

LD6769356

HOUSE BILL NO. 1180

Offered January 25, 1994

A BILL to amend and reenact §§ 55-361.1, 55-362, 55-363, 55-366 through 55-371, 55-374, 55-374.1, 55-375, 55-376, 55-380, 55-386, 55-390, and 55-391.1 of the Code of Virginia, to amend the Code of Virginia; by adding in a section numbered 55-364.1; and to repeal § 55-379 of the Code of Virginia, relating to the Virginia Real Estate Time-Share Act.

Patrons—Miller, Almand, Brickley, Callahan, Cantor, Puller, Reid and Wardrup; Senators: Colgan, Cross and Lambert

Referred to Committee for Courts of Justice

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, 55-374.1, 55-375, 55-376, 55-380, 55-386, 55-390, and 55-391.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 55-364.1 as follows:

§ 55-361.1. Applicability.

A. This chapter shall have exclusive jurisdiction and shall apply to any ~~time-share~~ 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 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 ~~time-share~~ 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 ~~permissible~~ *permitted* by the laws of the state in which the time-share project is ~~situated~~ *situs*.

§ 55-362. Definitions.

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

"Additional land" shall have the meaning ascribed to it in § 55-367 B;

"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 acquired by such potential purchaser even though such purchaser did not purchase a time-share. An alternative purchase is not a time-share. Alternative purchases need not be registered with the board and include, without limitation, vacation packages (howsoever denominated) and exit programs (howsoever denominated).

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

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

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

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

"Conversion time-share project" means a time-share project which prior to the disposition of any time-share, was wholly or partially occupied by persons other than those who have contracted for the purchase of a time-share and those who occupy with the consent of such purchasers;

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

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

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

"Dispose" or "disposition" means a transfer of a legal or equitable interest in a time-share, other than

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60 a transfer or release of security for a debt;

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

63 "Exchange program" means any opportunity or procedure for the assignment or exchange of
64 time-shares among owners in the same or other time-share programs *as evidenced by a past or present*
65 *written agreement executed between an exchange company and the developer or the time-share estate*
66 *association*; however, an "exchange program" shall not include an opportunity or procedure whereby a
67 time-share owner can exchange his time-share for another within the same time-share project;

68 "Incidental benefit" means *anything valued in excess of \$100 provided by the developer which is*
69 *acquired by a purchaser upon acquisition of a time-share. An incidental benefit is not a time-share.*
70 *Incidental benefits include without limitation internal exchange rights, travel insurance, bonus weeks,*
71 *upgrade entitlements, travel coupons, referral awards, and golf and tennis packages;*

72 "Managing agent" means a person who undertakes the duties, responsibilities, and obligations of the
73 management of a time-share program;

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

76 "Material change" means a change which renders inaccurate, incomplete or misleading any
77 information or document in such a way as to affect *substantially a purchaser's* purchaser's rights or
78 obligations;

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

82 "Person" means one or more natural persons, corporations, partnerships, associations, trusts, other
83 entities, or any combination thereof capable of holding title to real property;

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

86 "Project" means and shall be synonymous with all of the real property subject to a project instrument
87 and containing one or more units;

88 "Project instrument" means *any* recorded documents, by whatever name denominated, which ~~apply to~~
89 *creates* the time-share project and *program and which may* contain restrictions or covenants regulating
90 the use, occupancy, or disposition of time-shares in a project;

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

92 "Purchaser" means any person other than a developer or lender who owns or acquires a ~~time-share~~
93 ~~interest~~ *product*, or who otherwise enters into a legally binding ~~contract~~ *agreement* for the purchase of a
94 ~~time-share~~ *product*;

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

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

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

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

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

106 "Time-share expense" means expenditures, fees, charges, or liabilities (i) incurred with respect to the
107 time-shares by or on behalf of all time-share owners in one time-share project, and (ii) imposed on the
108 time-share units by the time-share owners' association or managing entity, together with any allocations
109 to reserves;

110 "Time-share instrument" shall be synonymous with "project instrument";

