association as evidenced by its execution of*
339 *the same and recorded in the clerk's office where the project is located.*

340 § 55-366. Time-sharing permitted.

341 A time-share project shall be permitted on any land or improvement thereon lying within the
342 Commonwealth unless prohibited by zoning then in effect or by the express language of any legally
343 enforceable covenant, condition or restriction, however denominated, contained in the governing
344 documents of record for such land, including without limitation, condominium instruments under the
345 Condominium Act (§ 55-79.39 et seq.), a time-share instrument under this chapter, declaration under the
346 Virginia Real Estate Cooperative Act (§ 55-424 et seq.) or a master deed under the Horizontal Property
347 Act (§ 55-79.1 et seq.). This chapter shall not be construed to affect the validity of any provisions of
348 any time-share program *or time-share project* (or any expansion thereof) or *any* time-share instrument
349 recorded or in existence prior to July 1, 1981.

350 § 55-367. Instruments.

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

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

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

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

360 4. ~~A legally sufficient description of the real estate constituting the time-share project~~ *The method, if*
361 *any, whereby additional land may be committed to the time-share project;*

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

364 65. Identification of time periods *set aside for accommodations of time-share units by owners or*
365 *guests* by letter, name, number, or combination thereof;

366 76. Identification *and types of* ~~time-shares~~ *time-share estates* and, where applicable, the method

whereby additional time-shares may be created ~~or withdrawn~~;

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

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

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

~~110.~~ 10. The ~~program~~ *contractual terms* by which the managing entity, if any, will provide management of the project;

~~1211.~~ 11. 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~~ *maximum number of time-share units if all development rights are exercised*;

~~1312.~~ 12. Any provision for amending the time-share instrument;

~~1413.~~ 13. 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;

~~1514.~~ 14. A statement of whether or not the developer reserves the right to add to or delete any incidental benefit;

~~1615.~~ 15. A statement of whether or not the developer reserves the right to add to or delete any alternative purchase; and

~~1716.~~ 16. 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 developer explicitly reserves the right to develop additional ~~time-shares~~ *time-share units*, 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 outlining the order in which 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 *time-share units comprising it the project*, which *arrangements* shall include, but need not be limited to, provisions for the following:

1. Creation of an association, the members of which shall ~~be include~~ the time-share estate owners. ~~The If the project is located in the Commonwealth and is created after July 1, 2012, the association may shall be formed pursuant to the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.); however, the association and shall be formed prior to the time 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 common~~ expenses of operating the time-share estate *project and program* and owning, managing, and maintaining the *common elements and time-share units comprising it the time-share project*;

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~~ *terminable* by the ~~association~~ *board of directors* 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, which are entered into during the developer control period. Any such lease or contract shall become ~~voidable~~ *terminable* at the option of the ~~association~~ *board of directors* 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;

428 5. Preparation and dissemination to time-share estate owners of the annual report required by
429 § 55-370.1;

430 6. Adoption of standards and rules of conduct for the use, enjoyment, and occupancy of *time-share*
431 *units and the common elements* by the time-share estate owners *and guests as well as procedures for*
432 *establishing the rights of time-share estate owners to occupancy, use, and enjoyment of time-share estate*
433 *units and common elements and amenities by prearrangement or under a first-reserved, first-served*
434 *priority system;*

435 7. ~~Collection of regular assessments, fees or dues, and/or special assessments from time-share estate~~
436 ~~owners to defray all time-share expenses. The methods for determining and collecting the maintenance~~
437 ~~fees, user fees, special assessments, and other charges or fees from time-share owners during the~~
438 ~~developer control period necessary to pay all time-share estate occupancy expenses; and thereafter, the~~
439 ~~method for determining and collecting the assessments, user fees, special assessments, and other charges~~
440 ~~or fees from time-share owners necessary to pay time-share program expenses;~~

441 8. Comprehensive general liability insurance for death, bodily injury, and property damage arising
442 out of, or in connection with, the use and enjoyment of the project by time-share estate owners, their
443 guests and other users. The costs associated with securing and maintaining such insurance shall be a
444 time-share expense. Nothing herein shall be construed to obligate the managing entity to secure
445 insurance on the conduct of the time-share estate owners, their guests and other users, or the personal
446 effects or property of such owners, guests, and users;

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

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

458 11. *Procedures for the suspension or forfeiture of a time-share estate owner's rights and privileges to*
459 *participate in the time-share estate program or to use, enjoy, and occupy the time-share project during*
460 *the owner's occupancy period or at any other time because of the failure of such owner to comply with*
461 *provisions of the time-share instrument or the rules and regulations with respect to the use, occupancy,*
462 *and enjoyment of the time-share units and common elements constituting the time-share project or*
463 *failure to pay in full all financial obligations due the developer or the association, including without*
464 *limitation maintenance fees, assessments, special assessments, and user fees;*

465 12. *The effect on the time-share owner with respect to both time-share estate ownership and*
466 *participation rights in the time-share estate program occasioned by the violation of the procedures*
467 *outlined in subdivision 10 or 11; and*

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

470 § 55-369. Developer control in time-share estate program.

471 A. The time-share instrument for a time-share estate program shall provide for a period of time, to
472 be called the "developer control period," during which the developer or a managing agent selected by
473 the developer shall manage and control the time-share estate project and the common elements and
474 units, or portions thereof, comprising it. All ~~costs~~ *common expenses* associated with the control,
475 management, and operation of the time-share estate project during the developer control period shall
476 belong to the developer, except for time-share estate occupancy expenses that shall, if required by the
477 developer in the time-share instrument, be allocated only to and paid by time-share estate owners other
478 than the developer. "Time-share estate occupancy expenses" means all costs and expenses incurred in (i)
479 the formation, organization, operation and administration, including capital contributions thereto, of the
480 association and both its board of directors and its members and (ii) all owners' use and occupancy of the
481 time-share estate project including without limitation its completed and occupied time-share estate units
482 and common elements available for use. Such costs and expenses include but are not limited to
483 maintenance and housekeeping charges; repairs; refurbishing costs; insurance premiums, including the
484 premium for comprehensive general liability insurance required by subdivision 8 of § 55-368; taxes;
485 properly allocated labor, operational, and overhead costs; general and administrative expenses; managing
486 agent's fee; utility charges and deposits; the cost of periodic repair and replacement of walls and window
487 treatments and furnishings, including furniture and appliances; filing fees and annual registration charges
488 of the State Corporation Commission and the Board; counsel fees and accountant charges; and reserves
489 for any of the foregoing. Nothing shall ~~preclude~~ *prohibit* the developer, during the developer control

period and at any time after the lapse of a purchaser's right of cancellation, and without regard to the recordation of the deed, ~~provided the deed has been delivered to the purchaser or the purchaser's agent,~~ from collecting an annual or specially assessed charge from each time-share estate owner ~~for the payment of as an offset against~~ the time-share estate occupancy expenses by way of a "maintenance fee." 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 common elements; ~~and title to the furniture, appliances, and equipment located within the project and paid for or maintained by time-share estate occupancy expense fees~~ shall be transferred to the ~~time-share estate owners'~~ association, free of charge, no later than at such time as the developer ~~either transfers of record to purchasers time-share owners legal or equitable ownership of~~ at least ~~ninety~~ 90 percent of the time-share estates ~~for the entire time-share project~~ or completes all of the ~~promised~~ 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 promised and incomplete common elements ~~and time-share units~~ once the transfer occurs. Upon transfer of ~~a portion of the time-share project or~~ ~~portion~~ to the association, the developer control period for such ~~project or portion thereof~~ shall terminate. ~~Upon transfer of all the common elements of the entire time-share project to the association, the developer control period for such project shall terminate.~~

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

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

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

C. The association shall have a lien on every time-share estate within its project for unpaid and past due regular or special assessments levied against that estate in accordance with the provisions of this chapter and for all unpaid and past due maintenance fees. The exemption created by § 34-4 shall not be claimed against the debt or lien of the association created by this section.

