WEST VIRGINIA CODE CHAPTER 36 ARTICLE 9

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§36-9-1. Short title.

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

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§36-9-2. Purposes.

The purposes of this article are to:

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

(b) Establish procedures for the creation, sale and operation of time-sharing plans; and

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

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§36-9-3. Scope.

(a) This article applies only to time-sharing plans consisting of more than seven time-sharing periods other than condominium fee ownership time-sharing plans, except that sections six, ten, eleven, twelve, thirteen, seventeen, twenty, twenty-one, twenty-three, twenty-four, twenty-five and twenty-six of this article shall apply to all time-sharing plans.

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

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

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§36-9-4. Definitions.

As used in this article:

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

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

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

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

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

(f) "Division" means the division of land sales and condominiums in the office of the State Auditor;

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

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

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

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

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

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

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

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sharing plan;

(n) "Time-sharing plan" means any arrangement, plan, scheme or similar device, other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license or right-to-use agreement or by any other means, whereby a purchaser, in exchange for a consideration receives a right to use accommodations or facilities, or both, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years; and

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

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

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

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

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

(c) The total financial obligation of the purchaser, including the initial purchase price and any additional charges to which the purchaser may be subject, such as reservation, maintenance, management and recreation charges: Provided, That those costs which cannot be specified exactly shall be estimated and the purchaser shall be notified that said costs are subject to change;

(d) The estimated date of availability of each accommodation or facility which is not completed at the time the contract is executed by the seller and purchaser;

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

(f) Immediately prior to the space reserved in the contract for the signature of the purchaser, in boldfaced and conspicuous type which shall be larger than the type in the remaining text of the contract, substantially the following statements:

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

IF YOU DECIDE TO CANCEL THIS CONTRACT, YOU MUST NOTIFY THE SELLER IN WRITING OF YOUR INTENT TO CANCEL. YOUR NOTICE OF CANCELLATION SHALL BE EFFECTIVE UPON THE DATE SENT AND SHALL BE SENT TO (Name of Seller) AT (Address of Seller) . NO PURCHASER SHOULD RELY UPON REPRESENTATIONS OTHER THAN THOSE INCLUDED IN THIS CONTRACT."

If no interest in real property is being conveyed, the contract shall also contain the following statement:

"YOU MAY ALSO CANCEL THIS CONTRACT AT ANY TIME AFTER THE ACCOMMODATIONS OR FACILITIES ARE NO LONGER AVAILABLE AS PROVIDED IN THIS CONTRACT";

(g) A statement that oral representations cannot be relied upon and that the seller makes no representations other than those contained in the contract and the public offering statement;

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(h) A statement that, in the event the purchaser cancels the contract during a ten-day cancellation period, the developer shall refund to the purchaser all payments made under the contract within twenty days after receipt of notice of cancellation;

(i) If no fee interest in real property is being conveyed, a statement that, in the event of any cancellation by the purchaser after the ten-day cancellation periods, the refund shall be the total amount of all payments made by the purchaser under the contract reduced by the proportion of any contract benefits the purchaser actually has received or has had the right to receive under the contract during the time preceding the date when the cancellation becomes effective; and

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

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§36-9-6. Public offering statement.

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

(a) The division shall, upon receiving a public offering statement from a developer, mail the developer an acknowledgment of receipt. The failure of the division to send such acknowledgment shall not, however, relieve the developer from the duty of complying with this section;

(b) Within twenty days after receipt of a public offering statement, the division shall determine whether the proposed public offering statement is adequate to meet the requirements of this section and shall notify the developer by mail that the division has either approved the public offering statement or found specified deficiencies. If the division fails to respond within twenty days, the filing shall be deemed approved. The developer may correct the deficiencies; and, within fifteen days after receipt of materials filed by the developer to correct the deficiencies found by the division, the division shall notify the developer by mail that the division has either approved the filing or found additional specified deficiencies. If the division fails to respond within fifteen days, the filing shall be deemed approved;

(c) Any material change to the public offering statement shall be filed with the division within fifteen days of the change. The division shall approve, or cite for deficiencies, the change within ten days after the date of filing. If the division fails to respond within ten days, the change shall be deemed approved;

(d) Upon filing a public offering statement with the division, a developer shall pay a filing fee of 50¢ for each time-share period which is to be part of the proposed time-sharing plan;