111 "Time-share" means a time-share estate or a time-share use *plus its appropriate incidental benefits*;

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

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

119 "Time-share project" means any real property that is subject to a time-share program *for which a*
120 *developer seeks registration under this chapter*;

121 "Time-share use" means a right to occupy a time-share unit or any of several time-share units during

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

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

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

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

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

C. For purposes of local real property taxation, each time-share unit, other than a unit operated for time-share use, shall be valued in the same manner as if such unit ~~was~~ *were* owned by a single taxpayer. The total cumulative purchase price paid by the time-share owners for a unit shall not be utilized by the commissioner of revenue or other local assessing officer as a factor in determining the assessed value of such unit. A unit operated as a time-share use, however, may be assessed the same as other income producing and investment property. The commissioner of revenue or other local assessing officer shall list in the land book a time-share unit in the name of the ~~managing agent~~ *association*.

§ 55.364.1. Use of Terms.

A developer in its offering or disposition of a time-share may use interchangeably any term recognized in the industry, including without limitation: "time-share," "time-share interest," "interval ownership," "interval ownership interest," "vacation ownership," "vacation ownership interest," and "product." A developer shall not use the term "incidental benefit" or "alternative purchase" except in the proper context.

§ 55-366. Time-share in units.

Time-shares may be created in any unit, unless expressly prohibited by the project instruments or local governing laws; but this chapter shall not be construed to affect the validity of any provisions of any time-share program or any expansion thereof or time-share instrument recorded or in existence prior to July 1, 1981. ~~A project created after July 1, 1981, shall not have a time-share program therein unless the project instrument applicable to such project affirmatively states that time-share programs are permitted.~~

§ 55-367. Instruments.

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

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

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

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

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

5. The form of time-share program, whether it be time-share estate or time-share use;

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

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

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

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

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

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

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

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

14. A description of the events, including but not limited to condemnation and damage or destruction, upon which the time-share program may or shall be terminated before the expiration of its full term and the consequences of such termination, including but not limited to the manner in which the time-share ~~property~~ *project* or the proceeds from the disposition thereof shall be held or distributed among owners; ~~and~~

183 15. A description of each incidental benefit which the developer has registered or intends to register
184 with the Board along with a statement of whether or not the developer reserves the right to add to or
185 delete any incidental benefit;

186 16. A description of each alternative purchase which the developer has registered or intends to
187 register with the Board along with a statement of whether or not the developer reserves the right to add
188 to or delete any alternative purchase;

189 17. A statement that it is not mandatory for the developer to register with the Board all alternative
190 purchases it intends to offer, and to the extent an alternative purchase is not registered, the Virginia
191 Real Estate Time-Share Act will have no application thereto;

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

194 19. Such other matters as the developer deems appropriate.

195 B. If the time-share instrument explicitly reserves the right to develop additional time-shares, the
196 time-share instrument shall also contain the following:

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

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

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

205 4. A statement of the maximum number of units which may be added to the time-share project; and

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

208 § 55-368. Time-share instrument for time-share estate project.

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

214 1. Creation of an association consisting only of time-share estate owners. The association shall be
215 formed pursuant to the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) and the association must
216 be formed prior to the time when the developer conveys the first time-share estate. Nothing shall affect
217 the validity of the association, once formed, and the rights applicable to it as granted by this chapter,
218 notwithstanding the time when such association was formed;

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

221 3. Employment and termination of employment of the managing agent for the project. ~~No~~ Any
222 agreement pertaining to the employment of the managing agent and executed during the developer
223 control period shall be ~~longer than two years in duration~~ voidable by the association at any time after
224 termination of the developer control period for the time-share project, and any provision in such
225 agreement to the contrary is hereby declared to be void;

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

230 5. Preparation and dissemination to time-share estate owners of an annual budget and of operating
231 statements and other financial information concerning the time-share estate program including any
232 outstanding debts associated with operating the time-share estate project and the manner in which these
233 debts shall be paid the annual report required by § 55-370.1;

