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HOUSE BILL NO. 233

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology on February 27, 2012)

(Patron Prior to Substitute—Delegate Cosgrove)

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

Be it enacted by the General Assembly of Virginia:

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

§ 55-362. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

60 or (ii) applies for registration of the time-share program;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

125 "Possibility of reverter" means a provision contained in a reverter deed whereby the time-share estate  
126 automatically reverts or transfers back to the developer upon satisfaction of the requirements imposed by  
127 § 55-376.1.;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

187 "Time-share instrument" means any document, however denominated, which creates the time-share  
 188 project and program, and which may contain restrictions or covenants regulating the use, occupancy, or  
 189 disposition of time-shares in a project;

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

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

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

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

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

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

210 § 55-376.5. Buyer's Acknowledgment.

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

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

215 1. The name and address of the developer;

216 2. The name and address of the time-share project;

217 3. Whether the developer currently offers a resale or rental program or a buy-back program; and

218 4. The following statement in at least 10-point boldface type: "There is no assurance that a  
 219 purchaser may resell a time-share for a certain price or on particular terms. By signing below,  
 220 purchaser acknowledges that this purchase is (i) for personal use and enjoyment and not for commercial  
 221 or investment purposes and (ii) not being made based upon any representation that the time-share has  
 222 any future market value or resale potential."

223 § 55-380. Resale of time-shares.

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

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

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

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

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

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

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

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

242 B. The developer, managing agent, or such officer of the time-share owners' association as the  
 243 bylaws may specify, shall furnish the certificate of resale prescribed by subsection A hereof upon the  
 244 written request of any purchaser within ~~thirty~~ 30 days of the receipt of such request. Payment of the

245 reasonable costs of preparing the certificate may be required as a prerequisite to the issuance of the  
246 certificate, but such fee shall not exceed ~~fifty dollars~~ \$50.

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

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

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

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

260 § 55-380.1. *Required resale disclosures.*

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

264 1. *The name and permanent business address of the reseller;*

265 2. *A commencement and transaction date for such resale service;*

266 3. *The names and addresses of any affiliates and the primary website address used by the reseller*  
267 *and such affiliates to be used to promote the resale time-share;*

268 4. *Whether the reseller's rights are exclusive and, if so, the scope of such rights and length of the*  
269 *exclusivity period;*

270 5. *Whether any person, other than the owner, may occupy, rent, exchange, or use the resale*  
271 *time-share during the resale service;*

272 6. *The name of any person other than the owner who will receive any rent or other consideration*  
273 *from the use of the resale time-share during the resale service;*

274 7. *A description of each resale service to be provided and the fees, costs, or commissions for each;*

275 8. *A description sufficient to identify the resale time-share;*

276 9. *The jurisdiction issuing the license for any services by a licensed real estate broker or*  
277 *salesperson; and*

278 10. *The following in at least 10-point conspicuous type:*

279 a. *The ratio of (i) the number of resale time-shares listed for sale to the number of resale*  
280 *time-shares actually sold by the reseller for each of the past two calendar years or (ii) the total amount*  
281 *of advance fees collected compared with the total amount of fees and commissions received by the*  
282 *reseller upon sale of resale time-shares for the past two calendar years and followed by this statement:*  
283 *"Do not rely on past performance as an indicator of the likelihood of sale of your time-share."; and*

284 b. *If the retail service is limited to the placement of advertisements: "There is no guarantee that you*  
285 *will sell your time-share at all or within any period of time by placing this advertisement. Our only*  
286 *obligation to you is to post your advertisement on our website for the agreed length of time and forward*  
287 *all inquiries we receive to you."*

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

289 1. *The disclosures required by subdivisions A 1 through A 7;*

290 2. *A description legally sufficient for the transfer of the resale time-share;*

291 3. *A description of the document by which the owner is to (i) grant rights in the resale time-share to*  
292 *the reseller or any other person, including a power of attorney or similar document, and (ii) transfer the*  
293 *resale time-share to a subsequent purchaser;*

294 4. *Any fees or costs the time-share owner is required to pay or reimburse to the reseller or transfer*  
295 *company to complete the transfer;*

296 5. *The date by which the transfer of the resale time-share from the owner to the reseller, a third*  
297 *person, or a subsequent purchaser will be completed, not to exceed 180 days from the effective date of*  
298 *the resale transfer contract;*

