

Chapter 21. The Virginia Real Estate Time-Share Act.

Article 1. General Provisions.

§ 55-360. Title.

This chapter shall be known and may be cited as the "Virginia Real Estate Time-Share Act."
1981, c. 462.

§ 55-361. Repealed.

Repealed by Acts 1985, c. 517.

§ 55-361.1. Applicability.

A. This chapter shall have exclusive jurisdiction and shall apply to any product offering or disposition made within this Commonwealth after July 1, 1985, in a time-share project located within this Commonwealth. Sections [55-360](#), [55-361.1](#), [55-362](#), [55-362.1](#), [55-363](#), [55-364](#), [55-365.1](#), [55-369](#), [55-370](#), [55-370.1](#), [55-372](#), [55-373](#), [55-375](#), [55-380](#), [55-381](#), [55-382](#), [55-384](#), [55-385](#), [55-389](#), and [55-400](#) of this chapter shall apply to a time-share project within this Commonwealth which was created prior to July 1, 1985.

B. This chapter shall not affect rights or obligations created by preexisting provisions of any time-share instrument which transfers an estate or interest in real property.

C. This chapter shall apply to any product offering or disposition in a time-share project located outside the Commonwealth and offered for sale in the Commonwealth with the exception that Articles 2 (§ [55-366](#) et seq.), 3 (§ [55-374](#) et seq.), and 4 (§ [55-387](#) et seq.) of this chapter shall apply only to the extent permitted by the laws of the situs.

Code 1950, § 55-361; 1981, c. 462; 1983, c. 59; 1985, c. 517; 1986, c. 359; 1989, c. 637; 1991, c. 704; 1994, c. [580](#).

§ 55-362. Definitions.

As used in this chapter, or in a time-share instrument, unless the context requires a different meaning:

"Additional land" has the meaning ascribed to it in subsection C of § [55-367](#).

"Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified.

"Alternative purchase" means anything valued in excess of \$100 which is offered to a potential purchaser by the developer during the developer's sales presentation and which is purchased by such potential purchaser for more than \$100, even though the purchaser did not purchase a time-share. An alternative purchase is not a time-share. A membership camping contract as defined in § [59.1-313](#) is not an alternative purchase. An alternative purchase shall be registered with the Board unless it is otherwise registered as a travel service under the Virginia Travel Club Act (§ [59.1-445](#) et seq.), and shall include, without limitation, vacation packages (howsoever denominated) and exit programs (howsoever denominated).

"Association" means the association organized under the provisions of § [55-368](#).

"Board" means the Common Interest Community Board, an agency within the meaning of the Administrative Process Act (§ [2.2-4000](#) et seq.).

"Board of directors" means an executive and administrative entity, by whatever name denominated, designated in a time-share estate project instrument as the governing body of the time-share estate owners' association.

"Common elements" means the real estate, improvements thereon, and the personalty situate within the time-share project that are subject to the time-share program. "Common elements" shall not include the units and the time-shares.

"Consumer documents" means the aggregate of the following documents: the reverter deed, note, and the deed of trust. A consumer document shall be deemed one of the consumer documents.

"Contact information" means any information that can be used to contact an owner, including the owner's name, address, telephone number, email address, or user identity on any electronic networking service.

"Contract," "sales contract," "purchase contract," "contract of purchase" or "contract to purchase" shall be interchangeable throughout this chapter and shall mean any legally binding instrument executed by the developer and a purchaser whereby the developer is obligated to sell and the purchaser is obligated to purchase either a time-share and its incidental benefits or an alternative purchase registered under this chapter.

"Conversion time-share project" means a real estate improvement, which prior to the disposition of any time-share, was wholly or partially occupied by persons as their permanent residence or on a transient pay-as-you-go basis other than those who have contracted for the purchase of a time-share and those who occupy with the consent of such purchasers.

"Cost of ownership" means all of the owner's expenses related to a resale time-share due and payable between the date of a resale transfer contract and the transfer of the resale time-share.

"Deed" means the instrument by which title to a time-share estate is transferred from one person to another person.

"Deed of trust" means the instrument conveying the time-share estate that is given as security for the payment of the note.

"Default" means either a failure to have made any payment in full and on time or a violation of a performance obligation required by a consumer document for a period of no less than 60 days.

"Developer" means any person or group of persons acting in concert who (i) offers to dispose of a time-share or its or their interest in a time-share unit for which there has not been a previous disposition or (ii) applies for registration of the time-share program.