(e) Every public offering statement shall contain the following:

(1) A cover page stating:

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

(B) The following, in conspicuous type:

"THIS PUBLIC OFFERING STATEMENT CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A TIME-SHARE PERIOD. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES, EXHIBITS HERETO, CONTRACT DOCUMENTS AND SALES MATERIALS. ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECT STATEMENTS OF SELLER REPRESENTATIONS. REFER TO THIS DOCUMENT FOR

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CORRECT REPRESENTATIONS";

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

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

(4) Exhibits, setting forth in detail the information summarized in the text of the public offering statement;

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

(6) A general description of the time-sharing plan, including the numbers of time-share units and time-share periods which are a part of the plan;

(7) An explanation of the purchaser's rights of cancellation;

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

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

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

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

(12) A statement of whether the time-sharing plan is participating in an exchange program and, if so, the name and address of the exchange company offering the exchange program; and

(13) Any other information that the seller, with the approval of the division, desires to include in the public offering statement.

(f) A public offering statement regarding a time-sharing plan shall contain or fully and accurately disclose the following:

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

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

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

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

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

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

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

(8) A copy of the rules, regulations, conditions or limitations on the use of the accommodations or facilities available to purchasers;

(9) Any restrictions on the transfer of any time-share period; and

(10) A description of the recreational and other facilities of the time-sharing plan.

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

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

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

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

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§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.

(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

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

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

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

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

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

(2) A statement that the escrow agent may not otherwise release moneys unless a contract is signed by the purchaser, authorizing the release of the escrowed reservation deposit as a deposit on the purchase price. Such deposit shall then be subject to the requirements of section seven of this article, relating to escrow accounts, surety bonds and nondisturbance instruments;

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

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

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

(6) A statement that the seller assures that the purchase price represented in or pursuant to the reservation agreement will be the price in the contract for the purchase or that the price represented may be exceeded within a stated amount or percentage or a statement that no assurance is given as to the price in the contract for purchase.

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

(2) All funds paid in connection with the reservation of a time-share shall be placed in 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

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division, the funds may be deposited into an escrow account required by the jurisdiction in which the sale took place.

(3) The escrow agent may invest the 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 from any such investments shall be as specified by the reservation agreement.

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

(5) 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 account 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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§36-9-9. Cancellation.

No seller shall:

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

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

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

(d) Fail to refund all payments made by the purchaser under the contract which exceed a pro rata portion of the total price representing the proportion of any contract benefits actually received by the purchaser during the time preceding the date when cancellation becomes effective, within twenty days from receipt of the purchaser's notice of cancellation, if the purchaser has received benefits under the time-sharing plan.

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§36-9-10. Advertising materials.

(a) All advertising materials shall be filed with the division within ten days of use."Advertising materials" include:

(1) Promotional brochures, pamphlets, advertisements or other materials to be disseminated to the public in connection with the sale of time shares;

(2) Transcripts of radio and television advertisements;

(3) Lodging certificates;

(4) Transcripts of standard verbal sales presentations; and

(5) Any other advertising materials.

(b) No advertising shall:

(1) Misrepresent a fact or create a false or misleading impression regarding the time-sharing plan;

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

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

(4) Contain any asterisk or other reference symbol as a means of contradicting or substantially changing any previously made statement or as a means of obscuring a material fact;

(5) Describe any improvement to the time-sharing plan that is not required to be built or that is uncompleted unless the improvement is conspicuously labeled as "NEED NOT BE BUILT,""PROPOSED" or "UNDER CONSTRUCTION" with the date or promised completion clearly indicated.

(6) Misrepresent the size, nature, extent, qualities or characteristics of the offered accommodations or facilities;

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

(8) Misrepresent the nature or extent of any services incident to the time-sharing plan;

(9) Make any misleading or deceptive representation with respect to the contents of the public offering statement and the contract or the purchasers' rights, privileges, benefits or obligations under the contract or this chapter; and

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(10) Misrepresent the conditions under which a purchaser may exchange the right to use accommodations or facilities in one location for the right to use accommodations or facilities in another location.

