WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2013

ENROLLED

House Bill No. 2842
(By Delegate(s) Boggs, Swartzmiller, Ferro, Caputo and Poling, D.)
[By Request of the State Auditor’s Office]

Passed April 13, 2013

In effect ninety days from passage.
ENROLLED

H. B. 2842

(BY DELEGATE(S) BOGGS, SWARTZMILLER, FERRO, CAPUTO AND POLING, D.)

[BY REQUEST OF THE STATE AUDITOR'S OFFICE]

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §36-9-3 and §36-9-23 of the Code of West Virginia, 1931, as amended, all relating to clarifying that time-sharing plans, accommodations and facilities are subject to regulation by the Division of Land Sales and Condominiums; and granting the Division of Land Sales and Condominiums the authority to seek additional relief in circuit courts.

Be it enacted by the Legislature of West Virginia:

That §36-9-3 and §36-9-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 9. WEST VIRGINIA REAL ESTATE TIME-SHARING ACT.


(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 accommoda-
tions or facilities subject to a time-sharing plan.

§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
authoritative 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;

(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, associa-
tion 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 opportu-
nity 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.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Member

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _______approves____ this the ________

day of ________, 2013.

Governor