"Developer control period" has the meaning ascribed to it in § [55-369](#).

"Development right" means any right reserved by the developer to create additional units which may be dedicated to the time-share program.

"Dispose" or "disposition" means a transfer of a legal or equitable interest in a time-share, other

than a transfer or release of security for a debt.

"Exchange agent" or "exchange company" means a person or persons who exchange or offer to exchange time-shares in an exchange program with other time-shares.

"Exchange program" means any opportunity or procedure for the assignment or exchange of time-shares among owners in other time-share programs as evidenced by a past or present written agreement executed between an exchange company and the developer or the time-share estate association; however, an "exchange program" shall not be either an incidental benefit or an opportunity or procedure whereby a time-share owner can exchange his time-share for another time-share within either the same time-share or another time-share project owned in part by the developer.

"Guest" means a person who is on the project, additional land or development at the request of an owner, developer, association or managing agent, or a person otherwise legally entitled to be thereon. A guest includes, without limitation, family members of owners, time-share exchange participants, merchants, purveyors, vendors and employees thereof, and of the developer and association.

"Incidental benefit" means anything valued in excess of \$100 provided by the developer that is acquired by a purchaser upon acquisition of a time-share and includes without limitation exchange rights, travel insurance, bonus weeks, upgrade entitlements, travel coupons, referral awards, and golf and tennis packages. An incidental benefit is not a time-share or an exchange program. An incidental benefit shall not be registered with the Board.

"Inherent risks of project activity" mean those dangers or conditions that are an integral part of a project activity, including certain hazards, such as surface and subsurface conditions; natural conditions of land, vegetation, and waters; the behavior of wild or domestic animals; and ordinary dangers of structures or equipment ordinarily used in association or time-share operations. Inherent risks of project activity also include the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including failing to follow instructions given by the project professional or failing to exercise reasonable caution while engaging in the project activity.

"Lead dealer" means a person who sells or otherwise provides to any other person contact information concerning five or more owners to be used for a resale service, but excludes developers, managing entities, or exchange companies to the extent such entities are providing other persons with personal contact information about time-share owners in their own time-share plans or members of their own exchange program.

"Lien holder" means either a person who holds an interest in an encumbrance that is not released of record as to a purchaser or such person's successor in interest who acquires title to the time-share project at foreclosure or by deed in lieu of foreclosure, or other instrument however denominated.

"Managing agent" means a person who undertakes the duties, responsibilities, and obligations of the management of a time-share project.

"Managing entity" means the managing agent or, if there is no managing agent, the time-share owners' association in a time-share estate project and the developer in a time-share use project.

"Material change" means a change in any information or document disclosed in or attached to

the public offering statement which renders inaccurate, incomplete or misleading any information or document in such a way as to affect substantially a purchaser's rights or obligations, but shall not include a change (i) in the real estate tax assessment or rate, utility charges or deposits, maintenance fees, association dues, assessments, special assessments or any recurring time-share expense item provided the change is made known (a) immediately to the prospective purchaser by a written addendum in the public offering statement and (b) to the Board by filing with the developer's annual report copies of the updated changes occurring over the immediately preceding 12 months; (ii) which is an aspect or result of the orderly development of the time-share project in accordance with the time-share instrument; (iii) resulting from new, updated, or amended information contained in the annual report prepared and distributed pursuant to § 55-370.1; (iv) correcting spelling, grammar, omissions or other similar errors not affecting the substance of the public offering statement; or (v) occurring in the issuance of an exchange company's updated annual report or disclosure document, provided upon its receipt by the developer, it shall be distributed in lieu of all others in order to satisfy § 55-374.

"Note" means the instrument that evidences the debt occasioned by the deferred purchase of a time-share.

"Offering" or "offer" means any act to sell, solicit, induce, or advertise, which originates in this Commonwealth, whether by radio, television, telephone, newspaper, magazine, or mail, whereby a person is given an opportunity to acquire a time-share.

"Participant" means any person, other than a project professional, who engages in a project activity.

"Person" means one or more natural persons, corporations, partnerships, associations, trustees of a trust, limited liability companies, other entities, or any combination thereof capable of holding title to real property.

"Possibility of reverter" means a provision contained in a reverter deed whereby the time-share estate automatically reverts or transfers back to the developer upon satisfaction of the requirements imposed by § 55-376.1.

"Product" means each time-share and its incidental benefits and all alternative purchases that are registered with the Board pursuant to this chapter.

