

2013 MAY -1 PM 4:01

SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
FIRST REGULAR SESSION, 2013

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**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.

HB 2842

FILED

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**E N R O L L E D**

**H. B. 2842**

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

[BY REQUEST OF THE STATE AUDITOR'S OFFICE]

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**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.**

**§36-9-3. Scope.**

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

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

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

**§36-9-23. Regulation by division.**

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

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

11       (b) The division may require or permit any person to file a  
12 written statement under oath or otherwise, as the division

13 determines, as to the facts and circumstances concerning a  
14 matter under investigation;

15 (c) For the purpose of any investigation under this chapter,  
16 the director of the division or any officer or employee designated  
17 by the director may administer oaths or affirmations, subpoena  
18 witnesses and compel their attendance, take evidence, and  
19 require the production of any matter which is relevant to the  
20 investigation, including the identity, existence, description,  
21 nature, custody, condition and location of any books, documents  
22 or other tangible things and the identity and location of persons  
23 having knowledge of relevant facts or any other matter reason-  
24 ably calculated to lead to the discovery of material evidence.  
25 Upon failure to obey a subpoena or to answer questions pro-  
26 pounded by the investigating officer and upon reasonable notice  
27 to all persons affected thereby, the division may apply to the  
28 circuit court for an order compelling compliance;

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

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

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

44 (2) The division may issue an order requiring a developer,  
45 exchange program, seller, managing entity, association or other

46 person, or other assignees or agents, to cease and desist from an  
47 unlawful practice under this article and take such affirmative  
48 action as in the judgment of the division will carry out the  
49 purposes of this article;

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

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

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

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

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

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Tommy Wells  
Chairman, House Committee

Member Rocky Fikuma  
~~Chairman, Senate Committee~~

Originating in the House.

In effect ninety days from passage.

Sam D. Lee  
Clerk of the House of Delegates

Joseph M. Minard  
Clerk of the Senate

R. G.  
Speaker of the House of Delegates

Jeffrey V. F.  
President of the Senate

The within is approved this the 1st  
day of May, 2013.

Carl Roy Tomblin  
Governor

PRESENTED TO THE GOVERNOR

MAY - 1 2013

Time 10:27 am