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

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

Notwithstanding any other provision of this chapter, or any other provision of law requiring

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

It shall be the duty of the clerk in whose office such memorandum shall be filed as provided herein to record and index the same as provided in this subsection, in the names of the persons identified therein as well as in the name of the time-share estates owners' association. The cost of recording such memorandum shall be taxed against the owner of the time-share on which the lien is placed. The filing with the clerk of one memorandum on which is listed two or more delinquent time-share estate unit owners is permitted in order to perfect the lien hereby allowed and the cost of filing in this event shall be the clerk's fee as prescribed in subdivision A. 2. of § 17.1-275.

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

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

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

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

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

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

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

- b. Such advertisement shall be placed in that section of the newspaper where legal notices appear or where the type of time-share estate being sold is generally advertised for sale. The advertisement of sale, in addition to such other matters as the association finds appropriate, shall set forth a description of the time-share estate to be sold, which description need not be as extensive as that contained in the deed of

trust, but shall identify the time-share project by street address, if any, or, if none, shall give the general location of such time-share project with reference to streets, routes, or known landmarks with further identification of the time-share estate to be sold. Where available, tax map identification may be used but is not required. The advertisement shall also include the date, time, place, and terms of sale and the name of the association. It shall set forth the name, address, and telephone number of the representative, agent, or attorney who may be able to respond to inquiries concerning the sale.

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

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

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

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

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

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

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

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

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

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

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

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

674 ~~forty-five dollars, on each such sale.~~ 1. An accounting shall be prepared by the trustee with a copy
675 delivered thereby to the board of directors. Such accounting shall be made available for inspection and
676 copying upon the written request of any time-share estate owner or any holder of a recorded lien
677 against the time-share estate that was foreclosed upon at the sale. The association and the trustee shall
678 maintain a copy of the accounting for at least 12 months following the sale. The trustee may, but shall
679 not be required to, file an accounting of the sale with the commissioner of accounts pursuant to § 26-15.

680 2. A trustee who forecloses under a purchase money deed of trust where the time-share owner is the
681 grantor and the developer is the initial beneficiary may, but shall not be required to, file an accounting
682 of the sale with the commissioner of accounts pursuant to § 26-15. An accounting shall be prepared by
683 the trustee and made available for inspection and copying upon the written request of any time-share
684 estate owner of or any holder of a recorded lien against the time-share estate that was foreclosed upon
685 at the sale. The trustee shall maintain a copy of the accounting for at least 12 months following the
686 foreclosure sale.

687 3. The commissioner of accounts to whom an accounting of sale is returned in connection with the
688 foreclosure of a memorandum of lien or a purchase money deed of trust on a time-share estate shall be
689 entitled to a fee, not to exceed \$45, on each such sale.

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

699 § 55-370.01. Time-share owners' association books and records; meetings; use of email.

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

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

714 The association shall provide members of the association with the location of the books and records,
715 along with the name and address of the custodian, by any reasonable method, which may include
716 posting in a reasonable location at the situs of the time-share project or in the annual report required by
717 § 55-370.1.

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

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

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

735 C. The association shall maintain among its records a complete, up-to-date list of the names and

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

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

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

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

2. A director of the association may be removed from the office pursuant to any procedure provided in its ~~articles of incorporation~~ *association formation documents* 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.

F. Whenever in this chapter communication between the board of directors and a member of the association is required by mail, any electronic means may be used in the alternative, including ~~e-mail~~ *email*, provided such electronic communication is personal and only between such board and such member. *Notwithstanding the foregoing or any other provision of this chapter, an owner or member may require the association, developer, or managing agent to communicate by United States mail.*

G. Filings with the ~~board~~ *Board* may be made by ~~any electronic means~~ *electronic transmission* providing such ~~board~~ *Board* is willing to accept same.

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

A. ~~Commencing with~~ *Throughout* the time-share estate program and ~~within 120 days after the close of each fiscal year thereafter by June 30 of each year thereof,~~ an annual report shall be prepared and distributed to all time-share estate owners. The annual report required hereby shall be prepared and distributed for each time-share estate project ~~located in the Commonwealth and~~ registered with the Board. ~~During the developer control period, the~~ *The* annual report shall be prepared and distributed to all time-share ~~purchasers~~ *owners* by the developer or its designated managing entity and thereafter by the association. *During the developer control period, the cost of preparing the annual report shall be a time-share estate occupancy expense; thereafter, the cost shall be a time-share program expense.*

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; *The full legal name of the time-share project and its address;*

2. *The full legal name of the association;*

3. 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;

4. *The managing entity's name, address, and contact person thereat, if any, for the project;*

5. *A statement of whether or not the developer control period has terminated for the time-share estate project;*