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

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

240 8. Comprehensive general liability insurance for death, bodily injury, and property damage arising
241 out of, or in connection with, the use and enjoyment of units by time-share estate owners, their guests
242 and other users. The costs associated with securing and maintaining such insurance shall belong to the
243 developer until such time as the developer control period ends, at which time such costs shall become
244 the responsibility of the association described in paragraph 1 of this section be deemed a time-share

estate occupancy expense and paid for as prescribed by § 55-369. Nothing herein shall be construed to obligate the developer, during the developer control period, to secure insurance on the conduct of the time-share estate owners, their guests and other users, or the personal effects or property of such owners, guests, and users;

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

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

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

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

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

B. Fee simple title to the time-share project, excluding the units comprising the time-share estate project, shall be transferred to the time-share estate owners' association, free of charge, no later than at such time as the developer either transfers to purchasers legal or equitable ownership of at least ninety percent of the time-share estates or completes all of the amenities and facilities comprising the time-share estate project, whichever occurs later. *Nothing shall preclude the developer from making a required transfer in phases or portions.* The transfer herein required of the developer shall not exonerate it from the responsibility of completion of the amenities and facilities once the transfer occurs. Upon transfer of the time-share project or portion thereof to the association, the developer control period for such project or portion thereof shall terminate.

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

A. Upon the termination of the developer control period described in § 55-369, the board of directors of the time-share estate owners' association shall have the authority to pass special assessments against and raise the annual fee or dues of the time-share estate unit owners and to collect the same from such owners according to law, if the purpose in so doing is determined by the board of directors to be in the best interest of the project and the proceeds are used primarily for the maintenance and upkeep, including capital expenditures, of the *time-share* project. The authority hereby granted and conferred upon the association shall exist notwithstanding any covenants and restrictions of record applicable to the project stated to the contrary and any such covenants and restrictions are hereby declared void.

B. The time-share estate owners' association shall have a lien on every time-share estate within its project for unpaid regular or special assessments levied against that estate in accordance with the provisions of this chapter.

The time-share estate owners' association, in order to perfect the lien given by this subsection, shall file, before the expiration of 150 days from the time such special or regular assessment became due and payable, in the clerk's office of the county or city in which the project is situated, a memorandum verified by the oath of any officer of the association or its managing agent and containing the following

306 information:

307 1. A description of the project;

308 2. The name or names of the persons constituting the owners of the time-share estate and a
309 description of the unit in which the time-share is situate;

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

312 4. The date of issuance of the memorandum.

313 Notwithstanding any other provision of this chapter, or any other provision of law requiring
314 documents to be recorded in the deed books of the clerk's office of any court, from July 1, 1981, all
315 memoranda of liens arising under this subsection shall be recorded in the deed books in such clerk's
316 office. Any such memorandum shall be indexed in the general index to deeds, and such general index
317 shall identify the lien as a lien for time-share estate regular or special assessments.

318 It shall be the duty of the clerk in whose office such memorandum shall be filed as provided herein
319 to record and index the same as provided in this subsection, in the names of the persons identified
320 therein as well as in the name of the time-share estates owners' association. The cost of recording such
321 memorandum shall be taxed against the person found liable for any judgment or decree enforcing such
322 lien. The filing with the clerk of one memorandum on which is listed all of the delinquent time-share
323 estate unit owners shall be sufficient to create the lien hereby allowed and the cost of filing in this event
324 shall be the clerk's fee plus fifty cents for each time-share estate unit owner so listed.

325 No suit to enforce any lien perfected under this subsection shall be brought after five years from the
326 time when the memorandum of lien was recorded. The filing of a petition to enforce any such lien in
327 any suit wherein such petitions may be properly filed shall be regarded as the institution of a suit under
328 this subsection; and, further, nothing herein shall extend the time within which any such lien may be
329 perfected.

330 The judgment or decree in an action brought pursuant to this subsection shall include, without
331 limitation, reimbursement for costs and attorney's fees, together with interest at the maximum lawful rate
332 for the sums secured by the lien from the time each such sum became due and payable.

