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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1984



# ENROLLED

Com. Sub. for  
HOUSE BILL No. 1405

(By Mr. Delmonico & Del Murensky)



Passed March 8, 1984

In Effect Ninety Days From Passage



**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**

**H. B. 1405**

(By DELEGATE MINARD and DELEGATE MURENSKY)

[Passed March 8, 1984; in effect ninety days from passage.]

AN ACT to amend chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nine, relating to the West Virginia real estate time-sharing act; short title; purposes; scope; definitions; contracts for purchase of time-share periods; public offering statement; escrow accounts; surety bonds; non-disturbance instruments; reservation agreements; escrows; cancellation; advertising materials; recordkeeping by seller; management; criminal penalties; civil penalties; discharge of management entity; assessment of common expense; liens for overdue assessments; mechanics liens; insurance; transfer of seller's interest to third party; exchange programs; license required to sell; purchasers' remedies; partition; securities; zoning and building; regulation; annual fee for each time-share period in plan; trust fund created; taxation.

*Be it enacted by the Legislature of West Virginia:*

That chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article nine, to read as follows:

**ARTICLE 9. WEST VIRGINIA REAL ESTATE TIME-SHARING ACT.**

**§36-9-1. Short title.**

1 This article shall be known and may be cited as the "West  
2 Virginia time-sharing act."

**§36-9-2. Purposes.**

1 The purposes of this article are to:

2 (a) Give statutory recognition to real property time-sharing  
3 in the state;

4 (b) Establish procedures for the creation, sale and opera-  
5 tion of time-sharing plans; and

6 (c) Require every time-sharing plan offered for sale or  
7 created and existing in this state to be subjected to the provi-  
8 sions of this article.

**§36-9-3. Scope.**

1 (a) This article applies only to time-sharing plans consisting  
2 of more than seven time-sharing periods other than condo-  
3 minimum fee ownership time-sharing plans, except that sec-  
4 tions six, ten, eleven, twelve, thirteen, seventeen, twenty,  
5 twenty-one, twenty-four, twenty-five and twenty-six of this  
6 article shall apply to all time-sharing plans.

7 (b) All time-sharing accommodations or facilities which are  
8 located outside the state but offered for sale in this state shall  
9 be subject to all of the provisions of this article except sec-  
10 tions eleven through sixteen and twenty through twenty-three.

11 (c) Notwithstanding other provisions of this article, either  
12 expressed or implied, to the contrary, it is the legislative intent  
13 that nothing herein be deemed to alter the existing procedure  
14 for the assessment and collection of ad valorem taxes on ac-  
15 commodated or facilities subject to a time-sharing plan.

**§36-9-4. Definitions.**

1 As used in this article:

2 (a) "Accommodations" means any apartment, condominium  
3 or cooperative unit, cabin, lodge, hotel or motel room or any  
4 other private or commercial structure which is situated on  
5 real property and designed for occupancy by one or more  
6 individuals;

7 (b) "Assessment" means the share of funds required for  
8 the payment of common expenses which is assessed from time  
9 to time against each purchaser by the managing entity;

10 (c) "Common expenses" means those expenses properly  
11 incurred for the maintenance, operation and repair of all ac-  
12 commodations or facilities, or both, constituting the time-  
13 sharing plan;

14 (d) "Contract" means any agreement conferring the rights  
15 and obligations of the time-sharing plan on the purchaser;

16 (e) "Developer" means the person creating a time-sharing  
17 plan;

18 (f) "Division" means the division of land sales and condo-  
19 miniums in the office of the state auditor;

20 (g) "Facilities" means any structure, service, improvement  
21 or real property, improved or unimproved, which is made  
22 available to the purchasers of a time-sharing plan;

23 (h) "Managing entity" means the person responsible for  
24 operating and maintaining the time-sharing plan;

25 (i) "Offer to sell," "offer for sale," "offered for sale" or  
26 "offer" means solicitation of purchasers, the taking of reser-  
27 vations or any other method whereby a purchaser is offered  
28 the opportunity to participate in a time-sharing plan;

29 (j) "Owners' association" means the association made up  
30 of all purchasers of a time-sharing plan who have purchased  
31 a fee simple interest in real property;

32 (k) "Purchaser" means any person who is buying or who  
33 has bought a time-share period in a time-sharing plan;

34 (l) "Seller" means any developer or any other person, or  
35 agent or employee thereof, who is offering time-share per-  
36 iods for sale to the public in the ordinary course of business,  
37 except a person who has acquired a time-share period for his  
38 own occupancy and later offers it for resale;

39 (m) "Time-share period" means that period of time when a  
40 purchaser of a time-sharing plan is entitled to the possession  
41 and use of the accommodations or facilities, or both, of a  
42 time-sharing plan;

43 (n) "Time-sharing plan" means any arrangement, plan,  
44 scheme or similar device, other than an exchange program,

45 whether by membership, agreement, tenancy in common, sale,  
46 lease, deed, rental agreement, license or right-to-use agree-  
47 ment or by any other means, whereby a purchaser, in exchange  
48 for a consideration receives a right to use accommodations or  
49 facilities, or both, for a specific period of time less than a  
50 full year during any given year, but not necessarily for con-  
51 secutive years, and which extends for a period of more than  
52 three years; and

53 (o) "Time-share unit" means an accommodation or facility  
54 of a time-sharing plan which is divided into time-share periods.

**§36-9-5. Contracts for purchase of time-share periods.**

1 No seller of a time-sharing plan shall fail to utilize, and  
2 furnish each purchaser of such plan a fully completed copy  
3 of, a contract pertaining to such sale, which contract shall  
4 include the following information:

5 (a) The actual date the contract is executed by all parties;

6 (b) The names and addresses of the seller, the developer  
7 and the time-sharing plan;

8 (c) The total financial obligation of the purchaser, in-  
9 cluding the initial purchase price and any additional charges  
10 to which the purchaser may be subject, such as reservation,  
11 maintenance, management and recreation charges: *Provided*,  
12 That those costs which cannot be specified exactly shall be  
13 estimated and the purchaser shall be notified that said costs  
14 are subject to change;

15 (d) The estimated date of availability of each accommoda-  
16 tion or facility which is not completed at the time the con-  
17 tract is executed by the seller and purchaser;

18 (e) A description of the nature and duration of the time-  
19 share period being sold, including whether any interest in  
20 real property is being conveyed and the specific number of  
21 years or months constituting the term of the contract;

22 (f) Immediately prior to the space reserved in the con-  
23 tract for the signature of the purchaser, in boldfaced and  
24 conspicuous type which shall be larger than the type in the

25 remaining text of the contract, substantially the following  
26 statements:

27 "YOU MAY CANCEL THIS CONTRACT WITHOUT  
28 ANY PENALTY OR OBLIGATION WITHIN TEN DAYS  
29 FROM THE DATE YOU SIGN THIS CONTRACT, AND  
30 UNTIL TEN DAYS AFTER YOU RECEIVE THE PUBLIC  
31 OFFERING STATEMENT.