"Project" means the same as the term "time-share project."

"Project activity" means any activity carried out or conducted on a common element, within a time-share unit or elsewhere in the project, additional land or development, that allows owners, their guests, and members of the general public to view, observe, participate or enjoy activities, including swimming pools, spas, sporting venues, and cultural, historical or harvest-your-own activities, other amenities and events, or natural activities and attractions for recreational, entertainment, educational or social purposes. An activity is a project activity whether or not the participant paid to participate in the activity.

"Project instrument" means any recorded documents, by whatever name denominated, which create the time-share project and program and which may contain restrictions or covenants regulating the use, occupancy, or disposition of time-shares in a project.

"Project professional" means any person who is engaged in the business of providing one or more

project activities, whether or not for compensation. For the purposes of this definition, the developer, association, and managing entity shall each be deemed a project professional.

"Public offering statement" means the statement required by § 55-374.

"Purchaser" means any person other than a developer or lender who owns or acquires a product, or who otherwise enters into a contract for the purchase of a product.

"Resale cost of ownership" means all the owner's expenses related to a resale time-share due and payable between the date of a resale transfer contract and the transfer of such resale time-share.

"Resale purchase contract" means an agreement negotiated by a reseller by which an owner or a reseller agrees to sell and a subsequent purchaser agrees to buy a resale time-share.

"Resale service" means engaging, directly or indirectly, for compensation, in any of the following either in person or by any medium of communication: (i) selling or offering to sell or list for sale for the owner a resale time-share, (ii) buying or offering to buy a resale time-share for transfer to a subsequent purchaser, (iii) transferring a resale time-share acquired from an owner to a subsequent purchaser or offering to assist in such transfer, (iv) invalidating or offering to invalidate for an owner the title of a resale time-share, or (v) advertising or soliciting to advertise or promote the transfer or invalidation of a resale time-share. Resale service shall not include an individual selling or offering to sell his own time-share unit.

"Resale time-share" means a time-share, wherever located, that has previously been sold to an owner who is a natural person for personal, family, or household use and that is transferred, or is intended to be transferred, through a resale service.

"Resale transfer contract" means an agreement between a reseller and the owner by which the reseller agrees to transfer or assist in the transfer of the owner's resale time-share.

"Reseller" means any person who, directly or indirectly, engages in a resale service.

"Reverter deed" means the deed from developer to a grantee that contains a possibility of reverter.

"Sales person" means a person who sells or offers to sell time-share interests in a time-share program.

"Situs" means the place outside the Commonwealth where a developer's time-share project is located.

"Situs Time-Share Act" means the Act, howsoever denominated, that regulates the offering, disposition, and sale of time-shares applicable to the property outside the Commonwealth where the time-share project is located.

"Subsequent purchaser" means the purchaser or transferee of a resale time-share.

"Time-share" or "timeshare" means either a time-share estate or a time-share use plus its incidental benefits.

"Time-share estate" means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, coupled with a freehold estate or an estate for years in a time-share project or a specified portion thereof.

"Time-share estate occupancy expense" has the meaning ascribed to it in § 55-369.

"Time-share estate subject to reverter" means a time-share estate (i) entitling the holder thereof to occupy units not more than four weeks in any one year period; and (ii) for which the down payment is not more than 20 percent of the total purchase price of the time-share estate.

"Time-share expense" means (i) expenditures, fees, charges, or liabilities incurred with respect to the operation, maintenance, administration or insuring of the time-shares, units, and common elements comprising the entire time-share project, whether or not incurred for the repair, renovation, upgrade, refurbishing or capital improvements; and (ii) any allocations of reserves.

"Time-share instrument" means any document, however denominated, which creates the time-share project and program, and which may contain restrictions or covenants regulating the use, occupancy, or disposition of time-shares in a project.

"Time-share owner" or "owner" means a person who is an owner or co-owner of a time-share other than as security for an obligation.

"Time-share program" or "program" means any arrangement of time-shares in one or more time-share projects whereby the use, occupancy, or possession of real property has been made subject to either a time-share estate or time-share use in which such use, occupancy, or possession circulates among owners of the time-shares according to a fixed or floating time schedule on a periodic basis occurring over any period of time in excess of five years.

"Time-share project" means all of the real property subject to a time-share program created by the execution of a time-share instrument.

"Time-share unit" or "unit" means the real property or real property improvement in a project which is divided into time-shares and designated for separate occupancy and use.