797 6. Financial statements of the association audited by an independent certified public accounting firm
 798 of the association, which contain at least the following:
 799 2a. A balance sheet as of the end of the ~~fiscal~~ previous year just ended;
 800 3b. An income statement as of the end of the ~~fiscal~~ previous year just ended; and
 801 4c. A statement of the net changes in the financial position of the association for the ~~fiscal~~ previous
 802 year just ended;
 803 ~~5. A~~ 7. During the developer control period, a statement of the maintenance fee constituting the
 804 time-share ~~estates~~ estate occupancy expenses, the regular assessment, and any special assessments or
 805 other charges due for the current year from each time-share estate owner; and after the developer control
 806 period, a statement of the assessments constituting the time-share program expenses and any special
 807 assessments or other charges due for the current year from each time-share estate owner; and
 808 68. A copy of the current budget adopted by the association's board of directors reflecting the
 809 anticipated time-share estate occupancy expenses maintenance fee and any special assessment during the
 810 developer control period and thereafter the assessment and any special assessment, along with:
 811 a. A statement as to who prepared the budget;
 812 b. A statement of the budgetary assumptions concerning occupancy factors;
 813 c. A description of any provision made in the budget for reserves for repairs and replacement;
 814 d. A statement of any other reserves;
 815 e. The projected financial liability for each time-share estate owner, including a statement of (i) the
 816 nature of all charges, assessments, maintenance fees, and other expenses ~~which~~ that may be assessed, (ii)
 817 the current amounts assessed, and (iii) the method and formula for changing any such assessments; and
 818 f. A statement of any services not reflected in the budget that the developer provides, or expenses
 819 that it pays, ~~what it~~ that the association expects may become a time-share occupancy expense or a
 820 time-share program expense, as the case may be, at any subsequent time, and the projected time-share
 821 program expense assessment attributable to each of those services or expenses for the association and
 822 for each time-share-;
 823 9. A statement of the location of the books and records of the association along with the name and
 824 contact address of the custodian of such books and records; and
 825 10. The amount charged by the association to reflect on its books and records each new subsequent
 826 owner of a time-share acquired from an existing owner, which amount shall not exceed \$75; moreover,
 827 a statement to the effect that if such new owner did not obtain a certificate of resale issued pursuant to
 828 § 55-380, the association will provide the same at an additional charge not to exceed \$100.
 829 C. In lieu of the annual report required by subsection A, during the first ~~twelve~~ 12 months of the
 830 time-share program, the developer or the association shall prepare a budget which shall contain the
 831 information contained in subdivision 6 of ~~subsection B~~ 8.
 832 § 55-370.1:1. Time-share use owners' annual report.
 833 A. Throughout the time-share use program and by June 30 of each year thereof, an annual report
 834 shall be prepared and distributed to all owners. The annual report required hereby shall be prepared
 835 and distributed for each time-share use project registered with the Board. The annual report shall be
 836 prepared and distributed to all owners by the developer. The cost of preparing the annual report shall
 837 be a time-share program expense.
 838 B. The annual report shall contain the following:
 839 1. The full legal name of the time-share use project and its address;
 840 2. A list of the names and mailing addresses of the members of the developer's board of directors
 841 and the name of the person who prepared the report;
 842 3. The managing entity's name, address, and contact person thereat, if any, for the project;
 843 4. Financial statements for the time-share use program audited by an independent certified public
 844 accounting firm for the time-share use program, which shall contain at least the following:
 845 a. A balance sheet of the time-share use program as of the end of the previous year just ended;
 846 b. An income statement reflecting all revenues received from owners as such regardless of amounts,
 847 reason, or denomination and all expenses incurred because of such owners' use and occupancy of the
 848 project as of the end of the previous year just ended; and
 849 c. A statement of the net changes in the financial position of the time-share use program for the
 850 previous year just ended;
 851 5. A statement of the maintenance fee, howsoever denominated, and any special assessments or other
 852 charges due for the current year from each time-share use owner;
 853 6. A copy of the current budget adopted by the developer's board of directors reflecting the
 854 maintenance fee and any special assessment, howsoever denominated, along with:
 855 a. A statement of the number of time-share use owners then entitled to participate in the time-share
 856 use program along with a breakdown, if any, of use restrictions occasioned by seasonality and the like;
 857 b. A statement as to who prepared the budget;
 858 c. A statement of the budgetary assumptions concerning occupancy factors;

859 d. A description of any provision made in the budget for reserves for repairs and replacement;
 860 e. A statement of any other reserves;
 861 f. The projected financial liability for each time-share use owner, including a statement of (i) the
 862 nature of all charges, assessments, maintenance fees, and other expenses that may be assessed, (ii) the
 863 current amounts assessed, and (iii) the method and formula for changing any such assessments; and
 864 g. A statement of any services not reflected in the budget that the developer provides, or expenses
 865 that it pays, which such developer expects may become a time-share program expense at any subsequent
 866 time and the projected time-share program expense assessment attributable to each of those services or
 867 expenses for each time-share;
 868 7. A statement of the location of the books and records of the developer along with the name and
 869 contact address of the custodian of such books and records; and
 870 8. The amount charged by the developer to reflect on its books and records each new subsequent
 871 owner of a time-share acquired from an existing owner, which amount shall not exceed \$75.
 872 C. In lieu of the annual report required by subsection A, during the first 12 months of the time-share
 873 use program, the developer shall prepare a budget that shall contain the information contained in
 874 subdivision B 4.
 875 § 55-371. Time-share instrument for time-share use project.
 876 In addition to the requirements of § 55-367, the time-share instrument for a time-share use program
 877 shall prescribe and outline reasonable arrangements for the management and operation of the time-share
 878 use program and for the maintenance, repair, and furnishing of time-share use units comprising same,
 879 which arrangements shall include, but need not be limited to, provisions for the following:
 880 1. Standards and procedures for upkeep, repair and interior furnishing of time-share use units, for the
 881 replacements of such furnishings, and for providing maid, cleaning, linen, and similar services to the
 882 such units during use and occupancy periods;
 883 2. Adoption of standards and rules of conduct governing the use, enjoyment, and occupancy of
 884 time-share use units by owners;
 885 3. Payment by the developer of the costs and expenses of operating the time-share use program and
 886 owning and maintaining the time-share use units ~~comprising it~~ and facilities comprising the project;
 887 4. Selection of a managing agent to act for and on behalf of the developer should the developer elect
 888 not to undertake the duties, responsibilities, and obligations of the management of the time-share use
 889 program;
 890 5. ~~Procedures~~ Adoption of standards and rules of conduct for the use, enjoyment, and occupancy of
 891 time-share units and facilities comprising the project by the time-share use owners and guests as well as
 892 procedures for establishing the rights of time-share use owners to occupancy, use, and enjoyment of
 893 time-share use units and such facilities by prearrangement or under a first-reserved, first-served priority
 894 system;
 895 6. Procedures for imposing and collecting regular and/or special assessments, maintenance, or use
 896 fees from time-share use owners as necessary to defray all time-share expenses and in providing
 897 materials and services to the units and facilities comprising the project, as herein required of the
 898 developer;
 899 7. Comprehensive general liability insurance for death, bodily injury, and property damage arising
 900 out of, or in connection with, the occupancy, use, and enjoyment of time-share use units by time-share
 901 use owners, their guests, and other users. The costs associated with securing and maintaining such
 902 insurance shall be a time-share expense. Nothing herein shall be construed to obligate the developer to
 903 secure insurance on the conduct of the time-share use owners, their guests and other users, or the
 904 personal effects or property of such owners, guests, and users;
 905 8. Methods for providing compensating or alternate use periods or monetary compensation to a
 906 time-share use owner if a time-share use unit cannot be made available for the period to which the
 907 owner is entitled by schedule or by a confirmed reservation; and
 908 9. Procedures for imposing a monetary penalty or suspension of a time-share use owner's rights and
 909 privileges in the time-share use program or project or termination of the time-share use itself for failure
 910 of the time-share use owner to comply with the provisions of the time-share use instrument, the rules
 911 and regulations established by the developer with respect to the occupancy, use and enjoyment of the
 912 time-share use units, or the failure to pay the charges imposed by the developer against the time-share
 913 use owner for providing the materials and services as herein required of the developer. Except in matters
 914 where the time-share use owner has failed to pay the charge imposed by the developer for a period of
 915 less than sixty days after it has become due and payable, the owner shall be given notice and the
 916 opportunity to be heard. ~~for failure of a time-share use owner to comply with provisions of the~~
 917 ~~time-share instrument, the contract, or the rules and regulations with respect to the occupancy, use, and~~
 918 ~~enjoyment of the time-share units and common elements constituting the time-share project. Under these~~
 919 ~~procedures a time-share owner must be given reasonable notice and reasonable opportunity to be heard~~

920 *and to explain the charges against him in person or in writing to the managing entity before a decision*
 921 *to impose discipline is rendered;*