32 IF YOU DECIDE TO CANCEL THIS CONTRACT,  
33 YOU MUST NOTIFY THE SELLER IN WRITING OF  
34 YOUR INTENT TO CANCEL. YOUR NOTICE OF CAN-  
35 CELLATION SHALL BE EFFECTIVE UPON THE DATE  
36 SENT AND SHALL BE SENT TO (Name of Seller) AT  
37 (Address of Seller). NO PURCHASER SHOULD RELY  
38 UPON REPRESENTATIONS OTHER THAN THOSE IN-  
39 CLUDED IN THIS CONTRACT."

40 If no interest in real property is being conveyed, the con-  
41 tract shall also contain the following statement:

42 "YOU MAY ALSO CANCEL THIS CONTRACT AT  
43 ANY TIME AFTER THE ACCOMMODATIONS OR FA-  
44 CILITIES ARE NO LONGER AVAILABLE AS PRO-  
45 VIDED IN THIS CONTRACT";

46 (g) A statement that oral representations cannot be re-  
47 lied upon and that the seller makes no representations other  
48 than those contained in the contract and the public offering  
49 statement;

50 (h) A statement that, in the event the purchaser cancels  
51 the contract during a ten-day cancellation period, the de-  
52 veloper shall refund to the purchaser all payments made  
53 under the contract within twenty days after receipt of notice  
54 of cancellation; and

55 (i) If no fee interest in real property is being conveyed,  
56 a statement that, in the event of any cancellation by the  
57 purchaser after the ten-day cancellation periods, the refund  
58 shall be the total amount of all payments made by the  
59 purchaser under the contract reduced by the proportion of  
60 any contract benefits the purchaser actually has received  
61 or has had the right to receive under the contract during

62 the time preceding the date when the cancellation becomes  
63 effective.

64 (j) If the seller is to transfer a fee interest in real property  
65 to the purchaser, the seller shall furnish a contract for sale  
66 to the purchaser at least ten days before the date of  
67 closing.

**§36-9-6. Public offering statement.**

1 Each developer shall file with the division a complete  
2 copy of the public offering statement to be used in the sale  
3 of the time-share periods. Until the division approves such  
4 filing, any contract regarding the sale of the time-sharing  
5 plan which is the subject of the public offering statement  
6 shall be voidable by the purchaser. The proposed offering  
7 statement shall be received, reviewed and monitored in the  
8 following manner:

9 (a) The division shall, upon receiving a public offering  
10 statement from a developer, mail the developer an acknowl-  
11 edgement of receipt. The failure of the division to send such  
12 acknowledgement shall not, however, relieve the developer  
13 from the duty of complying with this section;

14 (b) Within twenty days after receipt of a public offering  
15 statement, the division shall determine whether the proposed  
16 public offering statement is adequate to meet the require-  
17 ments of this section and shall notify the developer by mail  
18 that the division has either approved the public offering  
19 statement or found specified deficiencies. If the division fails  
20 to respond within twenty days, the filing shall be deemed  
21 approved. The developer may correct the deficiencies; and,  
22 within fifteen days after receipt of materials filed by the  
23 developer to correct the deficiencies found by the division,  
24 the division shall notify the developer by mail that the division  
25 has either approved the filing or found additional specified  
26 deficiencies. If the division fails to respond within fifteen  
27 days, the filing shall be deemed approved;

28 (c) Any material change to the public offering statement  
29 shall be filed with the division within fifteen days of the  
30 change. The division shall approve, or cite for deficiencies,

31 the change within ten days after the date of filing. If the  
32 division fails to respond within ten days, the change shall  
33 be deemed approved;

34 (d) Upon filing a public offering statement with the  
35 division, a developer shall pay a filing fee of fifty cents for  
36 each time-share period which is to be part of the proposed  
37 time-sharing plan;

38 (e) Every public offering statement shall contain the fol-  
39 lowing:

40 (1) A cover page stating:

41 (A) The name of the time-sharing plan; and

42 (B) The following, in conspicuous type:

43 "THIS PUBLIC OFFERING STATEMENT CONTAINS  
44 IMPORTANT MATTERS TO BE CONSIDERED IN AC-  
45 QUIRING A TIME-SHARE PERIOD. THE STATEMENTS  
46 CONTAINED HEREIN ARE ONLY SUMMARY IN NA-  
47 TURE. A PROSPECTIVE PURCHASER SHOULD REFER  
48 TO ALL REFERENCES, EXHIBITS HERETO, CON-  
49 TRACT DOCUMENTS AND SALES MATERIALS. ORAL  
50 REPRESENTATIONS CANNOT BE RELIED UPON AS  
51 CORRECT STATEMENTS OF SELLER REPRESENTA-  
52 TIONS. REFER TO THIS DOCUMENT FOR CORRECT  
53 REPRESENTATIONS";

54 (2) A separate index of the contents and exhibits of the  
55 public offering statement;

56 (3) A text, which shall be a summary of the disclosure  
57 required by paragraphs five through thirteen and subsection  
58 (f), and a cross-reference to the location in the public offering  
59 statement of each exhibit;

60 (4) Exhibits, setting forth in detail the information sum-  
61 marized in the text of the public offering statement;

62 (5) An explanation of the time-share form of ownership  
63 that is being offered;

64 (6) A general description of the time-sharing plan, in-



65 cluding the numbers of time-share units and time-share per-  
66 iods which are a part of the plan;

67 (7) An explanation of the purchaser's rights of can-  
68 cellation;

69 (8) A copy of each executed escrow agreement and, if  
70 applicable, any nondisturbance instrument and/or notice to  
71 creditors;

72 (9) An explanation of the status of the title to the  
73 real property underlying the time-sharing plan, including a  
74 statement of the existence of any lien, defect, judgment or  
75 other encumbrance affecting the title to the property;

76 (10) A description of any judgment against the seller or  
77 the managing entity and the status of any pending suit to  
78 which the seller or the managing entity is a party, which  
79 is material to the time-sharing plan, and any other suit  
80 material to the time-sharing plan of which the seller has actual  
81 knowledge;

82 (11) A description of the insurance coverage provided for  
83 the benefit of the purchasers;

84 (12) A statement of whether the time-sharing plan is par-  
85 ticipating in an exchange program and, if so, the name and  
86 address of the exchange company offering the exchange pro-  
87 gram; and

88 (13) Any other information that the seller, with the ap-  
89 proval of the division, desires to include in the public offer-  
90 ing statement;

91 (f) A public offering statement regarding a time-sharing  
92 plan shall contain or fully and accurately disclose the fol-  
93 lowing:

94 (1) The name and address of the developer and the identity  
95 of the chief operating officer or principal directing the creation  
96 and sale of the time-sharing plan;