333 *The lien perfected under this subsection may be foreclosed upon by the association in the same*
334 *manner as a deed of trust is foreclosed upon by a trustee, provided that the foreclosure occurs within*
335 *two years from the perfection and is conducted pursuant to §§ 55-59, 55-59.1 through 55-59.4, and*
336 *55-60.*

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

341 Any time-share owner within the project having executed a contract for the disposition of the
342 time-share, shall be entitled, upon request, to a recordable statement setting forth the amount of unpaid
343 regular or special assessments currently levied against that time-share. Such request shall be in writing,
344 directed to the president of the time-share estate owners' association, and delivered to the principal office
345 of the association. Failure of the association to furnish or make available such statement within twenty
346 days from the actual receipt of such written request shall extinguish the lien created by this subsection
347 as to the time-share involved. Payment of a fee not exceeding twenty-five dollars may be required as a
348 prerequisite to the issuance of such a statement if the bylaws of the time-share estate owners' association
349 so provide.

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

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

354 2. A director of the association may be removed from the office pursuant to any procedure provided
355 in its articles of incorporation and, if none is provided, may be removed at a meeting called expressly
356 for that purpose, with or without cause, by such vote as would suffice for his election;

357 3. Books and records of the association shall be made available to members except for use in matters
358 not concerning the membership of the time-share association. The association's membership list and
359 addresses shall not be used for purposes of commercial solicitation.

360 D. Subject to the provisions of subdivision 3 of subsection C, all books and records kept by or on
361 behalf of the association shall be available for examination and copying by a member in good standing
362 or his authorized agent. This right of examination shall exist without reference to the duration of
363 membership and may be exercised only during reasonable business hours or at a mutually convenient
364 time and location and upon five days' written notice.

365 Books and records kept by or on behalf of an association may be withheld from inspection to the
366 extent that they concern:

367 1. Personnel records;

2. An individual's medical records;
 3. Records relating to business transactions that are currently in negotiation;
 4. Privileged communications with legal counsel;
 5. Complaints against an individual member of the association;
 6. Agreements containing confidentiality requirements;
 7. Pending litigation;
 8. Disclosure of information in violation of law; or
 9. Meeting minutes or other records of an executive session of the board of directors held in accordance with subsection E.

The association may impose and collect a charge, reflecting the actual costs of materials and labor, prior to providing copies of any books and records to a member in good standing under this section.

E. Meetings of the board of directors shall be open to all members of record who are in good standing. Minutes shall be recorded and shall be available as provided in subdivision 3 of subsection C. The board of directors may convene in closed session to consider personnel matters; consult with legal counsel; discuss and consider contracts, potential or pending litigation and matters involving violations of the time-share instrument or rules and regulations adopted pursuant thereto for which a member, his family members, tenants, guests or other invitees are responsible; or discuss and consider the personal liability of members to the association upon the affirmative vote in open meeting to assemble in closed session. The motion shall state specifically the purpose for the closed session. Reference to the motion and the stated purpose for the closed session shall be included in the minutes. The board of directors shall restrict the consideration of matters during the closed portions of meetings only to those purposes specifically exempted and stated in the motion. No contract, motion or other action adopted, passed or agreed to in closed session shall become effective unless the board of directors, following the closed session reconvenes in open meeting and takes a vote on such contract, motion or other action which shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law.

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

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

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

B. The annual report shall contain the following:

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

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

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

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

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

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

a. A statement as to who prepared the budget;

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

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

d. A statement of any other reserves;

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

f. A statement of any services not reflected in the budget that the developer provides, or expenses that it pays, what it expects may become a common expense of the association at any subsequent time,

429 *and the projected common expense assessment attributable to each of those services or expenses for the*
430 *association and for each time-share.*

431 § 55-371. Time-share instrument for project.

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

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

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

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

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

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

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

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

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

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

470 § 55-374. Public offering statement.

