# WEST VIRGINIA CODE: §36-9-17

**§36-9-17. Exchange programs.**

(a) If a purchaser is offered the opportunity to subscribe to any program that provides exchanges of time- share periods among purchasers in either the same time- sharing plan or other time-sharing plans, or both, the seller shall deliver to the purchaser, together with the public offering statement, and prior to the execution of any contract between the purchaser and the company offering the exchange program, written information regarding such exchange program and the purchaser shall certify in writing to the receipt of such written information, which information shall include, but is not limited to, the following:

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

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

(3) Whether the exchange company or any of its officers or directors has any legal or beneficial interest in any developer, seller or managing entity for any time-sharing plan participating in the exchange program and, if so, the name and location of the time-sharing plan and the nature of the interest;

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

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

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

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

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

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

(10) Whether exchanges are arranged on a space-available basis and whether any

WV Legislature

guarantees of fulfillment of specific requests for exchanges are made by the exchange program;

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

(12) The fees or range of fees for participation by purchasers in the exchange program, a statement whether any such fees may be altered by the exchange company and the circumstances under which alterations may be made;

(13) The name and address of the site of each accommodation or facility included in the time-sharing plan participating in the exchange program;

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

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

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

(17) The following information, which shall be independently audited by a certified public accountant or accounting firm in accordance with the standards of the accounting standards board of the American institute of certified public accountants and reported on an annual basis beginning no later than July 1, 1984:

(A) The number of purchasers currently enrolled in the exchange program;

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

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

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



WV Legislature

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

(18) A statement in boldfaced type to the effect that the percentage described in subparagraph (c), subdivision (17) of this subsection is a summary of the exchange requests entered with the exchange program in the period reported and that the percentage does not indicate a purchaser's probabilities of being confirmed to any specific choice or range of choices.

(b) Each exchange company offering an exchange program to purchasers in this state shall file the information specified in subsection (a) with the division annually. If at any time the division determines that any of such information supplied by an exchange company fails to meet the requirements of this section, the division may undertake enforcement action against the exchange company in accordance with the provision of section twenty-three of this article. No developer shall have any liability with respect to any violation of this chapter arising out of the publication by the developer of information provided to it by an exchange company pursuant to this section. No exchange company shall have any liability with respect to any violation of this chapter arising out of the use by a developer of information relating to an exchange program other than that provided to the developer by the exchange company.

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

(d) The failure of an exchange company to observe the requirements of this section, or the use of any unfair or deceptive act or practice in connection with the operation of an exchange program, is a violation of this article.

WV Legislature