97 (2) The name and address of the accommodations and  
98 facilities;

99 (3) The schedule of commencement and completion of all  
100 improvements;

101 (4) The name of any person who will or may have the  
102 right to alter, amend or add to the charges to which the  
103 purchaser may be subject and the terms and conditions  
104 under which such alterations, amendments or additions may  
105 be imposed;

106 (5) The documents, if any, creating the time-sharing plan;

107 (6) Any contracts or leases to be signed by purchasers;

108 (7) The identity of the managing entity and the manner,  
109 if any, whereby the seller may change the managing entity  
110 or its control;

111 (8) A copy of the rules, regulations, conditions or limita-  
112 tions on the use of the accommodations or facilities available  
113 to purchasers;

114 (9) Any restrictions on the transfer of any time-share per-  
115 iod; and

116 (10) A description of the recreational and other facilities  
117 of the time-sharing plan;

118 (g) In addition, a public offering statement regarding any  
119 time-sharing plan which transfers fee simple interests in real  
120 property shall also contain or fully and accurately disclose  
121 the following:

122 (1) All unusual and material circumstances, features and  
123 characteristics of the real property;

124 (2) An estimated operating budget and a schedule of each  
125 purchaser's expenses; and

126 (3) Any service, maintenance or recreation contracts or  
127 leases that may be canceled by the purchasers.

**§36-9-7. Escrow accounts; surety bonds; nondisturbance instru-  
ments.**

1 (a) It is a violation of this article for a seller of a time-  
2 sharing plan to fail to:

3 (1) Place one hundred percent of all funds which are re-  
4 ceived from purchasers of such time-sharing plan in an escrow  
5 account during the ten-day cancellation periods provided for  
6 by this chapter. The establishment of such an escrow account  
7 shall be evidenced by an escrow agreement between the es-  
8 crow agent and the seller, the provisions of which shall include:

9 (A) That its purpose is to protect the purchaser's right to a  
10 refund if he cancels the contract for the sale of a time-sharing  
11 plan within a ten-day cancellation period;

12 (B) That funds may be disbursed to the seller by the es-  
13 crow agent from the escrow account only after expiration of  
14 the purchasers' ten-day cancellation periods; and

15 (C) That the escrow agent may release funds to the seller  
16 from the escrow account only after receipt of a sworn state-  
17 ment from the seller that no cancellation notice postmarked on  
18 a date within the ten-day cancellation period was received from  
19 the purchasers whose funds are being released to the seller.

20 (2) Place fifty percent of the funds received from purchas-  
21 ers, after the ten-day cancellation periods have expired, in an  
22 escrow account when a time-sharing plan is being sold which  
23 does not convey fee interests in real property:

24 (A) The establishment of such escrow accounts shall be  
25 evidenced by an executed escrow agreement between the es-  
26 crow agent and the seller, the provisions of which shall include:

27 (i) That its purpose is to protect the purchaser's right to a  
28 refund, at any time the accommodations or facilities of the  
29 time-sharing plan are no longer available as provided in the  
30 contract entered into by the seller and the purchaser, in an  
31 amount representing the purchaser's pro rata share of the  
32 moneys escrowed;

33 (ii) That funds may be disbursed to the seller by the  
34 escrow agent from the escrow account periodically in the  
35 ratio of the amount of time the purchasers have already used  
36 or had the right to use the accommodations or facilities of  
37 the time-sharing plan at the time of the disbursement in  
38 relation to the total time sold to the purchasers; and

39 (iii) That the escrow agent may release funds to the seller  
40 from the escrow account only after receipt of a statement  
41 signed by the purchaser indicating that such purchaser has  
42 used or has had the right to use a specific number of days out  
43 of the total time period purchased. If a purchaser refuses to  
44 sign such a statement when tendered, the seller may submit  
45 a sworn statement to the escrow agent that the purchaser used  
46 or had the right to use a specific number of days, but that the  
47 purchaser refused to sign a statement to that effect.

48 (B) The seller may elect to terminate use of an escrow  
49 account established pursuant to this paragraph if, at a later  
50 date, such seller complies with the requirements of subdivision  
51 (4) or subdivision (5). Any funds remaining in such escrow  
52 account at the time a seller elects to terminate its use shall be  
53 disbursed to the seller by the escrow agent only when the seller  
54 has transmitted to the escrow agent and to each purchaser  
55 affected a copy of the surety bond or, if applicable, a nondis-  
56 turbance instrument or notice to creditors. A sworn statement  
57 from the seller that the purchasers have been furnished these  
58 required documents shall also be given to the escrow agent  
59 and the division before the funds may be released to the seller  
60 from the escrow account.

61 (3) Place one hundred percent of all funds received from  
62 purchasers of such time-sharing plan, after the ten-day can-  
63 cellation periods have expired, in an escrow account when  
64 interests in real property are being sold, whether by means of  
65 deeds, agreements for deed or other agreements which will  
66 subsequently transfer title to the purchasers. The establishment  
67 of such an escrow account shall be evidenced by an executed  
68 escrow agreement between the escrow agent and the seller the  
69 provisions of which shall include:

70 (A) That its purpose is to protect all deposits and pay-  
71 ments made by a purchaser toward the purchase price until  
72 the deed is transferred to the purchaser or until the purchaser  
73 and seller enter into a contract for deed or any other agree-  
74 ment which will subsequently transfer title to the purchaser;  
75 and

76 (B) That funds may be disbursed to the seller by the

77 escrow agent from the escrow account only after title has  
78 been delivered to the purchaser or delivered for recording  
79 to the clerk of the ~~Circuit Court~~ <sup>County Commission</sup> in the county where the  
80 real property underlying the time-sharing plan is located.  
81 However, in the case of a time-share period sold by agreement  
82 for deed, funds only may be disbursed to the seller after a  
83 notice to creditors and, if the property is encumbered by a  
84 mortgage, a nondisturbance instrument has been recorded in  
85 the public records of the county or counties in which the time-  
86 sharing plan is located; or alternatively, after the seller re-  
87 cords a notice to creditors and obtains a release of lien for a  
88 time-share unit, funds may be disbursed pertaining to the time-  
89 share periods within that unit.