471 A. The developer shall prepare and distribute to ~~any~~ *each* prospective purchaser *prior to the*
472 *execution thereby of a contract* a copy of the current public offering statement ~~which discloses~~. *The*
473 *public offering statement shall fully and accurately disclose the characteristics of the each time-share*
474 *project, registered under this chapter and the time-shares products offered, and shall make known to*
475 *each prospective purchasers purchaser all material circumstances affecting the each such time-share*
476 *project. The proposed public offering statement shall be filed with the Board, shall be in a form*
477 *prescribed by its regulations, and shall include the following:*

478 1. The name and principal address of the developer and ~~the each~~ time-share project *registered with*
479 *the Board*, including:

480 a. The name, principal occupation and address of every director, partner, or trustee of the developer;

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

483 c. The particulars of any indictment, conviction, judgment, decree or order of any court or
484 administrative agency against the developer or managing entity for violation of a federal, state, local or
485 foreign country law or regulation in connection with activities relating to time-share sales, land sales,
486 land investments, security sales, construction or sale of homes or improvements or any similar or related
487 activity;

488 d. ~~A statement~~ *The nature of any*each unsatisfied judgments, *if any*, against the developer or the
489 managing entity, the status of ~~any each~~ pending ~~suits~~suit involving the sale or management of real estate
490 to which the developer, the managing entity, or any general partner, executive officer, director, or

majority stockholder thereof, is a defending party, and the status of ~~any~~*each* pending ~~suits~~ *suit*, if any, of significance to ~~the~~*any* time-share project *registered with the Board*; and

e. The name and address of the developer's agent for service of process.

2. A general description of ~~the~~ *each* time-share project *registered with the Board* and the units and amenities available to purchasers, including without limitation, the developer's estimated schedule of commencement and completion of all units and amenities or, if the units and amenities have been completed, the ~~date~~ *year* of such completion.

3. As to all ~~units~~*products* offered by the developer ~~in the time-share project~~:

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

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

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

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

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

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

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

4. In a time-share estate program where the developer control period as described in § 55-369 has not terminated, a current balance sheet and a projected budget for the time-share estate owners' association for one year after the date of the first transfer to a purchaser and thereafter the current budget, a statement as to who prepared the budget, and a statement of the budgetary assumptions concerning occupancy factors. The budget shall include, without limitation:

a. A description of any provisions made in the budget for reserves for repairs and replacement;

b. A statement of any other reserves;

c. The projected common expense liability, if any, by category of expenditure;

d. The projected common expense liability for each time-share owner;

e. A statement of (i) the nature of all charges, dues, maintenance fees, and other expenses which may be assessed, (ii) the current amounts assessed, and (iii) the method and formula for changing any such assessments; and

f. A statement of any services not reflected in the budget that the developer provides, or expenses that he pays and that he expects may become a common expense of the association at any subsequent time, and the projected common expense assessment attributable to each of those services or expenses for the association and for each time-share. *copy of the annual report 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 ~~or~~; *and where the developer's net worth exceeds such amount*, a statement by such developer that its equity in ~~such~~*the* time-share program exceeds ~~such~~ *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 until midnight of the seventh calendar day following the signing of the sales contract or receipt of the current public offering statement, whichever is later, to cancel the contract by proper notice to the developer of the purchaser's nonwaivable right of cancellation provided by § 55-376.

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

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

12. ~~Any current or expected fees or charges to be paid by time-share owners for the use and enjoyment of any facilities related to the project.~~

13. The extent to which financial arrangements, if any, have been provided for completion of any *incomplete* time-share unit being then offered for sale, including a statement of the developer's obligation to complete planned improvements to the time-share project which have not begun, or begun but not yet completed. The statement shall include a description of any limitations on the developer's obligation to begin or complete such improvements.

14.13. The extent to which a time-share unit may become subject to a tax or other lien arising out of

552 claims against other owners of the same unit.

553 ~~15-14.~~ The name of the managing entity and the significant terms of any management contract,
554 including but not limited to, the manner whereby the developer or the time-share estate owners'
555 association may terminate the management contract.