922 *10. Procedures for the suspension of a time-share use owner's rights and privileges to participate in*
 923 *the time-share use program or to use, enjoy, and occupy the time-share project during his confirmed use*
 924 *period or other time for failure of such owner to comply with provisions of the time-share instrument,*
 925 *consumer documents, or the rules and regulations with respect to the use, occupancy, and enjoyment of*
 926 *the time-share units and common elements constituting the time-share project or the failure to pay any*
 927 *and all financial obligations due developer timely and in full; and*

928 *11. The effect on the time-share owner with respect to both time-share use ownership and*
 929 *participation rights in the time-share use program occasioned by the violation of the procedures*
 930 *outlined in subdivision 9 or 10.*

931 *§ 55-374. Public offering statement.*

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

946 *1. As to the developer:*

947 *1a. The name and principal address of the developer and the time-share project registered with the*
 948 *Board about which the public offering statement relates, including:*

949 *ab. The name, principal occupation, and address of every director, top five officers, partner, limited*
 950 *liability company manager, or trustee of the developer;*

951 *bc. The name and address of each person owning or controlling an interest of 20 percent or more in*
 952 *each time-share project registered with the Board the developer;*

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

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

963 *ef. The name and address of the developer's agent for service receipt of any notice permitted by this*
 964 *chapter; and*

965 *g. In a time-share use program, a copy of the current audited balance sheet of the developer;*

966 *2. As to the time-share project:*

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

971 *b. The name and address of the managing entity for the project;*

972 *c. Provisions, if any, that have been made for public utilities in the time-share project including*
 973 *water, electricity, telephone, and sewerage facilities;*

974 *d. In a time-share estate program, the legal name of the association and a general description of the*
 975 *perfection of lien rights afforded the association under § 55-370;*

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

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

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

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

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

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

3. As to all time-shares time-share units offered within the time-share project offered by the developer:

a. The form of time-share ownership offered in the project types, duration, and number of units in the project registered with the Board;

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

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

d. The estimated maximum number of time-share units that may become subject to the part of the time-share program; project; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1043 prospective purchasers.

1044 c. The extent to which a time-share unit may become subject to a tax or other lien arising out of
1045 claims against other owners of the same unit;

1046 4. As to the time-share program offered by developer:

1047 a. The date when the time-share program is to terminate;

1048 b. Any provision in the time-share instrument for the sooner termination or extension of the
1049 time-share program that alters the date given in subdivision A 4 a; and

1050 c. Identification of units that are subject to the time-share program;

1051 5. As to time-shares offered by developer:

1052 a. The form of time-share ownership offered in the project registered with the Board;

1053 b. Any restraints on alienation of any number or portion of any time-shares;

1054 c. A general description of any resale program offered by developer; and

1055 d. If the developer utilizes the possibility of reverter, a statement to that effect referring the
1056 purchaser to the reverter deed for an explanation thereof;

1057 6. As to finances or expenses affecting the time-share project or time-share program:

1058 a. In a time-share estate program, a copy of the annual report or budget required by § 55-370.1,
1059 which copy may take the form of an exhibit to the public offering statement. In the case where multiple
1060 time-share projects are registered with the Board, the copy or exhibit may be in summary form;

1061 b. Any initial or special fee due from the purchaser at settlement together with a description of the
1062 purpose and method of calculating the fee;

1063 c. A general description of any financing offered by or available through the developer;

1064 d. A statement that the purchaser has a nonwaivable right of cancellation, referring such purchaser
1065 to that portion of the contract in which such right may be found; and

1066 e. Any services that the developer provides or expense it pays and that it expects may become at any
1067 subsequent time a common expense of the owners, and the projected time-share expense liability
1068 attributable to each of those services or expenses for each time-share;

1069 7. A description of the terms of the deposit escrow requirements, including a statement that deposits
1070 may be removed from escrow at the termination of the cancellation period;

1071 8. A statement to the effect that any inconsistency between contents of the public offering statement
1072 and the time-share instrument shall be resolved in favor of the time-share instrument;

1073 9. Copies of the current time-share instrument or supplement thereto and the association formation
1074 documents and association bylaws, each of which may be a supplement to the public offering statement;
1075 and

1076 10. Any other information required by the Board to assure full and fair meaningful disclosure to
1077 prospective purchasers.

1078 B. If any prospective purchaser is offered the opportunity to subscribe to or participate in any
1079 exchange program, the public offering statement shall include as an exhibit or supplement, the disclosure
1080 document prepared by the exchange company in accordance with § 55-374.2 and a brief narrative
1081 description of the exchange program which shall include the following:

1082 1. A statement of whether membership or participation in the program is voluntary or mandatory;

1083 2. The name and address of the exchange company together with the names of its top three officers
1084 and directors;

1085 3. A statement of whether the exchange company or any of its top three officers, directors, or holders
1086 of a 10 percent or greater interest in the exchange company has any interest in the developer, managing
1087 entity or the time-share project;

1088 4. A statement that the purchaser's contract with the exchange company is a contract separate and
1089 distinct from the purchaser's contract with the developer; and

1090 5. A brief narrative description of the procedure whereby exchanges are conducted.

1091 C. The public offering statement of a conversion time-share project shall also include the following,
1092 which may take the form of an exhibit to the public offering statement:

1093 1. A specific statement of the amount of any initial or special fee, if any, due from the purchaser of
1094 a time-share on or before settlement of the purchase contract and the basis of such fee occasioned by
1095 the fact that the project is a conversion time-share project;

1096 2. Information on the actual expenditures, if available, made on all repairs, maintenance, operation,
1097 or upkeep of the building or buildings within the last three years. This information shall be set forth in a
1098 tabular manner within the proposed budget of the project. If such building or buildings have not been
1099 occupied for a period of three years then the information shall be set forth for the period during which
1100 such building or buildings were occupied;

1101 3. A description of any provisions made in the budget for reserves for capital expenditures and an
1102 explanation of the basis for such reserves occasioned by the fact that the project is a conversion
1103 time-share project, or, if no provision is made for such reserves, a statement to that effect; and

1104 4. A statement of the present condition of all structural components and major utility installations in

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

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

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

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

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

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

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

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

I. The public offering statement may be in any format, including a compact disc, provided the prospective buyer has available for review *at the point of sale*, along with ample time for any questions and answers, a *printed* copy of the public offering statement prior to his execution of a contract.

§ 55-374.1. Certain advertising practices regulated.

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

1. The retail value of each gift or prize;
2. The approximate odds against any given person obtaining each gift or prize if all persons to whom the advertisement is disseminated do what is necessary to qualify for the award of the gift or prize;
3. If the number of gifts or prizes to be awarded is limited, a statement of the number of gifts or prizes to be awarded or in lieu thereof, the nature of such limitation;

4. All rules, terms, requirements, and conditions which must be fulfilled before a prospective purchaser may claim any gift or prize, including whether the prospective purchaser is required to attend a sales presentation in order to receive the gift or prize;

5. The date upon which the offer expires; and

6. A statement to the effect that the offer is being made for the purpose of soliciting the purchase of a time-share, time-share interest, interval ownership, interval ownership interest, vacation ownership, vacation ownership interest or product, as appropriate.

B. Any gift or prize offered in connection with an offering shall be delivered to the prospective

1166 purchaser no later than the day the purchaser attends a sales presentation, if required, and if not, on the
1167 day the purchaser appears to claim it, whether or not he purchases a time-share. In the event the supply
1168 of gifts or prizes is exhausted at the time required for delivery, the developer shall give the prospective
1169 purchaser a written, unconditional promise to deliver such gift or prize no later than 30 days from the
1170 date required for delivery. If such gift or prize is not obtainable, the developer shall deliver an item of
1171 equal or greater value.