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90 (4) In lieu of establishing the escrow account described  
91 by subdivision (2), post a surety bond, in the total amount of  
92 the contract, with the clerk of the ~~Circuit Court~~ <sup>County Commission</sup> in the county  
93 where the time-sharing plan accommodations or facilities are  
94 located. Such bond shall be executed by the seller as principal  
95 and by a surety company authorized to do business in this state  
96 as surety. The bond shall be conditioned upon the faithful  
97 compliance of the seller with the provisions of both this section  
98 and the contract between the seller and the purchaser and shall  
99 run to the division for the benefit of any purchaser injured by  
100 the seller's violation of this section or failure to perform pur-  
101 suant to the contract between the seller and the purchaser. The  
102 bond may be reduced periodically in the ratio of the amount of  
103 time used by purchasers in relation to the total time sold to  
104 purchasers;

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105 (5) In lieu of either establishing the escrow account de-  
106 scribed by subdivision (2) or posting a surety bond described  
107 by subdivision (4), provide the purchaser with a nondistur-  
108 bance instrument or notice to creditors, as follows:

109 (A) Each purchaser shall be furnished with a copy of a  
110 recorded nondisturbance instrument from every lienholder who  
111 has a recorded lien against the property upon which the  
112 accommodations or facilities to be used by the purchaser are  
113 situated. The nondisturbance instrument shall provide that,  
114 in the event of foreclosure of such lien, the succeeding owner

115 shall take title to the property subject to the possessory rights  
116 of the purchasers;

117 (B) Each purchaser shall also be furnished with a copy of  
118 a recorded instrument which provides to all subsequent credit-  
119 ors of the seller notice of the existence of the time-sharing  
120 plan and notice of the rights of purchasers in the time-sharing  
121 plan from any claims by subsequent creditors;

122 (C) However, if the seller owns the real property and any  
123 accommodations or facilities constituting the time-sharing  
124 plan free and clear of any mortgage, lien or other encumbrance,  
125 the seller need only furnish to each purchaser a notice to  
126 creditors; and

127 (D) A copy of any recorded nondisturbance instrument or  
128 notice to creditors shall be provided to each purchaser by the  
129 seller at the time the contract between them is executed, unless  
130 the seller has initially utilized the escrow provisions of sub-  
131 section (b), in which case the nondisturbance instrument or  
132 notice to creditors shall be provided to the purchaser before  
133 the seller obtains funds from the escrow agent, as provided in  
134 subdivision (2).

135 (6) Place any fund escrowed pursuant to this section into  
136 an escrow account established solely for that purpose with an  
137 attorney who is a member of the state bar; a bank having trust  
138 powers and located in this state; a savings and loan company  
139 located in this state; a trust company located in this state; or a  
140 real estate broker registered under chapter ~~thirty three~~ <sup>thirty three</sup> of this  
141 code. In lieu of the foregoing, with the approval of the divi-  
142 sion, the funds may be escrowed in an account required by  
143 the jurisdiction in which the sale of the time-sharing plan took  
144 place. In lieu of any escrows required by this section, the di-  
145 rector of the division shall have the discretion to accept other  
146 assurances, including, but not limited to, a surety bond or an  
147 irrevocable letter of credit in an amount equal to the escrow  
148 requirements of this section. Determination of default and re-  
149 fund of deposits shall be governed by the escrow release pro-  
150 vision of this subsection.

151 (b) An escrow agent holding funds escrowed pursuant to

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152 this section may invest such escrowed funds in securities of  
153 the United States government, or any agency thereof, or in  
154 savings or time deposits in institutions insured by an agency  
155 of the United States government. The right to receive the  
156 interest generated by any such investments shall be as speci-  
157 fied by contract.

158 (c) Each escrow agent shall maintain separate books and  
159 records for each time-sharing plan and shall maintain such  
160 books and records in accordance with good accounting prac-  
161 tices.

162 (d) Any seller who intentionally fails to pay all required  
163 funds into the escrow accounts required by this section is  
164 guilty of a felony, and, upon conviction thereof, shall be con-  
165 fined in the penitentiary not less than one nor more than five  
166 years.

**§36-9-8. Reservation agreements; escrows.**

1 (a) (1) Prior to filing the public offering statement with  
2 the division a seller shall not offer a time-sharing plan for  
3 sale but may accept reservation deposits upon approval by  
4 the division of a fully executed escrow agreement and reser-  
5 vation agreement properly filed with the division.

6 (2) Reservations shall not be taken on a time-sharing  
7 plan unless the seller has an ownership interest or leasehold  
8 interest of a duration at least equal to the duration of the  
9 proposed time-sharing equal to the duration of the proposed  
10 time-sharing plan in the land upon which the time-sharing  
11 plan is to be developed.

12 (b) Each executed reservation agreement shall be signed  
13 by the seller and the escrow agent and shall contain the  
14 following:

15 (1) A statement that the escrow agent will grant a pros-  
16 pective purchaser an immediate, unqualified refund of the  
17 reservation deposit upon either the purchaser's or the seller's  
18 written request directed to the escrow agent;

19 (2) A statement that the escrow agent may not otherwise  
20 release moneys unless a contract is signed by the purchaser,

21 authorizing the release of the escrowed reservation deposit  
22 as a deposit on the purchase price. Such deposit shall then  
23 be subject to the requirements of section eight of this article,  
24 relating to escrow accounts, surety bonds and nondisturbance  
25 instruments;

26 (3) A statement of the obligation of the developer to file  
27 a public offering statement with the division prior to entering  
28 into binding contracts;

29 (4) A statement of the rights of the purchaser to receive  
30 the public offering statement required by this chapter;

31 (5) The name and address of the escrow agent and a  
32 statement that the purchaser may obtain a receipt from the  
33 escrow agent upon request; and

34 (6) A statement that the seller assures that the purchase  
35 price represented in or pursuant to the reservation agree-  
36 ment will be the price in the contract for the purchase or  
37 that the price represented may be exceeded within a stated  
38 amount or percentage or a statement that no assurance is  
39 given as to the price in the contract for purchase.

40 (c) (1) The total amount paid for a reservation shall be  
41 deposited into a reservation escrow account.

42 (2) All funds paid in connection with the reservation of  
43 a time-share shall be placed in an escrow account estab-  
44 lished solely for that purpose with an attorney who is a  
45 member of the state bar; a bank having trust powers and located  
46 in this state; a savings and loan company located in this  
47 state; a trust company located in this state; or a real estate  
48 broker registered under chapter forty-seven of this code.  
49 In lieu of the foregoing, with the approval of the division,  
50 the funds may be deposited into an escrow account required  
51 by the jurisdiction in which the sale took place.

52 (3) The escrow agent may invest the escrowed funds in  
53 securities of the United States government, or any agency  
54 thereof, or in savings or time deposits in institutions insured  
55 by an agency of the United States government. The right  
56 to receive the interest generated from any such investments  
57 shall be as specified by the reservation agreement.



58 (4) The escrowed funds shall at all reasonable times be  
59 available for withdrawal in full by the escrow agent.

60 (5) Each escrow agent shall maintain separate books and  
61 records for each time-sharing plan and shall maintain such  
62 books and records in accordance with good accounting prac-  
63 tices.

64 (d) Any seller who intentionally fails to pay all required  
65 funds into the escrow account required by this section is  
66 guilty of a felony, and, upon conviction thereof, shall be  
67 confined in the penitentiary not less than one nor more than  
68 five years.