556 ~~16-15.~~ Copies of the project instrument, *and the* association's articles of incorporation and bylaws,
557 with a brief narrative statement describing each and which includes information about developer control
558 and copies of any documents which purchasers may be required to sign, which copies *each of which*
559 may be a supplement to the public offering statement.

560 ~~17-16.~~ Any services which the developer provides or expense it pays and which it expects may
561 become at any subsequent time a time-share expense of the ~~time-share~~ owners, and the projected
562 time-share expense liability attributable to each of those services or expenses for each time-share.

563 ~~18-17.~~ A description of the terms of the deposit escrow requirements, including a statement that
564 deposits may be removed from escrow at the termination of the cancellation period.

565 ~~19-18.~~ A description of the facilities, if any, provided by the developer to the association for the
566 management of the ~~time-share~~ project.

567 ~~20-19.~~ Any other information required by the Board to assure full and fair *meaningful* disclosure to
568 prospective purchasers.

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

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

574 2. The name and address of the exchange company together with the names of ~~all~~ *its top three*
575 officers and directors of the exchange company;

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

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

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

582 C. ~~In addition to the requirements of subsections A and B of this section, the~~ The public offering
583 statement of a conversion time-share project shall *also* include the following (*which may take the form*
584 *of an exhibit to the public offering statement*):

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

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

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

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

600 D. In the case of a conversion project, the developer shall give at least ninety days' notice to each of
601 the tenants of the building or buildings which the developer intends to submit to the provisions of this
602 chapter. During the first sixty days of such ninety-day period, each of these tenants shall have the
603 exclusive right to contract for the purchase of a time-share from the unit he occupies, but only if such
604 unit is to be retained in the conversion project without substantial alteration in its physical layout. Such
605 notice shall be hand delivered or sent by first-class mail, return receipt requested, and shall inform the
606 tenants of the developer's intent to create a conversion project. Such notice may also constitute the
607 notice to terminate the tenancy as provided for in § 55-222, except that, despite the provisions of
608 § 55-222, a tenancy from month to month may only be terminated upon 120 days' notice as set forth
609 herein when such termination is in regard to the creation of a conversion project. If, however, a tenant
610 so notified remains in possession of the unit he occupies after the expiration of the 120-day period with
611 the permission of the developer, in order to then terminate the tenancy, such developer shall give the
612 tenant a further notice as provided in § 55-222.

613 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 the time-share program or time-share project. Prior to distribution, the developer shall file with the Board the public offering statement amended to reflect any material change. ~~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.~~

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.~~

G. In the case of a time-share ~~projects~~project located outside this Commonwealth, and properly registered in the state where the project is located, the Board may accept a substitute public offering statement. The Board shall establish by regulation the requirements for such public offering statement. ~~similar disclosure statements required by other situs laws governing time-sharing shall be acceptable alternative disclosure statements.~~

§ 55-374.1. Certain advertising practices regulated.

A. Any advertisement used in the marketing or promotion of a time-share project or a time-share program that includes the offer of 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 offered;
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;
4. All rules, terms, requirements, and conditions which must be fulfilled before a prospective purchaser may claim any gift or prize, including whether the prospective purchaser is required to attend a sales presentation in order to receive the gift or prize;
5. The date upon which the offer expires; and
6. A statement to the effect that the offer is being made for the purpose of soliciting the purchase of time-shares.

B. Any gift or prize offered in connection with the marketing or promotion of a time-share project or time-share program ~~an offering~~ shall be delivered to the prospective purchaser no later than the day the purchaser attends a sales presentation, if required, and if not on the day the purchaser appears to claim it, whether or not he purchases a time-share. In the event the supply of gifts or prizes is exhausted at the time required for delivery, the developer shall give the prospective purchaser a written, unconditional promise to deliver such gift or prize no later than thirty days from the date required for delivery. If such gift or prize is not obtainable, the developer shall deliver an item of equal or greater value.