"Time-share use" means a right to occupy a time-share unit or any of several time-share units during five or more separated time periods over a period of at least five years, including renewal options, not coupled with a freehold estate or an estate for years in a time-share project or a specified portion thereof. "Time-share use" shall not mean a right to use which is subject to a first-come, first-served, space-available basis as might exist in a country club, motel, hotel, health spa, campground, or membership or resort facility.

"Transfer" means a voluntary conveyance of a resale time-share to a person other than the developer, association, or managing entity of the time-share program of which the resale time-share is a part or to a person taking ownership by gift, foreclosure, or deed in lieu of foreclosure.

1981, c. 462; 1985, c. 517; 1986, c. 359; 1991, c. 704; 1994, c. 580; 1998, c. 460; 2001, c. 543; 2004, c. 143; 2007, c. 267; 2008, cc. 376, 851, 871; 2012, c. 751.

§ 55-362.1. Administrative agency.

This chapter shall be administered by the Common Interest Community Board, which is herein called the "Board."

1985, c. 517; 2008, cc. 851, 871.

§ 55-363. Status of time-share estates with respect to real property interests.

A. A document transferring or encumbering a time-share estate shall not be rejected for

recordation within this Commonwealth because of the nature or duration of that estate or interest, provided the document complies with all other recordation requirements.

B. Each time-share estate constitutes for purposes of title a separate estate or interest in a unit.

C. For purposes of local real property taxation, each time-share unit, other than a 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 commissioner of revenue or other local assessing officer 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. The commissioner of revenue or other local assessing officer shall list in the land book a time-share unit in the name of the association.

1981, c. 462; 1985, c. 517; 1994, c. 580.

§ 55-364. Applicability of local ordinances, regulations, and building codes.

A zoning, subdivision, or other ordinance or regulation may not impose any requirement upon a time-share project which it would not otherwise impose upon a similar project under a different form of ownership.

1981, c. 462.

§ 55-364.1. Use of terms.

A developer in its offering or disposition of a time-share may use interchangeably any term recognized in the industry, including without limitation: "time-share," "time-share interest," "interval ownership," "interval ownership interest," "vacation ownership," "vacation ownership interest," and "product." A developer shall not use the term "incidental benefit" or "alternative purchase" except in the proper context.

1994, c. 580.

§ 55-365. Repealed.

Repealed by Acts 1985, c. 517.

§ 55-365.1. Severability of provisions of time-share instruments.

All provisions of the time-share instruments shall be deemed severable, and any unlawful provision thereof shall be void.

Code 1950, § 55-365; 1981, c. 462; 1985, c. 517.

Article 2. Creation, Termination, and Management.

§ 55-366. Time-sharing permitted.

A time-share project shall be permitted on any land or improvement thereon lying within the Commonwealth unless prohibited by zoning then in effect or by the express language of any legally enforceable covenant, condition or restriction, however denominated, contained in the governing documents of record for such land, including without limitation, condominium instruments under the Condominium Act (§ 55-79.39 et seq.), a time-share instrument under this chapter, declaration under the Virginia Real Estate Cooperative Act (§ 55-424 et seq.) or a master deed under the Horizontal Property Act (§ 55-79.1 et seq.). This chapter shall not be construed to affect the validity of any provisions of any time-share program or any expansion thereof or time-

share instrument recorded or in existence prior to July 1, 1981.

1981, c. 462; 1994, c. 580; 1998, c. 460.

§ 55-367. Instruments.

A. In order to create a time-share program for a time-share estate project, the developer shall execute a time-share instrument prepared and executed in accordance with this chapter and record it in the clerk's office where such time-share project is located. The time-share instrument shall contain the following:

1. The name of the time-share project, which name must include or be followed by a qualifying adjective or term outlined in § 55-364.1;
2. The name of the locality and the state or situs in which the time-share project is situated;
3. The legal description, street address, or other description sufficient to identify the time-share project;
4. A legally sufficient description of the real estate constituting the time-share project;
5. A statement of the form of time-share program, i.e., whether it is a time-share estate or time-share use;
6. Identification of time periods by letter, name, number or combination thereof;
7. Identification of time-shares and where applicable, the method whereby additional time-shares may be created or withdrawn;
8. The formula, fraction, or percentage of the common expenses and any voting rights assigned to each time-share;
9. Any restrictions on the use, occupancy, enjoyment, alteration, or alienation of time-shares;
10. The ownership interest, if any, in personal property available to time-share owners;
11. The program by which the managing entity, if any, will provide management of the project;
12. The period for which units are designated and committed to the time-share program and the property classification of the units at the expiration of such period;
13. Any provision for amending the time-share instrument;
14. A description of the events, including but not limited to condemnation and damage or destruction, upon which the time-share program may or shall be terminated before the expiration of its full term and the consequences of such termination, including but not limited to the manner in which the time-share project or the proceeds from the disposition thereof shall be held or distributed among owners;
15. A statement of whether or not the developer reserves the right to add to or delete any incidental benefit;
16. A statement of whether or not the developer reserves the right to add to or delete any alternative purchase; and
17. Such other matters as the developer deems appropriate.

B. In order to create a time-share program for a time-share use project, the developer shall either (i) execute and record a time-share instrument as required by subsection A or (ii) execute a time-share instrument that takes the form of and is a part of the contract which contains the information required by subsection A.

C. If the developer explicitly reserves the right to develop additional time-shares, the time-share instrument shall also contain the following:

1. A legally sufficient description of all land which may be added to the time-share project which shall be referred to as "additional land";
2. A statement outlining the order in which portions of the additional land may be subjected to the exercise of each development right, or a statement that no assurances are made in that regard;
3. A statement of the time limit upon which the option to develop shall expire, together with a statement of the circumstances, if any, which will terminate that option prior to the expiration of the specified time limit;
4. A statement of the maximum number of units which may be added to the time-share project, if known, and if not known, a statement to that effect; and
5. A statement of the property classification of the additional land if the developer fails to exercise the development rights as reserved in the time-share instrument.

1981, c. 462; 1985, c. 517; 1994, c. 580; 1998, c. 460.

§ 55-368. Time-share instrument for time-share estate project.

In addition to the requirements of § 55-367, the time-share instrument for a time-share estate project shall outline or prescribe reasonable arrangements for the management and operation of the time-share estate program and for the maintenance, repair, and furnishing of units comprising it, which shall include, but need not be limited to, provisions for the following:

1. Creation of an association, the members of which shall be the time-share estate owners. The association may be formed pursuant to the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.); however, the association shall be formed prior to the time the project and program are registered with the Board. Nothing shall affect the validity of the association, once formed, and the rights applicable to it as granted by this chapter, notwithstanding the time when such association was formed;
2. Payment of costs and expenses of operating the time-share estate program and owning and maintaining the units comprising it;
3. Employment and termination of employment of the managing agent for the project. Any agreement pertaining to the employment of the managing agent and executed during the developer control period shall be voidable by the association at any time after termination of the developer control period for the time-share project, and any provision in such agreement to the contrary is hereby declared to be void;
4. Termination of leases and contracts for goods and services for the time-share estate project, which are entered into during the developer control period. Any such lease or contract shall become voidable at the option of the association upon termination of the developer control

period for the entire time-share project, or sooner if the provisions of such lease or contract so state;

5. Preparation and dissemination to time-share estate owners of the annual report required by § 55-370.1;

6. Adoption of standards and rules of conduct for the use, enjoyment, and occupancy of units by the time-share estate owners;

7. Collection of regular assessments, fees or dues, and/or special assessments from time-share estate owners to defray all time-share expenses;

8. Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use and enjoyment of the project by time-share estate owners, their guests and other users. The costs associated with securing and maintaining such insurance shall be a time-share expense. Nothing herein shall be construed to obligate the managing entity to secure insurance on the conduct of the time-share estate owners, their guests and other users, or the personal effects or property of such owners, guests, and users;

9. Methods for providing compensation or alternate use periods or monetary compensation to a time-share estate owner if his contracted-for unit cannot be made available for the period to which the owner is entitled by schedule or by confirmed reservation;

10. Procedures for imposing a monetary penalty or suspension of a time-share estate owner's rights and privileges in the time-share estate program or time-share project for failure of such owner to comply with provisions of the time-share instrument or the rules and regulations of the association with respect to the use and enjoyment of the units and the time-share project. Under these procedures a time-share estate owner must be given reasonable notice and reasonable opportunity to be heard and explain the charges against him in person or in writing to the board of directors of the association before a decision to impose discipline is rendered; and

11. Employment of attorneys, accountants, and other professional persons as necessary to assist in the management of the time-share estate program and the units comprising it.