1172 C. The offering or sale of any product registered with the Board is exempt from the Virginia Travel
1173 Club Act (§ 59.1-445 et seq.), the Virginia Condominium Act (§ 55-79.39 et seq.), the Virginia
1174 Securities Act (§ 13.1-501 et seq.), the Virginia Home Solicitation Sales Act (§ 59.1-21.1 et seq.), the
1175 Subdivided Land Sales Act (§ 55-336 et seq.), Chapter 27.2 (§ 55-525.8 et seq.) of Title 55, *the Virginia*
1176 *Consumer Protection Act* (§ 59.1-196 et seq.), and the Prizes and Gifts Act (§ 59.1-415 et seq.).

1177 D. Any inconsistency between this chapter and the provisions of the Virginia Nonstock Corporation
1178 Act (§ 13.1-801 et seq.) shall be resolved in favor of this chapter.

1179 § 55-374.2. Exchange programs.

1180 A. Any exchange company ~~which~~ that offers an exchange program in the Commonwealth shall
1181 prepare and register with the Board a disclosure document including, but not limited to, the following:

1182 1. The name and address of the exchange company;

1183 2. The names and addresses of the top three officers, all directors, and, if the exchange company is
1184 privately held, all shareholders owning five percent or more interest in the exchange company;

1185 3. Whether the exchange company or any of its officers or directors has any legal or beneficial
1186 interest in any developer or managing agent for any time-share program participating in the exchange
1187 program and, if so, the name and location of the time-share project and the nature of the interest;

1188 4. Unless the exchange company is also the developer or an affiliate, a statement that the purchaser's
1189 contract with the exchange company is a contract separate and distinct from the sales contract;

1190 5. Whether the purchaser's participation in the exchange program is dependent upon the continued
1191 affiliation of the time-share project with the exchange program;

1192 6. Whether the purchaser's membership or participation, or both, in the exchange program is
1193 voluntary or mandatory;

1194 7. A complete and accurate description of the terms and conditions of the purchaser's contractual
1195 relationship with the exchange company and the procedure by which changes in the terms and
1196 conditions of the exchange contract may be made;

1197 8. A complete and accurate description of the procedure to qualify for and effectuate exchanges;

1198 9. A complete and accurate description of all limitations, restrictions, or priorities employed in the
1199 operation of the exchange program including, but not limited to, limitations on exchanges based on
1200 seasonality, unit size, or levels of occupancy, expressed in boldfaced type, and, in the event that such
1201 limitations, restrictions, or priorities are not uniformly applied by the exchange program, a clear
1202 description of the manner in which they are applied;

1203 10. Whether exchanges are arranged on a space available basis and whether any guarantees of
1204 fulfillment of specific requests for exchanges are made by the exchange program;

1205 11. Whether and under what circumstances an owner, in dealing with the exchange company, may
1206 lose the use of occupancy of his time-share in any properly applied for exchange, without being
1207 provided with substitute accommodations by the exchange company;

1208 12. The fees or range of fees for participation by owners in the exchange program, a statement of
1209 whether any such fees may be altered by the exchange company, and the circumstances under which
1210 alterations may be made;

1211 13. The name and address of the site of each time-share property, accommodation or facility
1212 participating in the exchange program;

1213 14. The number of units in each property participating in the exchange program which are available
1214 for occupancy and which qualify for participation in the exchange program, expressed within the
1215 following numerical groupings: 1-5, 6-10, 11-20, 21-50, and 51 and over;

1216 15. The number of owners with respect to each time-share program or other property who are
1217 eligible to participate in the exchange program, expressed within the following numerical groupings:
1218 1-100, 101-249, 250-499, 500-999, and 1,000 and over, and a statement of the criteria used to determine
1219 those owners currently eligible to participate in the exchange program;

1220 16. The disposition made by the exchange company of time-shares deposited with the exchange
1221 program by owners eligible to participate in the exchange program and not used by the exchange
1222 company in effecting exchanges;

1223 17. The following information, which, except as provided in subsection B of this section, shall be
1224 independently audited by a certified public accountant or accounting firm in accordance with the
1225 standards of the Accounting Standards Board of the American Institute of Certified Public Accountants
1226 and reported for each year no later than July 1 of the succeeding year, beginning no later than July 1,
1227 1985;

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

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

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

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

ed. The number of exchanges confirmed by the exchange company during the year; and

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

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

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

DC. Each exchange company must include the statement set forth in subdivision A 18 of subsection A on all promotional brochures, pamphlets, advertisements, or other materials disseminated by the exchange company which *that* also contain the percentage of confirmed exchanges described in subdivision 17 e of subsection A 17 b.

ED. 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.

FE. 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 Common Interest Community Management Information Fund established pursuant to § 55-529.

§ 55-375. Escrow of deposits.

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

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

required by this section is prima facie evidence of willful violation of this section.

B. The developer shall disclose in the contract or in the public offering that the deposit may not be held in escrow after expiration of the cancellation period and that such deposit is not protected as an escrow after expiration of the cancellation period. This disclosure shall include a statement of whether or not the developer reserves the option to sell or assign any promissory note given by a purchaser to another entity, whether or not such entity is affiliated with the developer. Both disclosures shall appear in boldfaced type of a minimum size of 10 points.

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

§ 55-376. 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~~ 45 days after receipt of the *written* notice of cancellation.

B. If the purchaser elects to cancel a contract pursuant to subsection A, he shall only do so *in a written notice to this effect* and 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 designated in the contract. Any such notice sent by certified mail shall be effective on the date postmarked. *No purchaser shall be entitled to use an electronic transmission to effect a cancellation.*

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

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

E. A statement of the purchaser's right of cancellation as set forth in subsections A and B shall appear in the contract above the purchaser's signature line. Such statement shall appear in type no smaller than any other provisions of the contract, and the caption "PURCHASER'S NONWAIVABLE RIGHT TO CANCEL" shall appear immediately preceding it in conspicuous, bold-face type.

§ 55-376.1. Possibility of reverter.

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

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

2. A grantee in the reverter deed is in default and *such grantee* has been provided thereafter with at least two written notices to this effect, *one of which shall be sent by registered mail return receipt requested*, with no less than a 10-calendar day right to cure in each notice;

3. A grantee in the reverter deed has been provided with no less than 30 calendar days *from the date of default in subdivision A 2, of which the two 10-calendar-day notices required in subdivision A 2 may be a part* within which to cure the default before exercise of the possibility of reverter occurs;

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

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

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

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

c. A recitation that the purchaser defaulted in or violated a consumer document *for no less than 45 days* and failed to cure such default or violation within a period of no less than 30 calendar days

thereafter;

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

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

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

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

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

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

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

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

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

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

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

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

Loss of Time-Share Estate. Developer has inserted into this deed a "possibility of reverter." By this concept, should a grantee of this reverter deed default in or violate an obligation imposed by a consumer document for a period of at least 60 45 days and fail to cure such violation or default within a *period of* no less than 30 calendar days thereafter, title to the time-share will revert back to the developer upon the developer recording an affidavit to this effect where this reverter deed is recorded. Only the developer can elect to exercise the possibility of reverter. Each grantee in this reverter deed will be sent at least two notices of default or violation within the 30-day period with no less than 10 days to cure in each instance. The notice will be sent to the address of each grantee maintained at the office of the developer or the association. After the cure period has lapsed and the developer records the affidavit, title to the time-share estate will automatically vest in the developer and any note executed by grantee will be deemed canceled and any recorded deed of trust securing such note shall be automatically released. The possibility of reverter will itself lapse and become null and void at the soonest to occur of the following: (i) the deed of trust is released of record, (ii) a statement that the deed of trust is released of record is executed and recorded by the developer with a date of when the possibility of reverter was or is to lapse, or (iii) when the time-share program terminates pursuant to either the Virginia Real Estate Time-Share Act or the time-share instrument which created such program.