C. ~~If any provision of this section is in conflict with a provision in~~ The offering of any product registered with the Board is exempt from the Prizes and Gifts Act (§ 59.1-415 et seq.), the provision in the Prizes and Gifts Act shall control. Virginia Camping Act (§ 59.1-311 et seq.), the Virginia Travel Club Act (§ 59.1-445 et seq.), the Virginia Condominium Act (§ 55-79.39 et seq.), the Virginia Securities Act (§ 13.1-501 et seq.), and Subdivided Land Sales Act (§ 55-336 et seq.).

D. 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.). 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.

E. 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 State Treasurer, and shall be placed to the credit of the special fund of the Virginia Real Estate Board.

§ 55-375. Escrow of deposits.

A. Any deposit made in connection with the purchase or reservation of a time-share 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, or (ii) delivered to the developer because of purchaser's default under a contract to purchase a time-share; such default being determined by an order of a court of competent jurisdiction or by a written agreement signed by the parties, 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 to purchase a time-share that the deposit may not be held in escrow after expiration of the cancellation period and that such deposit is not protected as an escrow after expiration of the cancellation period. This disclosure shall include a statement of whether or not the developer reserves the option to sell or assign any promissory note given by a purchaser to another entity, whether or not such entity is affiliated with the developer. Both disclosures shall appear in boldfaced type of a minimum size of ten points.

C. There shall be posted a fidelity bond, written so as to protect all deposits escrowed pursuant to subsection A, in favor of the time-share purchasers. The bond shall be in an amount equal to the total of the deposits in escrow at any given time or \$25,000, whichever is greater. Such bond shall be filed with the Real Estate Board and shall be maintained for so long as the developer offers time-shares in the project. The bond shall be with a surety company authorized to do business in Virginia.

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

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

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

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

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

§ 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 execution of the 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 instruments 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 budget and the balance sheet for the time-share owners' association annual report prepared pursuant to § 55-370.1;

5. A statement of any capital expenditures anticipated within the current or succeeding two fiscal

years;

6. A statement of the amount of any reserves for capital expenditures or any portion of those reserves designated for any specified projects;

7. A statement, including the amount, of all assessments and any other fees or charges currently imposed on the owners of time-shares associated with the purchase, disposition and maintenance of the time-share unit and use of the common elements;

8. 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

9. 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.

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 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.

C. A time-share owner providing a certificate pursuant to subsection A is not liable to the purchaser for any erroneous information ~~provided by the managing entity and~~ included in the certificate, other than for judgment liens against the time-share or time-share unit.

D. A purchaser is not liable for any unpaid time-share expense liability or fee greater than the amount set forth in ~~a~~ *the* certificate prepared ~~by the managing entity as provided in conformity with~~ subsection A. A time-share owner is not liable to a purchaser for the failure or delay of ~~a managing entity 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 buyer against a selling time-share owner for the failure to obtain and issue a certificate are waived upon settlement occurring.

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

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

§ 55-390. Registration of time-share program required.

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

B. [Repealed.]

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

§ 55-391.1. Application for registration.

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

798 shall include the following:

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

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

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

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

811 5. A statement, in a form acceptable to the Board, of the condition of the title to the time-share
812 project including encumbrances as of a specified date within thirty days of the date of application by a
813 title opinion of a licensed attorney not a salaried employee, officer or director of the applicant or owner,
814 or by other evidence of a title acceptable to the Board;

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

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

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

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

824 10. The proposed public offering statement and ~~all other time-share instruments~~ *its exhibits*;

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

826 12. The time-share owners' association budget as ~~more particularly described in paragraph 4 of~~
827 ~~subsection A of § 55-374~~ *annual report required by § 55-370.1 to the extent available*;

828 13. A ~~complete list, updated quarterly, of locations and addresses of any and all sales offices together~~
829 ~~with a roster of all salespersons in the employ of the developer whether or not those salespersons are~~
830 ~~employees of the developer or independent contractors; A description of each product the developer~~
831 ~~seeks to register with the Board; and~~

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

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

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

837 **2. That § 55-379 of the Code of Virginia is repealed.**