**§36-9-9. Cancellation.**

1 No seller shall:

2 (a) Fail to honor the request of a purchaser to cancel a  
3 contract made between the seller and purchaser pertaining to  
4 the sale of a time-sharing plan if the request is made as  
5 provided in the contract;

6 (b) Misrepresent in any manner the purchaser's right to  
7 cancel;

8 (c) Fail to refund all payments made by the purchaser  
9 under the contract and return all negotiable instruments,  
10 other than checks, executed by the purchaser in connection  
11 with the contract within twenty days from receipt of the  
12 notice of cancellation transmitted to the seller from the  
13 purchaser, if the purchaser has received no benefits under the  
14 contract; and

15 (d) Fail to refund all payments made by the purchaser  
16 under the contract which exceed a pro rata portion of the  
17 total price representing the proportion of any contract bene-  
18 fits actually received by the purchaser during the time pre-  
19 ceding the date when cancellation becomes effective, within  
20 twenty days from receipt of the purchaser's notice of can-  
21 cellation, if the purchaser has received benefits under the  
22 time-sharing plan.

**§36-9-10. Advertising materials.**

1 (a) All advertising materials shall be filed with the division

2 within ten days of use. "Advertising materials" include:

3 (1) Promotional brochures, pamphlets, advertisements or  
4 other materials to be disseminated to the public in connection  
5 with the sale of timeshares;

6 (2) Transcripts of radio and television advertisements;

7 (3) Lodging certificates;

8 (4) Transcripts of standard verbal sales presentations; and

9 (5) Any other advertising materials.

10 (b) No advertising shall:

11 (1) Misrepresent a fact or create a false or misleading im-  
12 pression regarding the time-sharing plan;

13 (2) Make a prediction of specific or immediate increases  
14 in the price or value of time-share periods;

15 (3) Contain a statement concerning future price increases  
16 by the seller which are nonspecific or not bona fide;

17 (4) Contain any asterisk or other reference symbol as a  
18 means of contradicting or substantially changing any previous-  
19 ly made statement or as a means of obscuring a material fact;

20 (5) Describe any improvements to the time-sharing plan  
21 that is not required to be built or that is uncompleted unless  
22 the improvement is conspicuously labeled as "NEED NOT  
23 BE BUILT," "PROPOSED" or "UNDER CONSTRUC-  
24 TION" with the date or promised completion clearly indicated;

25 (6) Misrepresent the size, nature, extent, qualities or char-  
26 acteristics of the offered accommodations or facilities;

27 (7) Misrepresent the amount or period of time during  
28 which the accommodations or facilities will be available to  
29 any purchaser;

30 (8) Misrepresent the nature or extent of any services in-  
31 cident to the time-sharing plan;

32 (9) Make any misleading or deceptive representation with  
33 respect to the contents of the public offering statement and

34 the contract or the purchasers' rights, privileges, benefits or  
35 obligations under the contract or this chapter; and

36 (10) Misrepresent the conditions under which a purchaser  
37 may exchange the right to use accommodations or facilities  
38 in one location for the right to use accommodations or facili-  
39 ties in another location.

40 (c) No promotional device, including any sweepstakes,  
41 lodging certificate, gift award, premium, discount, drawing or  
42 display booth, may be utilized without a disclosure that:

43 (1) The promotional device is being used for the purpose  
44 of soliciting sales of time-share periods; and

45 (2) The promotional device is being used to obtain the  
46 names and addresses of prospective purchasers and that any  
47 names and addresses acquired may be used for the purpose of  
48 soliciting sales of time-share periods.

49 (d) When a time-share project uses free offers, gift enter-  
50 prises, drawings, sweepstakes or discounts as a promotional  
51 program, the rules of such promotional program shall be  
52 disclosed to the public and shall state:

53 (1) The name of each time-sharing plan or business entity  
54 participating in the program;

55 (2) The day and year by which all prizes listed or offered  
56 will be awarded; and

57 (3) The method by which all prizes are to be awarded.

58 (e) At least one of each prize featured in a promotional  
59 program shall be awarded by the day and year specified in the  
60 promotion. When a promotion promises the award of a certain  
61 number of each prize, such number of prizes shall be awarded  
62 by the date and year specified in the promotion. A record shall  
63 be maintained containing the names and addresses of winners  
64 of the prizes and the record shall be made available upon re-  
65 quest, to the public, upon payment of reasonable reproduction  
66 costs.

67 (f) The division shall require full disclosure of all perti-  
68 nent information concerning the use of lodging certificates in

69 a promotional campaign, including the terms and conditions  
70 of the campaign and the fact and extent of participation in  
71 such campaign by the developer. The division further may re-  
72 quire reasonable assurances that the obligation incurred by a  
73 seller or the seller's agent in a lodging certificate program can  
74 be met. Such programs are subject to the prior approval of the  
75 division.

76 (g) If at any time the division determines that any adver-  
77 tising fails to meet the requirements of this section, the divi-  
78 sion may undertake enforcement action under the provisions  
79 of section twenty-six of this article.

**§36-9-11. Recordkeeping by seller.**

1 Each seller of a time-sharing plan shall maintain among  
2 its business records the following:

3 (a) A copy of each contract for the sale of a time-share  
4 period, which contract has not been canceled. If fee title  
5 is being conveyed, the seller is required to retain a copy  
6 of the contract only until a deed of conveyance is recorded  
7 in the office of the clerk of the county commission in the  
8 county wherein the plan is located; and

9 (b) A list of all salespersons of the seller and their last  
10 known addresses. The names and addresses of such sales-  
11 persons whose employments terminate shall be retained for  
12 three years after termination of employment. If the seller  
13 has a contract with any entity not owned or controlled by  
14 the seller for the sale of the time-sharing plan, that entity  
15 shall be responsible for maintaining a record of current em-  
16 ployees involved in the sale of the time-sharing plan and a  
17 record of any former employees involved in the sale of such  
18 plan within the previous three years.

**§36-9-12. Management.**

1 (a) Before the first sale of a time-share period, the de-  
2 veloper shall create or provide for a managing entity, which  
3 may be the developer, a separate management firm or an  
4 owners' association, or some combination thereof.

5 (b) The managing entity shall act in the capacity of a  
6 fiduciary to the purchasers of the time-sharing plan.

7 (c) The duties of the managing entity shall include, but  
8 are not limited to:

9 (1) Management and maintenance of all accommodations  
10 and facilities constituting the time-sharing plan;

11 (2) Collection of all assessments for common expenses;

12 (3) Providing each year to all purchasers an itemized  
13 annual budget, which shall include all receipts and expendi-  
14 tures;

15 (4) Maintenance of all books and records concerning the  
16 time-sharing plan on the premises of the accommodations or  
17 facilities of such plan and making all such books and records  
18 reasonably available for inspection by any purchaser or the  
19 authorized agent of such purchaser;

20 (5) Arranging for an annual independent audit to be  
21 conducted of all the books and financial records of the  
22 time-sharing plan by a certified public accountant in accord-  
23 ance with the standards of the accounting standards board of  
24 the American institute of certified public accountants. A  
25 copy of the audit shall be forwarded to the officers of the  
26 owners' association; or, if no association exists, the owner of  
27 each time-share period shall be notified that such audit is  
28 available upon request;

29 (6) Making available for inspection by the division any  
30 books and records of the time-sharing plan, upon the request  
31 of the division;

32 (7) Scheduling occupancy of the time-share units, when  
33 purchasers are not entitled to use specific time-share periods,  
34 so that all purchasers will be provided the use and possession  
35 of the accommodations and facilities of the time sharing  
36 plan which they have purchased; and

37 (8) Performing any other functions and duties which are  
38 necessary and proper to maintain the accommodations or  
39 facilities as provided in the contract and as advertised.