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

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

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

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

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

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

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

(e) At least one of each prize featured in a promotional program shall be awarded by the day and year specified in the promotion. When a promotion promises the award of a certain number of each prize, such number of prizes shall be awarded by the date and year specified in the promotion. A record shall be maintained containing the names and addresses of winners of the prizes and the record shall be made available upon request, to the public, upon payment of reasonable reproduction costs.

(f) The division shall require full disclosure of all pertinent information concerning the use of lodging certificates in a promotional campaign, including the terms and conditions of the campaign and the fact and extent of participation in such campaign by the developer. The division further may require reasonable assurances that the obligation incurred by a seller or the seller's agent in a lodging certificate program can be met. Such programs are subject to the prior approval of the division.

(g) If at any time the division determines that any advertising fails to meet the requirements of this section, the division may undertake enforcement action under the provisions of section twenty-three of this article.

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§36-9-11. Recordkeeping by seller.

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

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

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

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§36-9-12. Management.

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

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

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

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

(2) Collection of all assessments for common expenses;

(3) Providing each year to all purchasers an itemized annual budget, which shall include all receipts and expenditures;

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

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

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

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

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

(d) Any managing entity, or employee or agent thereof, who willfully misappropriates the property or funds of a time- sharing plan is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than five years.

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

(a) If a fee simple interest in real property is being sold to purchasers of a time-sharing plan, the contract retaining a managing entity shall be automatically renewable every three years, beginning with the third year after the managing entity is first created or provided for the time- sharing plan, unless the purchasers vote to discharge the managing entity. Such a vote shall be conducted by the board of the owners' association. The managing entity shall be discharged if at least sixty-six percent of the purchasers voting, which shall be at least fifty percent of all votes allocated to purchasers, vote to discharge the managing entity.

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

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

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

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

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

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

(d) Unless otherwise specified in the contract between the seller and the purchaser, any common expenses benefiting fewer than all purchasers shall be assessed only against those purchasers benefited.

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

WV Legislature

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

(a) The managing entity has a lien on a timeshare period for any assessment levied against that timeshare period from the date such assessment becomes due.

(b) The managing entity may bring an action in its name to foreclose a lien for assessments, in the manner a mortgage of real property is foreclosed.

(c) The managing entity may cause a trustee sale of the timeshare estate if the owner is delinquent to the managing entity for more than one year for assessments against the timeshare estate: Provided, That a trustee sale shall be effectuated as provided in section fifteen-a, article nine, chapter thirty-six of this code.

(d) In addition to the remedies in subsections (b) and (c) of this section, the managing entity may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. However, in the case of a timesharing plan in which no interest in real property is conveyed, the managing entity may bring an action under chapter forty-six of this code.

(e) The lien is effective from the date of recording a claim of lien in the public records of the county or counties in which the accommodations or facilities constituting the timesharing plan are located. The claim of lien shall state the name of the timesharing plan and identify the timeshare period for which the lien is effective, state the name of the purchaser, state the assessment amount due and state the due dates. The lien is effective until satisfied or until barred by law. The claim of lien may include only assessments which are due when the claim is recorded. A claim of lien shall be signed and acknowledged by an officer or agent of the managing entity. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

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

(g) Labor performed on a unit, or materials furnished to a unit, shall not be the basis for the filing of a lien pursuant to the mechanic's lien law against the timeshare unit of any timeshare period owner not expressly consenting to or requesting the labor or materials.

(h) The seller, initially, and thereafter the managing entity, shall be responsible for obtaining insurance to protect the accommodations and facilities of the timesharing plan in an amount equal to the replacement cost of such accommodations and facilities.

(i) Notwithstanding any provision in this article, the lien granted pursuant to this section shall not have priority over any voluntarily granted lien or security interest in the timeshare estate.

WV Legislature

(j) A copy of each policy of insurance in effect shall be made available for reasonable inspection by purchasers and their authorized agents.

WV Legislature

§36-9-15a. Trustee's sale of timeshare estates.

(a) A managing entity that desires to use a trustee sale shall prepare, execute and acknowledge a notice of trustee sale which shall include the following:

(1) The time and place of sale;

(2) The names of the parties to the deed under which it will be made;

(3) The date of the deed;

(4) The office and book in which it is recorded;

(5) The terms of sale;

(6) The nature and amount of the owner's current delinquency;

(7) The legal description of the owner's timeshare estate;

(8) The name and address of the association or other managing entity; and

(9) The name and address of the trustee designated by the association or managing entity to conduct the trustee sale.

