WEST VIRGINIA CODE: §36-9-7

§36-9-7. Escrow accounts; surety bonds; nondisturbance instruments.

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

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

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

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

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

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

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

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

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

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

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

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

(A) That its purpose is to protect all deposits and payments made by a purchaser toward the purchase price until the deed is transferred to the purchaser or until the purchaser and seller enter into a contract for deed or any other agreement which will subsequently transfer title to the purchaser; and

(B) That funds may be disbursed to the seller by the escrow agent from the escrow account only after title has been delivered to the purchaser or delivered for recording to the clerk of the county commission in the county where the real property underlying the time-sharing plan is located. However, in the case of a time-share period sold by agreement for deed, funds only may be disbursed to the seller after a notice to creditors and, if the property is encumbered by a mortgage, a nondisturbance instrument has been recorded in the public records of the county or counties in which the time-sharing plan is located; or alternatively, after the seller records a notice to creditors and obtains a release of lien for a time-share unit, funds may be disbursed pertaining to the time-share periods within that unit.

(4) In lieu of establishing the escrow account described by subdivision (2), post a surety bond, in the total amount of the contract, with the clerk of the county commission in the county where the time-sharing plan accommodations or facilities are located. Such bond shall be executed by the seller as principal and by a surety company authorized to do business in this state as surety. The bond shall be conditioned upon the faithful compliance of the seller with the provisions of both this section and the contract between the seller and the purchaser and shall run to the division for the benefit of any purchaser injured by the seller's violation of this section or failure to perform pursuant to the contract between the seller and the purchaser. The bond may be reduced periodically in the ratio of the amount of time used by purchasers in relation to the total time sold to purchasers.

(5) In lieu of either establishing the escrow account described by subdivision (2) or posting a surety bond described by subdivision (4), provide the purchaser with a nondisturbance

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instrument or notice to creditors, as follows:

(A) Each purchaser shall be furnished with a copy of a recorded nondisturbance instrument from every lienholder who has a recorded lien against the property upon which the accommodations or facilities to be used by the purchaser are situated. The nondisturbance instrument shall provide that, in the event of foreclosure of such lien, the succeeding owner shall take title to the property subject to the possessory rights of the purchasers;

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

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

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

(6) Place any fund escrowed pursuant to this section into an escrow account established solely for that purpose with an attorney who is a member of the State Bar; a bank having trust powers and located in this state; a savings and loan company located in this state; a trust company located in this state; or a real estate broker registered under chapter forty-seven of this code. In lieu of the foregoing, with the approval of the division, the funds may be escrowed in an account required by the jurisdiction in which the sale of the time- sharing plan took place. In lieu of any escrows required by this section, the director of the division shall have the discretion to accept other assurances, including, but not limited to, a surety bond or an irrevocable letter of credit in an amount equal to the escrow requirements of this section. Determination of default and refund of deposits shall be governed by the escrow release provision of this subsection.

(b) An escrow agent holding funds escrowed pursuant to this section may invest such escrowed funds in securities of the United States government, or any agency thereof, or in savings or time deposits in institutions insured by an agency of the United States government. The right to receive the interest generated by any such investments shall be as specified by contract.

(c) Each escrow agent shall maintain separate books and records for each time-sharing plan and shall maintain such books and records in accordance with good accounting practices.

(d) Any seller who intentionally fails to pay all required funds into the escrow accounts

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required by this section is guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than five years.

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