299 6. *If the resale time-share will be transferred to a transferee other than a subsequent purchaser, the*  
300 *contact information of such transferee;*

301 7. *A statement that the reseller will (i) provide the owner written evidence of transfer of the resale*  
302 *time-share to a subsequent purchaser within 30 days of such transfer and (ii) send notice of the transfer*  
303 *to the association and managing entity of the time-share program for the resale transfer and any*  
304 *exchange company in which the resale time-share was enrolled; and*

305 8. *The following in 10-point boldface type:*

306 a. "No later than 180 days from the date of this agreement, we will transfer your time-share to  
307 another person. If transfer does not occur within that period, we will pay or reimburse to you the cost  
308 of ownership of your time-share for that period. If we breach our agreement, you will continue to be  
309 responsible for such cost of ownership."; and

310 b. "Your time-share may be sold at any price by us without your approval. If sold for a price in  
311 excess of our fee, we have no obligation to send you the excess."

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

314 1. A description legally sufficient for transfer of the resale time-share;

315 2. The name and address of the developer or managing agent for a time-share use project or the  
316 association for a time-share estate project;

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

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

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

324 § 55-394.2. Registration required for time-share resellers; exemptions; prohibited practices.

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

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

333 C. The registration requirements shall not apply to:

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

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

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

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

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

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

354 D. No reseller shall:

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

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

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

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

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

366 6. Make false or misleading statements concerning the identity of the reseller or any of its affiliates  
367 or the time-share resale entity's or any of its affiliate's experience, performance, guarantees, services,

368 fees, or commissions, availability of refunds, length of time in business, or endorsements by or  
369 affiliations with developers, management companies, or any other third parties.

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

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

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

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

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

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

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

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

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

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

393 § 55-394.3. Recordkeeping by resellers.

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

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

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

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

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

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

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

415 § 55-396. General powers and duties of Board.

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

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

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

426 D. 1. If the Board determines after legal notice and opportunity for hearing that a developer or  
427 reseller or an agent of a developer or reseller has:

428 a. Made any representation in any document or information filed with the Board which is false or

429 misleading;

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

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

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

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

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

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

443 2. If the Board makes a finding of fact at a hearing that the public interest will be irreparably  
444 harmed by delay in issuing an order, as prescribed in subdivision 1 of this subsection, it may issue a  
445 temporary cease and desist order. With the issuance of a temporary cease and desist order, the Board, by  
446 registered mail or other personal written service, shall give notice of the issuance to the developer *or the*  
447 *reseller*. Every temporary cease and desist order shall include in its terms:

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

451 b. A provision that a hearing by the Board may be held, after due notice but not more than fifteen  
452 days from the date such temporary cease and desist order is effective, to determine whether or not a  
453 cease and desist order as called for in the immediately preceding subsection shall be issued;

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

458 d. A provision that a failure to comply with such temporary cease and desist order will be a violation  
459 of this chapter. The Board shall not issue more than one temporary cease and desist order with reference  
460 to such finding of fact as prescribed in this subsection.

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

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

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

474 H. Upon request of a time-share owner, the Board shall, in accordance with subsection B of  
475 § 55-382, issue its determination whether compliance with § 55-375 or 55-386 has occurred.

476 § 55-397. Cancellation of cease and desist order; reinstatement of registration of developer.

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

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

484 § 55-400. Penalties.

485 A. Any person who willfully violates any of the provisions of §§ 55-374, 55-374.1, 55-374.2,  
486 55-375, 55-376, 55-381, 55-385, or 55-390, or any order issued pursuant to §§ 55-396 through 55-399  
487 shall be guilty of a Class 5 felony.

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

490 Each violation shall be deemed a separate offense.

491 B. Any developer, member, agent or affiliate of any developer of time-shares registered pursuant to  
492 § 55-393.1, *or any reseller*, who violates any provision of this chapter or regulations promulgated  
493 pursuant to this chapter, and who is not criminally prosecuted, may be subject to a monetary penalty. If  
494 it has been determined by the Board upon or after a hearing that a respondent has violated this chapter  
495 or the Board's rules and regulations, the Board shall proceed to determine the amount of the monetary  
496 penalty for such violation, which shall not exceed \$2,000 for each violation. Such penalty may be sued  
497 for and recovered in the name of the Commonwealth.