(b) The managing entity shall record the notice of trustee sale with the clerk of the county commission of the county in which the timeshare estate is located and shall mail by certified mail, return receipt requested, a copy of the notice of trustee sale to the owner listed in the notice at the last address for each delinquent timeshare period according to the records of the managing entity, and, to any holder of a lien or security interest against the timeshare estate being sold, other than the state and the managing entity. To the extent the owner is unable to be located, notice under this subsection is satisfied by notice by publication as provided in subsection (c) of this section.

(c) At least thirty days prior to the date of the trustee sale, the notice of trustee sale shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the county where the property is located.

(d) A trustee appointed in a notice of delinquency may conduct a trustee sale of a timeshare estate under this section. The recording of a notice of trustee sale shall satisfy all requirements for the trustee to appear in the chain of title for the timeshare estate in order for the trustee to be entitled to issue a trustee deed on completion of a trustee's sale for the timeshare estate.

(e) If the delinquencies identified in a notice of trustee sale are not cured within thirty days after the managing entity mails the notice of trustee sale pursuant to subsection (b) of this

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section, and publication is made under subsection (c) of this section, the managing entity may cause the trustee to conduct a trustee's sale of the delinquent owner's timeshare estate at public auction.

(f) The trustee's sale may include multiple timeshare estates owned by an owner if the owner is delinquent in payment of assessments for all of the timeshare estates included in the trustee's sale proceeding. The trustee's sale may include timeshare estates owned by multiple owners if the notice of trustee's sale provides all information required by this section for each owner and timeshare estate and each timeshare estate is sold separately.

(g) This section shall not apply to any timeshare property if the timeshare instrument expressly mandates that judicial foreclosure is the sole method for the managing entity to foreclose or liquidate a lien securing payment of assessments due to the managing entity.

(h) When a sale of property is made under any trustee deed, there shall, within two months after the sale, be returned by the trustee, to the clerk of the county commission of the county wherein such deed may have been first recorded, an inventory of the property sold and an account of the sale. The clerk of the county commission shall record the same, as provided in section nine, article one, chapter thirty-eight of this code. When a report of the sale of the property sold pursuant to a trustee deed is placed on record by the trustee with the clerk of the county commission as provided in section eight of this article, the trustee shall include in a disclosure form submitted with and made a part of the report of sale the information identified in section eight-a, article one, chapter thirty-eight of this code, to the extent applicable.

(i) If notice is given as provided in this section, no action or proceeding to set aside a trustee sale due to the failure to follow any notice, service, process or other procedural requirement relating to a sale of property under a timeshare instrument, shall be filed or commenced more than one year from the date of the sale.

WV Legislature

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

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

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

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

(c) The third party agrees in writing to comply with the provisions of this article for as long as the third party continues to sell the time-sharing plan or for as long as purchasers of the time-sharing plan are entitled to occupy the accommodations or use the facilities, whichever is longer in time;

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

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

Persons who hold mortgages on the property constituting a time-sharing plan before the public offering statement of such plan is approved by the division shall not be considered third parties for the purposes of this section.

WV Legislature

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

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(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

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

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(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

§36-9-18. License required to sell.

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

WV Legislature

§36-9-19. Purchaser's remedies.

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

WV Legislature

§36-9-20. Partition.

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

WV Legislature

§36-9-21. Securities.

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

WV Legislature

§36-9-22. Zoning and building.

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

WV Legislature

§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 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;

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(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.

WV Legislature

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

On or before July 1, of each year, each managing entity shall collect as a common expense and pay to the division an annual fee of 50¢ for each time- share period within the time-sharing plan.

WV Legislature

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

There is created within the State Treasury the West Virginia real estate time-sharing trust fund to be used for the administration and operation of this article by the division. All funds collected by the division and any amounts paid as fees or penalties under this article shall be deposited in the State Treasury to the credit of the trust fund created by this section.

WV Legislature

§36-9-26. Taxation.

For purposes of local real property taxation, each time-sharing unit, other than an unit operated for time- share use, shall be valued in the same manner as if such unit 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 local assessing officers 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. Tax records in a time-share unit shall be in the name of the association or the managing agent.

WV Legislature