40 (d) Any managing entity, or employee or agent thereof,  
41 who willfully misappropriates the property or funds of a  
42 time-sharing plan is guilty of a felony, and, upon conviction

43 thereof, shall be imprisoned in the penitentiary for not less  
44 than one nor more than five years.

**§36-9-13. Discharge of managing entity.**

1 (a) If a fee simple interest in real property is being  
2 sold to purchasers of a time-sharing plan, the contract re-  
3 taining a managing entity shall be automatically renewable  
4 every three years, beginning with the third year after the  
5 managing entity is first created or provided for the time-  
6 sharing plan, unless the purchasers vote to discharge the  
7 managing entity. Such a vote shall be conducted by the board  
8 of the owners' association. The managing entity shall be dis-  
9 charged if at least sixty-six percent of the purchasers voting,  
10 which shall be at least fifty percent of all votes allocated to  
11 purchasers, vote to discharge the managing entity.

12 (b) In the event the managing entity is discharged, the  
13 board of the owners' association shall be responsible for  
14 obtaining another managing entity.

15 (c) The managing entity of a condominium time-sharing  
16 plan may be discharged in the same manner.

**§36-9-14. Assessment of common expenses.**

1 (a) Until a managing entity is created or provided the  
2 developer shall pay all common expenses.

3 (b) After the creation or provision of a managing entity,  
4 the managing entity shall make an annual assessment against  
5 each purchaser for the payment of common expenses, based  
6 on the projected annual budget, in the amount specified by  
7 the contract between the seller and the purchaser. The  
8 seller shall be assessed for the share of common expenses  
9 allocated to all time-share periods still owned by the seller  
10 at the time such assessment is made, unless the seller guaran-  
11 tees all common expenses of the time-share plan pursuant  
12 to the provisions of the contract or until the time control is  
13 turned over to the purchasers.

14 (c) Past-due assessments may bear interest at the legal  
15 rate or at some lesser rate established by the managing entity.

16 (d) Unless otherwise specified in the contract between

17 the seller and the purchaser, any common expenses benefiting  
18 fewer than all purchasers shall be assessed only against  
19 those purchasers benefited.

20 (e) Any assessments for common expenses which have not  
21 been spent for common expenses during the year for which  
22 such assessments were made shall be shown as an item on  
23 the annual budget.

**§36-9-15. Liens for overdue assessments; mechanic's liens; insurance.**

1 (a) The managing entity has a lien on a time-share period  
2 for any assessment levied against that time-share period from  
3 the date such assessment becomes due.

4 (b) The managing entity may bring an action in its name  
5 to foreclose a lien for assessments, in the manner a mortgage  
6 of real property is foreclosed, and may also bring an action to  
7 recover a money judgment for the unpaid assessments without  
8 waiving any claim of lien. However, in the case of a time-  
9 sharing plan in which no interest in real property is conveyed,  
10 the managing entity may bring an action under chapter forty-  
11 six of this code.

12 (c) The lien is effective from the date of recording a claim  
13 of lien in the public records of the county or counties in  
14 which the accommodations or facilities constituting the time-  
15 sharing plan are located. The claim of lien shall state the name  
16 of the time-sharing plan and identify the time-share period  
17 for which the lien is effective, state the name of the purchaser,  
18 state the assessment amount due, and state the due dates. The  
19 lien is effective until satisfied or until barred by law. The  
20 claim of lien may include only assessments which are due  
21 when the claim is recorded. A claim of lien shall be signed and  
22 acknowledged by an officer or agent of the managing entity.  
23 Upon full payment, the person making the payment is entitled  
24 to a satisfaction of the lien.

25 (d) A judgment in any action or suit brought under this  
26 section shall include costs and reasonable attorney's fees for  
27 the prevailing party.

28 (e) Labor performed on a unit, or materials furnished to

29 a unit, shall not be the basis for the filing of a lien pursuant to  
30 the mechanic's line law against the time-share unit of any  
31 time-share period owner not expressly consenting to or re-  
32 questing the labor or materials.

33 (f) The seller, initially, and thereafter the managing entity,  
34 shall be responsible for obtaining insurance to protect the  
35 accommodations and facilities of the time-sharing plan in an  
36 amount equal to the replacement cost of such accommodations  
37 and facilities.

38 A copy of each policy of insurance in effect shall be made  
39 available for reasonable inspection by purchasers and their  
40 authorized agents.

**§36-9-16. Transfer of seller's interest to third party.**

1 No seller shall sell, lease, assign, mortgage or otherwise  
2 transfer the seller's interest in the accommodations or facilities  
3 of a time-sharing plan to a third party, unless:

4 (a) The third party agrees in writing to honor fully the  
5 rights of purchasers of the time-sharing plan to occupy and  
6 use the accommodations or facilities;

7 (b) The third party agrees in writing to honor fully the  
8 rights of purchasers of the time-sharing plan to cancel their  
9 contracts and receive appropriate refunds, as provided in  
10 this article;

11 (c) The third party agrees in writing to comply with the  
12 provisions of this article for as long as the third party con-  
13 tinues to sell the time-sharing plan or for as long as purchasers  
14 of the time-sharing plan are entitled to occupy the accommo-  
15 dations or use the facilities, whichever is longer in time;

16 (d) The third party agrees to assume all obligations of  
17 the seller to purchasers; and

18 (e) Notice is mailed to each purchaser of the time-sharing  
19 plan affected thereby within thirty days of the sale, lease, as-  
20 signment or other transfer.

21 Persons who hold mortgages on the property constituting  
22 a time-sharing plan before the public offering statement of such



23 plan is approved by the division shall not be considered third  
24 parties for the purposes of this section.