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

G. Any possibility of reverter not otherwise exercised by the developer pursuant to this section shall itself lapse and become null and void at the soonest to occur of the following: (i) the deed of trust is released of record, (ii) a statement that the deed of trust is released of record is executed and recorded by the developer with a date of when the possibility of reverter was or is to lapse, or (iii) when the time-share program terminates pursuant to either this chapter or the time-share instrument.

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

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

§ 55-376.5. *Buyer's Acknowledgment.*

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

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

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 bold face, 10-point font size: "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 (i) is for personal use and enjoyment and not for commercial or investment purposes and (ii) is not being made based upon any representation that the time-share shall have 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 or 55-370.1:1;

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 the Buyer's Acknowledgment 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. *Registration required for resellers.*

A. A reseller shall be registered with the CICB before receiving anything of value for providing or offering to provide a resale service.

B. 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 rents 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 or percentage of (i) the number of resale time-shares listed for sale and the number 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, in either case 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."

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

1. The disclosures required by subdivisions B 1 through B 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 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."

D. 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 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."

§ 55-380.2. Exemptions from reseller requirements.

The following shall be exempt from the requirements of § 55-380.1:

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.

1535 2. A person who owns or acquires more than 12 resale time-shares and who subsequently transfers
1536 all such resale time-shares to a single purchaser in a single transaction.

1537 3. The owner, its agents, and employees of a regularly published newspaper, magazine, or other
1538 periodical publication of general circulation; broadcast station; website; or billboard, to the extent their
1539 activities are limited to solicitation and publication of advertisements and the transmission of responses
1540 to the persons who place the advertisements. Any person who would otherwise be exempt from this act
1541 pursuant to this section shall not be exempt if the person (i) solicits the placement of the advertisement
1542 by representing that the advertisement will generate cash, a certain price, or a similar type of
1543 representation for the time-share owner's resale time-share, (ii) makes a recommendation as to the sales
1544 price for which to advertise the resale time-share, (iii) makes any representations to the person placing
1545 the advertisement regarding the success rate for selling resale time-shares advertised with such person,
1546 or (iv) makes any misrepresentations as described in this act.

1547 4. Sale by a developer, or a party acting on its behalf, of a resale time-share under a current
1548 registration of the time-share program in which the resale time-share is included.

1549 5. Sale by an association, managing entity, or a party acting on its behalf, of a resale time-share
1550 owned by the association so long as the sale is in compliance with subsection C of § 55-380.1.

1551 6. Attorneys, title agents, title companies, or escrow companies providing closing services in
1552 connection with the transfer of a resale time-share.

1553 § 55-380.3. Recordkeeping by resellers.

1554 A. If contact information has been obtained by a reseller from any source, including a lead dealer,
1555 the reseller and lead dealer shall maintain the following records for a period of five years from the last
1556 date of contact between the reseller and the owner:

1557 1. The name; home address; work address, if different; telephone number; email address, if any; and
1558 a copy of a current government-issued photographic identification (e.g., driver's license, passport, or
1559 military identification card) of the lead dealer who provided the contact information;

1560 2. The date, time, and place of the transaction at which the contact information was obtained, along
1561 with the amount of consideration paid and a signed receipt from the lead dealer or copy of a cancelled
1562 check; and

1563 3. A copy of the contact information obtained in the exact form and media in which received.

1564 B. A reseller shall maintain records for at least five years after each transaction involving resale
1565 service including resale transfer agreements and resale purchase agreements.

1566 C. In any civil or criminal action based on a violation of this section, there shall be a presumption
1567 that contact information was wrongfully obtained if a reseller or lead dealer fails to produce the
1568 records required by this section.

1569 D. Any person who establishes that a reseller or lead dealer wrongfully obtained or wrongfully used
1570 contact information with respect to time-share owners or members of an exchange program shall, in
1571 addition to any other remedies that may be available in law or equity, be entitled to recover from such
1572 reseller or lead dealer an amount equal to \$1,000 for each time-share owner or member about whom
1573 contact information was wrongfully obtained or used. The prevailing person in any such action shall
1574 also be entitled to recover reasonable attorney fees and costs.

1575 § 55-380.4. Prohibited practices.

1576 A person violates this act by engaging in any of the following:

1577 1. Failing to disclose information in writing concerning the marketing, sale, or transfer of resale
1578 time-shares required by this act prior to accepting any consideration or with the expectation of
1579 receiving consideration from any time-share owner, seller, or buyer.

1580 2. Making false or misleading statements concerning offers to buy or rent; the value, pricing, timing,
1581 or availability of resale time-shares; or numbers of sellers, renters, or buyers when engaged in
1582 time-share resale activities.

1583 3. Misrepresenting the likelihood of selling a resale time-share interest.

1584 4. Misrepresenting the method by or source from which the reseller or lead dealer obtained the
1585 contact information of any time-share owner.

1586 5. Misrepresenting price or value increases or decreases, assessments, special assessments,
1587 maintenance fees, or taxes or guaranteeing sales or rentals in order to obtain money or property.

1588 6. Making false or misleading statements concerning the identity of the reseller or any of its affiliates
1589 or the time-share resale entity's or any of its affiliate's experience, performance, guarantees, services,
1590 fees, or commissions, availability of refunds, length of time in business, or endorsements by or
1591 affiliations with developers, management companies, or any other third parties.

1592 7. Misrepresenting whether or not the reseller or its affiliates, employees, or agents hold, in any
1593 state or jurisdiction, a current real estate sales or broker's license or other government-required license.

1594 8. Misrepresenting how funds will be utilized in any time-share resale activity conducted by the
1595 reseller.

1596 9. Misrepresenting that the reseller or its affiliates, employees, or agents have specialized education,

professional affiliations, expertise, licenses, certifications, or other specialized knowledge or qualifications.

10. Making 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. Representing 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. Misrepresenting the nature of any resale time-share interest or the related time-share plan.

13. Misrepresenting the amount of the proceeds, or failing 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. Failing to transfer any resale time-share interests as represented and required by this act 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 act.

15. Failing 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 act.

16. Misrepresenting or misusing the intended purpose of a power of attorney or similar document to the detriment of any grantor of such power of attorney.

§ 55-383. Statute of limitations; actions; limitation on rescission rights.

