WEST VIRGINIA CODE: §36-9-23

§36-9-23. Regulation by division.

The division of land sales and condominiums is hereby created in the office of the State Auditor to administer the provisions of this article. The division has the power and authority to enforce and ensure compliance with the provisions of this article. In performing its duties, the division shall have the following powers and duties:

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

(b) The division may require or permit any person to file a written statement under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter under investigation;

(c) For the purpose of any investigation under this chapter, the director of the division or any officer or employee designated by the director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the identity, existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the division may apply to the circuit court for an order compelling compliance;

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

(e) Notwithstanding any remedies available to purchasers, if the division has reasonable cause to believe that a violation of this chapter has occurred, the division may institute enforcement proceedings in its own name against any developer, exchange program, seller, managing entity, association or other person as follows:

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

(2) The division may issue an order requiring a developer, exchange program, seller, managing entity, association or other person, or other assignees or agents, to cease and

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desist from an unlawful practice under this article and take such affirmative action as in the judgment of the division will carry out the purposes of this article;

(3) The division may bring an action in circuit court for declaratory or injunctive relief and for other appropriate relief;

(4) (A) The division may impose a civil penalty against any developer, exchange program, seller, managing entity, association or other person for a violation of this chapter. A penalty may be imposed on the basis of each day of continuing violation, but in no event shall the penalty for any offense exceed $10,000. All accounts collected shall be deposited with the treasurer to the credit of the West Virginia real estate time-sharing trust fund;

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

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

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

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