**§36-9-17. Exchange programs.**

1 (a) If a purchaser is offered the opportunity to subscribe  
2 to any program that provides exchanges of time-share periods  
3 among purchasers in either the same time-sharing plan or  
4 other time-sharing plans, or both, the seller shall deliver to  
5 the purchaser, together with the public offering statement,  
6 and prior to the execution of any contract between the pur-  
7 chaser and the company offering the exchange program, writ-  
8 ten information regarding such exchange program and the  
9 purchaser shall certify in writing to the receipt of such writ-  
10 ten information, which information shall include, but is not  
11 limited to, the following:

12 (1) The name and address of the exchange company;

13 (2) The names of all officers, directors and shareholders  
14 of the exchange company;

15 (3) Whether the exchange company or any of its officers  
16 or directors has any legal or beneficial interest in any devel-  
17 oper, seller or managing entity for any time-sharing plan par-  
18 ticipating in the exchange program and, if so, the name and  
19 location of the time-sharing plan and the nature of the in-  
20 terest;

21 (4) Unless otherwise stated, a statement that the pur-  
22 chaser's contract with the exchange company is a contract  
23 separate and distinct from the purchaser's contract with the  
24 seller of the time-sharing plan;

25 (5) Whether the purchaser's participation in the exchange  
26 program is dependent upon the continued affiliation of the  
27 time-sharing plan with the exchange program;

28 (6) A statement that the purchaser's participation in the  
29 exchange program is voluntary;

30 (7) A complete and accurate description of the terms and  
31 conditions of the purchaser's contractual relationship with  
32 the exchange program and the procedure by which changes  
33 thereto may be made;

34 (8) A complete and accurate description of the procedure  
35 to qualify for and effectuate exchanges;

36 (9) A complete and accurate description of all limitations,  
37 restrictions or priorities, employed in the operation of the  
38 exchange program, including, but not limited to, limitations  
39 on exchanges based on seasonality, unit size or levels of oc-  
40 cupancy, expressed in boldfaced type, and, in the event that  
41 such limitations, restrictions or priorities are not uniformly  
42 applied by the exchange program, a clear description of the  
43 manner in which they are applied;

44 (10) Whether exchanges are arranged on a space-available  
45 basis and whether any guarantees of fulfillment of specific  
46 requests for exchanges are made by the exchange program;

47 (11) Whether and under what circumstances a purchaser,  
48 in dealing with the exchange program, may lose the use and  
49 occupancy of his time-share period in any properly applied  
50 for exchange without his being provided with substitute ac-  
51 commodations by the exchange program;

52 (12) The fees or range of fees for participation by pur-  
53 chasers in the exchange program, a statement whether any such  
54 fees may be altered by the exchange company and the circum-  
55 stances under which alterations may be made;

56 (13) The name and address of the site of each accommo-  
57 dation or facility included in the time-sharing plan partici-  
58 pating in the exchange program;

59 (14) The number of the time-share units in each time-shar-  
60 ing plan which are available for occupancy and which qualify  
61 for participation in the exchange program expressed within the  
62 following numerical groupings: 1-5; 6-10; 11-20; 21-50 and  
63 51 and over;

64 (15) The number of currently enrolled purchasers for each  
65 time-sharing plan participating in the exchange program, ex-  
66 pressed within the following numerical groupings: 1-100; 101-  
67 249; 250-499; 500-999 and 1,000 and over; and a statement  
68 of the criteria used to determine those purchasers who are  
69 currently enrolled with the exchange program;

70 (16) The disposition made by the exchange company of the  
71 time-share periods deposited with the exchange program by  
72 purchasers enrolled in the exchange program and not used by  
73 the exchange company in effecting exchanges;

74 (17) The following information, which shall be independ-  
75 ently audited by a certified public accountant or accounting  
76 firm in accordance with the standards of the accounting stand-  
77 ards board of the American institute of certified public ac-  
78 countants and reported on an annual basis beginning no later  
79 than the first day of July, one thousand nine hundred eighty-  
80 four:

81 (A) The number of purchasers currently enrolled in the ex-  
82 change program;

83 (B) The number of accommodations and facilities that  
84 have current affiliation agreements with the exchange program;

85 (C) The percentage of confirmed exchanges, which shall be  
86 the number of exchanges confirmed by the exchange program  
87 divided by the number of exchanges properly applied for, to-  
88 gether with a complete and accurate statement of the criteria  
89 used to determine whether an exchange request was properly  
90 applied for;

91 (D) The number of time-share periods for which the ex-  
92 change program has an outstanding obligation to provide an  
93 exchange to a purchaser who relinquished a time-share period  
94 during the year in exchange for a time-share period in any  
95 future year; and

96 (E) The number of exchanges confirmed by the exchange  
97 program during the year.

98 (18) A statement in boldfaced type to the effect that the  
99 percentage described in subparagraph (C), subdivision (17) of  
100 this subsection is a summary of the exchange requests entered  
101 with the exchange program in the period reported and that the  
102 percentage does not indicate a purchaser's probabilities of be-  
103 ing confirmed to any specific choice or range of choices.

104 (b) Each exchange company offering an exchange program  
105 to purchasers in this state shall file the information specified

106 in subsection (a) with the division annually. If at any time  
107 the division determines that any of such information supplied  
108 by an exchange company fails to meet the requirements of  
109 this section, the division may undertake enforcement action  
110 against the exchange company in accordance with the pro-  
111 vision of section twenty-six of this article. No developer shall  
112 have any liability with respect to any violation of this chapter  
113 arising out of the publication by the developer of information  
114 provided to it by an exchange company pursuant to this sec-  
115 tion. No exchange company shall have any liability with re-  
116 spect to any violation of this chapter arising out of the use  
117 by a developer of information relating to an exchange program  
118 other than that provided to the developer by the exchange  
119 company.

120 (c) Only a person who has purchased a time-share period in  
121 a time-share unit may participate in an exchange program.

122 (d) The failure of an exchange company to observe the re-  
123 quirements of this section, or the use of any unfair or de-  
124 ceptive act or practice in connection with the operation of an  
125 exchange program, is a violation of this article.

**§36-9-18. License required to sell.**

1 Any seller of a time-sharing plan shall be a licensed real  
2 estate salesman, broker or broker-salesman, pursuant to  
3 chapter forty-seven of the code or its successor, and shall be  
4 subject to all of the provisions of that article. This section  
5 shall not apply to those individuals who are exempt from  
6 chapter forty-seven of the code or to those time-sharing  
7 plans which are registered with the securities and exchange  
8 commission.

**§36-9-19. Purchaser's remedies.**

1 An action for damages or injunctive or declaratory relief  
2 for a violation of this article may be brought by any purchaser  
3 or association of purchasers against the developer, a seller  
4 or the managing entity. The prevailing party in any such  
5 action may be entitled to reasonable attorney's fees. Relief  
6 under this section does not exclude any other remedies pro-  
7 vided by law.

**§36-9-20. Partition.**

1 No action for partition of any time-share unit shall lie,  
2 unless otherwise provided for in the contract between the  
3 seller and the purchaser.

**§36-9-21. Securities.**

1 Time-sharing plans are not securities under the provisions  
2 of this code.

**§36-9-22. Zoning and building.**

1 All laws, ordinances and regulations concerning buildings  
2 or zoning shall be construed and applied with reference to the  
3 nature and use of the real estate time-sharing plan property,  
4 without regard to the form of ownership.