A. Except as otherwise provided in § 55-389, a judicial proceeding where the sufficiency of the time-share instrument, the accuracy of the public offering statement, or validity of any contract of purchase is in issue and a rescission of the contract or damages is sought shall be commenced within two years after the date of the contract of purchase, notwithstanding that the purchaser's terms of payments may extend beyond this period of limitation; however, with respect to the enforcement of provisions in the contract of purchase which require the continued furnishing of services and the reciprocal payments to be made by the purchaser, the period of bringing a judicial proceeding will continue for a period of two years for each breach.

Rescission of the contract shall not be granted by the court unless (i) the inaccuracy of the public offering statement or the insufficiency of the time-share instrument directly and adversely affected the purchaser's right to participate in the time-share program or to own his time-share or (ii) at the time of the contract the purchaser files his complaint with the court, the developer has sold more time-shares than there are time-share units that have been completed or bonded to accommodate such sales permitted by the time-share instrument. Further, if damages are awarded, the amount of the damages shall be limited to actual damages sustained.

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

§ 55-385. Financial records.

The person or entity responsible for either making or collecting common expense assessments or, maintenance fees, or special assessments shall keep detailed financial records. All financial and other records shall be made reasonably available at such person's or entity's office for examination by any time-share owner and his authorized agents.

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

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

B. The developer shall file with the Board a payment and performance bond in the sum equal to 100 percent of the estimated cost of completing all promised and incomplete units and common elements comprising the time-share project described in the time-share instrument and the public offering statement. Such bond shall be conditioned upon the completion of 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 and shall list the Board as obligee. 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 cash or

1658 letter of credit *or use the cash posted*. Should it become necessary for the Board to call upon the *bond*
1659 *or* letter of credit in order to assure completion of the improvements, the Board shall have the authority
1660 to petition a court of competent jurisdiction to appoint a receiver to administer such completion.

1661 § 55-390. Registration of time-share project and time-share program required.

1662 A. A developer may not offer or dispose of any ~~interest~~ *time-share or alternative purchase* in a
1663 time-share *project or offer or dispose of any participation right in a time-share* program unless the
1664 time-share project and its program have been properly registered with the Board. A developer may
1665 accept a nonbinding reservation together with a deposit if the deposit is placed in an escrow account
1666 with an institution having trust powers within ~~this the~~ Commonwealth and is refundable at any time at
1667 the purchaser's option. In all cases, the reservation must require a subsequent affirmative act by the
1668 purchaser via a separate instrument to create a binding obligation. A developer may not dispose of or
1669 transfer a time-share *or dispose of or transfer a participation right in a time-share program* while an
1670 order revoking or suspending the registration of the time-share ~~program~~ *project* is in effect. In the case
1671 of a time-share project located outside ~~this the~~ Commonwealth and properly registered in the situs, the
1672 Board may accept a substitute application for registration.

1673 B. [Repealed.]

1674 C. The developer shall maintain records of names and addresses of current independent contractors
1675 employed by it for time-share sales purposes.

1676 § 55-394.1. Annual report; amendments; termination of registration.

1677 A. The developer shall file a report in the form prescribed by the Board's regulations by June 30 of
1678 each year the registration is effective. The developer of any time-share project initially registered with
1679 the Board between January and June shall not be required to file an annual report for the year in which
1680 it was initially registered. The report shall reflect any material changes in information contained in the
1681 original application for registration or in the immediately preceding annual report, whichever is later,
1682 and shall be accompanied by the appropriate fee established by the Board's regulations or pursuant to
1683 § 55-392.1.

1684 B. During the developer control period in a time-share estate program, the developer shall file a copy
1685 of the unit owners' association annual report required by § 55-370.1 along with the annual report
1686 required by this section.

1687 C. The developer shall amend or supplement its registration with the Board to report any material
1688 change in the information required by §§ 55-374 and 55-391.1. Such amendments or supplemental
1689 information shall be filed with the Board within twenty business days after the occurrence of the
1690 material change.

1691 D. ~~In a time-share estate program, if the annual report indicates that the developer has transferred~~
1692 ~~title to the time-share owners' association and that no further development rights exist, the Board shall~~
1693 ~~issue an order terminating the registration of time-share projects.~~

1694 E. The Board shall issue an order terminating the registration of a time-share project *and time-share*
1695 *program upon written application signed by the developer in which the developer states that (i) no*
1696 *further development right rights of the project is anticipated and that exist, (ii) the developer has ceased*
1697 *sales of time-shares at the project, and (iii) the developer requests termination of registration.*

1698 § 55-396. General powers and duties of Board.

1699 A. The Board may adopt, amend, and repeal rules and regulations and issue orders consistent with
1700 and in furtherance of the objectives of this chapter. The Board may prescribe forms and procedures for
1701 submitting information to the Board.

1702 B. The Board may accept grants in aid from any governmental source and may contract with
1703 agencies charged with similar functions in this or other jurisdictions, in furtherance of the objectives of
1704 this chapter.

1705 C. The Board may cooperate with agencies performing similar functions in this and other
1706 jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform
1707 administrative practices, and may develop information that may be useful in the discharge of the Board's
1708 duties.

1709 D. 1. ~~If the Board determines after legal notice and opportunity for hearing that a developer or agent~~
1710 ~~of developer has~~ *The Board may issue an order requiring the developer to cease and desist from any of*
1711 *the following and take such affirmative action that in the judgment of the Board will carry out the*
1712 *purposes of this chapter if after legal notice and opportunity for hearing, the Board determines that a*
1713 *developer or an agent of a developer has:*

1714 a. Made any representation in any document or information filed with the Board which is false or
1715 misleading;

1716 b. Engaged or is engaging in any unlawful act or practice;

1717 c. Disseminated or caused to be disseminated orally, or in writing, any false or misleading
1718 promotional materials in connection with a time-share program;

1719 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. 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.

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, 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.

§ 55-396.1. Protection of the interests of the association and all time-share owners; appointment of receiver.

A. Each member of the board of directors of the association owes a fiduciary duty to the other members of such board and to the members of such association with respect to the management and operation of the time-share project and time-share program, especially with respect to the receipt and disbursement of funds, including assessments and special assessments. All funds deposited with the association shall be handled in a fiduciary capacity and shall be kept in one or more separate accounts in an FDIC-insured financial institution located in the Commonwealth. The funds shall be the property of the association and shall be used only in accordance with the approved budget then in effect unless the board of directors, by resolution, decides otherwise. All records having administrative or fiscal value to the association compiled or generated on behalf of a time-share estate project or time-share program are the property of the association. The board of directors may retain and dispose of association records in accordance with the bylaws of the association then in effect.

B. Each primary or key executive officer of the developer in a time-share use project owes a fiduciary duty to its time-share owners with respect to the management and operation of the time-share project and time-share program, especially with respect to the receipt and disbursement of funds, including maintenance fees, assessments, levies, user fees, and special assessments to which it provides management services and to the handling of the funds or the records of the time-share use project. All funds paid by the time-share owners to the developer or deposited therewith shall be handled in a fiduciary capacity and shall be kept in one or more separate accounts in an FDIC-insured financial institution located in the Commonwealth. The funds received from the owners by way of annual dues,

1781 assessment, special assessment, resort levy, and the like shall be the property of the time-share owners
1782 and shall be segregated in the records of the developer in a manner that permits the funds to be so
1783 identified and used for the maintenance and upkeep of the time-share use project and management of
1784 the time-share use program. In this regard, no more than 25 percent of such funds received shall go to
1785 management for overhead and profit.

1786 C. A managing agent owes a fiduciary duty to the association to which it provides management
1787 services with respect to the manager's handling of the funds or the records of such association. All
1788 funds deposited with the managing agent shall be handled in a fiduciary capacity and shall be kept in a
1789 separate fiduciary trust account or accounts in an FDIC-insured financial institution located in the
1790 Commonwealth and separate from the assets of the managing agent. The funds shall be the property of
1791 the association and shall be segregated for each depository in the records of the managing agent in a
1792 manner that permits the funds to be identified on an association basis. All records having administrative
1793 or fiscal value to the association that a managing agent holds, maintains, compiles, or generates on
1794 behalf of a time-share estate project are the property of the association. A managing agent may retain
1795 and dispose of association records in accordance with a policy contained in the contract between the
1796 managing agent and the association. Within a reasonable time after a written request for any such
1797 records, the managing agent shall provide copies of the requested records to the association at the
1798 association's expense. The managing agent shall return all association records that it retains and any
1799 originals of legal instruments or official documents that are in the possession of the managing agent to
1800 the association within a reasonable time after termination of the contract for management services
1801 without additional cost to the association. Records maintained in electronic format may be returned in
1802 such format.

1803 D. If the Board has reasonable cause to believe that a person described in subsection A, B, or C is
1804 unwilling or unable to discharge its fiduciary responsibilities as described in such subsections, the
1805 Board may submit an ex parte petition to the Circuit Court where the jurisdiction is proper for the
1806 issuance of an order authorizing the immediate inspection by and production to representatives of the
1807 petitioner of any records, documents, and physical or other evidence belonging to the managing agent,
1808 member of the board of directors, or officer, as the case may be. The court may issue such order
1809 without notice if the petition, supported by affidavit of the petitioner and such other evidence as the
1810 court may require, shows reasonable cause to believe that such action is required to prevent immediate
1811 loss of property or money. The court may also temporarily enjoin further activity by the managing
1812 agent, member of the board of directors, or officer, as the case may be, and take such further action as
1813 shall be necessary to conserve, protect, and disburse the funds involved, including the appointment of a
1814 receiver. The papers filed with the court pursuant to this subsection shall be placed under seal.

1815 E. If the Board has reasonable cause to believe that a managing agent, member of the board of
1816 directors, or officer, as the case may be, is unable to properly discharge his fiduciary duties or
1817 responsibilities, the Board may file a petition with the Circuit Court, where the jurisdiction is proper,
1818 seeking one or both of the following relief: (i) an injunction prohibiting the withdrawal of any bank
1819 deposits or the disposition of any other assets belonging to or subject to the control of the managing
1820 agent, board of directors, or officer, as the case may be, or (ii) the appointment of a receiver for all or
1821 part of the funds or property constituting the time-share project or time-share program. Each person
1822 against whom the petition is filed shall be given notice of the time and place of the hearing on the
1823 petition and an opportunity to offer evidence. The court, in its discretion, may require a receiver
1824 appointed pursuant to this subsection to post bond, with or without surety. The papers filed with the
1825 court under this subsection shall be placed under seal until such time as the court grants an injunction
1826 or appoints a receiver. The court may issue an injunction, appoint a receiver, or provide such other
1827 relief as such court may consider proper if, after a hearing, it finds that such relief is necessary or
1828 appropriate to prevent loss, diminution, or dissipation of property constituting the time-share project or
1829 time-share program.

1830 F. In any proceeding under subsection E, any person or entity known to the Board to be indebted to
1831 or having in his possession property, real or personal, belonging to or subject to the control of the
1832 managing agent, member of the board of directors, or officer, as the case may be, and which property
1833 the Board reasonably believes may become part of the receivership assets, shall be served with a copy
1834 of the petition and notice of the time and place of the hearing.

1835 G. The court shall describe the powers and duties of the receiver in its appointing order, which may
1836 be amended from time to time. The receiver shall, unless otherwise ordered by the court in the
1837 appointing order, (i) prepare and file with the Board a list of all known time-share owners in the
1838 project or program, whether in good standing or otherwise; (ii) prepare and file with the Board a
1839 schedule of the receipt of monies from time-share owners in the project or program at for a period of
1840 no less than five years or such shorter period as records are available; (iii) prepare and file with the
1841 Board a schedule of the expenses paid, capital or otherwise, for a period of no less than five years or
1842 such shorter period as records are available; (iv) prepare and file with the Board a schedule of all

payments made to each member of the board of directors, managing agent, or key or executive officer of the developer, as the case may be, for a period of no less than five years or such shorter period as records are available; (v) notify in writing the association to which the subject managing agent provides management services of the appointment and take whatever action the receiver deems appropriate to protect the interests of such association until such time as it has had an opportunity to obtain a successor managing agent; (vi) facilitate the transfer of records and information to such successor managing agent; (vii) identify and take control of all bank accounts, including without limitation trust and operating accounts, over which the subject managing agent, the board of directors, or the developer, as the case may be, had signatory authority in connection with the time-share project or time-share program; (viii) prepare and submit an accounting of receipts and disbursements and account balances of all funds under the receiver's control for submission to the court within four months of the appointment and annually thereafter until the receivership is terminated by the court; (ix) attempt to collect any accounts receivable related to the time-share project or the time-share program; (x) identify and attempt to recover any assets wrongfully diverted from the subject time-share project or time-share program or assets acquired with funds wrongfully diverted from the time-share project or time-share program; (xi) determine the nature and amount of all claims of creditors of the time-share project and time-share program, including the association, if any; (xii) prepare and file with the court a report of such assets and claims proposing a plan for the distribution of funds in the receivership to such creditors in accordance with the provisions of subsection H; and (xiii) prepare and file with the court a report on the status of the time-share project and time-share program with a recommendation as to whether or either or both shall be terminated or continued and the conditions under which such is to occur.

H. Upon the court's approval of the receiver's report referenced in subsection G, at a hearing after such notice as the court may require, the receiver shall either (i) continue the time-share project or time-share program in accordance with the order entered into connection therewith or (ii) terminate the time-share program and liquidate the time-share project and thereafter distribute the assets and funds in the receivership first to clients whose funds were or ought to have been held in a fiduciary capacity by the subject managing agent, member of the board of directors, or officer, as the case may be, then to the receiver for fees, costs, and expenses awarded pursuant to subsection I, and thereafter to the creditors of the time-share project and, if the time-share program is terminated, then to the time-share owners as provided by court order to this effect.

I. A receiver appointed pursuant to this section shall be entitled, upon proper application to the court in which the appointment was made, to recover an award of reasonable fees, costs, and expenses.

J. The provisions of this section are declared to be remedial. The purpose of this section is to protect the interests of time-share owners adversely affected by a managing agent, a member of the board of directors, or a principal or key officer of the developer who has breached his fiduciary duty. The provisions of this section shall be liberally administered in order to protect those interests and thereby the public's interest in the quality of time-share projects, time-share programs, associations, managing agents, and exchange companies registered with the Board without regard for whether the situs of the time-share project is within or without the Commonwealth.

§ 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 is guilty of a Class 5 felony 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, 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.

2. That § 55-398 of the Code of Virginia is repealed.