**§36-9-23. Regulation by division.**

1 The division of land sales and condominiums is hereby  
2 created in the office of the state auditor to administer the  
3 provisions of this article. The division has the power and  
4 authority to enforce and ensure compliance with the provisions  
5 of this article. In performing its duties, the division shall  
6 have the following powers and duties:

7 (a) To aid in the enforcement of this chapter, the division  
8 may make necessary public or private investigations within  
9 or outside this state to determine whether any person has  
10 violated or is about to violate this article;

11 (b) The division may require or permit any person to  
12 file a written statement under oath or otherwise, as the  
13 division determines, as to the facts and circumstances con-  
14 cerning a matter under investigation;

15 (c) For the purpose of any investigation under this chap-  
16 ter, the director of the division or any officer or employee  
17 designated by the director may administer oaths or affirma-  
18 tions, subpoena witnesses and compel their attendance, take  
19 evidence, and require the production of any matter which  
20 is relevant to the investigation, including the identity, exist-  
21 ence, description, nature, custody, condition and location  
22 of any books, documents or other tangible things and the

23 identity and location of persons having knowledge of rele-  
24 vant facts or any other matter reasonably calculated to lead  
25 to the discovery of material evidence. Upon failure to obey  
26 a subpoena or to answer questions propounded by the in-  
27 vestigating officer and upon reasonable notice to all persons  
28 affected thereby, the division may apply to the circuit court for  
29 an order compelling compliance;

30 (d) The division may prepare and disseminate a pros-  
31 pectus and other information to assist prospective purchasers,  
32 sellers and managing entities of time-sharing plans in assessing  
33 the rights, privileges and duties pertaining thereto; and

34 (e) Notwithstanding any remedies available to purchasers,  
35 if the division has reasonable cause to believe that a viola-  
36 tion of this chapter has occurred, the division may institute  
37 enforcement proceedings in its own name against any de-  
38 veloper, exchange program, seller, managing entity, associa-  
39 tion or other person as follows:

40 (1) The division may permit any person whose conduct  
41 or actions may be under investigation to waive formal  
42 proceedings and enter into a consent proceeding whereby an  
43 order, rule or letter of censure or warning, whether formal  
44 or informal, may be entered against that person;

45 (2) The division may issue an order requiring a developer,  
46 exchange program, seller, managing entity, association or  
47 other person, or other assignees or agents, to cease and desist  
48 from an unlawful practice under this article and take such  
49 affirmative action as in the judgment of the division will carry  
50 out the purposes of this article;

51 (3) The division may bring an action in circuit court for  
52 declaratory or injunctive relief;

53 (4) (A) The division may impose a civil penalty against  
54 any developer, exchange program, seller, managing entity,  
55 association or other person for a violation of this chapter.  
56 A penalty may be imposed on the basis of each day of con-  
57 tinuing violation, but in no event shall the penalty for any  
58 offense exceed ten thousand dollars. All accounts collected  
59 shall be deposited with the treasurer to the credit of the  
60 West Virginia real estate time-sharing trust fund;

61 (B) If a developer, exchange program, seller or other  
62 person fails to pay the civil penalty, the division shall there-  
63 upon issue an order directing that such developer, exchange  
64 program, seller or other person cease and desist from further  
65 operation until such time as the civil penalty is paid; or the  
66 division may pursue enforcement of the penalty in a court of  
67 competent jurisdiction. If an association or managing entity  
68 fails to pay the civil penalty, the division shall thereupon  
69 pursue enforcement in a court of competent jurisdiction;

70 (5) In order to permit the developer, exchange program,  
71 seller, managing entity, association or other person an op-  
72 portunity either to appeal such decision administratively or  
73 to seek relief in a court of competent jurisdiction, the order  
74 imposing the civil penalty or the cease and desist order shall  
75 not become effective until twenty days after the date of  
76 such order; and

77 (6) Any action commenced by the division shall be brought  
78 in the county in which the violation occurred.

**§36-9-24. Annual fee for each time-share period in plan.**

1 On or before the first day of July of each year, each man-  
2 aging entity shall collect as a common expense and pay to the  
3 division an annual fee of fifty cents for each time-share period  
4 within the time-sharing plan.

**§36-9-25. West Virginia real estate time-sharing trust fund.**

1 There is created within the state treasury the West Virginia  
2 real estate time-sharing trust fund to be used for the adminis-  
3 tration and operation of this article by the division. All funds  
4 collected by the division and any amounts paid as fees or pen-  
5 alties under this article shall be deposited in the state treasury  
6 to the credit of the trust fund created by this section.

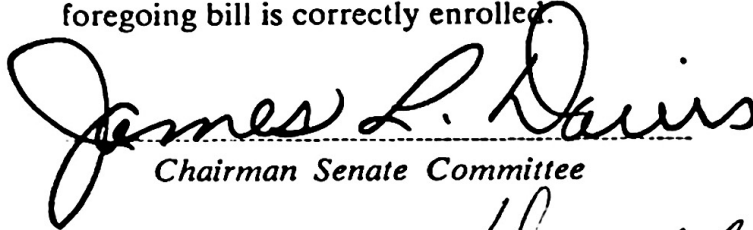
**§36-9-26. Taxation.**

1 For purposes of local real property taxation, each time-  
2 share unit, other than a unit operated for time-share use, shall  
3 be valued in the same manner as if such unit were owned  
4 by a single taxpayer. The total cumulative purchase price  
5 paid by the time-share owners for a unit shall not be utilized

6 by the local assessing officers as a factor in determining the  
7 assessed value of such unit. A unit operated as a time-share  
8 use, however, may be assessed the same as other income-  
9 producing and investment property. Tax records in a time-  
10 share unit shall be in the name of the association or the  
11 managing agent.




The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

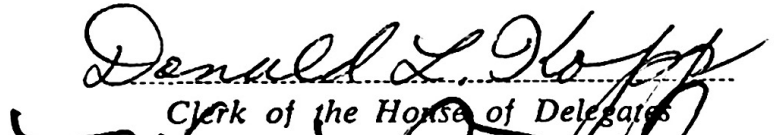
  
Chairman Senate Committee


  
Chairman House Committee

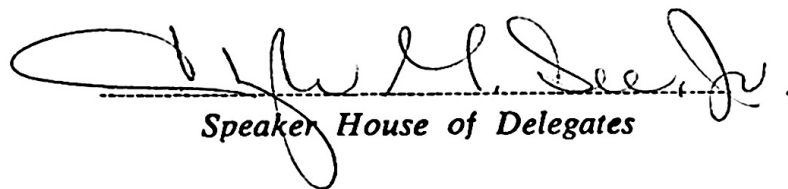
Originating in the House.

Takes effect ninety days from passage.

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker House of Delegates

The within is approved this the 30  
day of March, 1984.

  
Governor

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SECY. OF STATE