1981, c. 462; 1985, c. 517; 1989, c. 637; 1991, c. 704; 1994, c. 580; 1998, c. 460.

§ 55-369. Developer control in time-share estate program.

A. The time-share instrument for a time-share estate program shall provide for a period of time, to be called the "developer control period," during which the developer or a managing agent selected by the developer shall manage and control the time-share estate project and the common elements and units, or portions thereof, comprising it. All costs associated with the control, management, and operation of the time-share estate project during the developer control period shall belong to the developer, except for time-share estate occupancy expenses that shall, if required by the developer in the time-share instrument, be allocated only to and paid by time-share estate owners other than the developer. "Time-share estate occupancy expenses" means all costs and expenses incurred in (i) the formation, organization, operation, and administration, including capital contributions thereto, of the association and both its board of directors and its members and (ii) all owners' use and occupancy of the time-share estate project including without limitation its completed and occupied time-share estate units and common elements available for use. Such costs and expenses include but are not limited to maintenance and housekeeping charges; repairs; refurbishing costs; insurance premiums,

including the premium for comprehensive general liability insurance required by subdivision 8 of § 55-368; taxes; properly allocated labor, operational, and overhead costs; general and administrative expenses; managing agent's fee; utility charges and deposits; the cost of periodic repair and replacement of walls and window treatments and furnishings, including furniture and appliances; filing fees and annual registration charges of the State Corporation Commission and the Board; counsel fees and accountant charges; and reserves for any of the foregoing. Nothing shall preclude the developer, during the developer control period and at any time after the lapse of a purchaser's right of cancellation, and without regard to the recordation of the deed, provided the deed has been delivered to the purchaser or the purchaser's agent, from collecting an annual or specially assessed charge from each time-share estate owner for the payment of the time-share estate occupancy expenses by way of a "maintenance fee." However, any such funds received and not spent or any other funds received and allocated to the benefit of the association shall be transferred to the association by the developer at the termination of the developer control period.

B. Except to the extent that the purchase contract or time-share instrument expressly provides otherwise, fee simple title to the common elements shall be transferred to the time-share estate owners' association, free of charge, no later than at such time as the developer (i) transfers to purchasers legal or equitable ownership of at least 90 percent of the time-share estates, excluding any reacquisitions by the developer; (ii) is no longer the beneficiary on deeds of trust secured on at least 20 percent of the time-share estates; or (iii) has completed all of the promised common elements and facilities comprising the time-share estate project, whichever occurs last. The developer may, but shall not be required to, make such transfer when the period has ended for a phase or portion of the time-share estate project. The transfer herein required of the developer shall not exonerate the developer from the responsibility of completion of the promised and incomplete common elements once the transfer occurs. Upon transfer of the time-share project or portion to the association, the developer control period for such project or portion thereof shall terminate.

1981, c. 462; 1985, c. 517; 1989, c. 637; 1991, c. 704; 1993, c. 842; 1994, c. 580; 1998, c. 460; 2001, c. 543; 2008, c. 376; 2013, cc. 259, 327.

§ 55-370. Time-share estate owners' association control liens.

A. The board of directors of the association shall have the authority to adopt regular annual assessments and to levy periodic special assessments against each of the time-share estate unit owners and to collect the same from such owners according to law, if the purpose in so doing is determined by the board of directors to be in the best interest of the time-share project or time-share program and the proceeds are used to either pay common expenses or fund a reserve. In addition, the board of directors of the association shall have the authority to collect, on behalf of the developer or on its own account, the maintenance fee imposed by the developer pursuant to § 55-369. The authority hereby granted and conferred upon the association shall exist notwithstanding any covenants and restrictions of record applicable to the project stated to the contrary and any such covenants and restrictions are hereby declared void.

B. The developer may provide that it not be obligated to pay all or a portion of any assessment, dues, or other charges of the association, however denominated, passed, or adopted, pursuant to subsection A, if such developer so provides, in bold type, in the time-share instrument for the time-share estate project. If no such provision exists, the developer shall be responsible to pay the same assessment, dues, or other charges that a time-share estate owner is obligated to pay

for each of its unsold time-shares existing at the end of the fiscal year of the association and no more if the board of directors of the association so determines. In no event shall either a time-share expense or the dues, assessment, or charges of the association discriminate against the developer.

C. The association shall have a lien on every time-share estate within its project for unpaid and past due regular or special assessments levied against that estate in accordance with the provisions of this chapter and for all unpaid and past due maintenance fees. The exemption created by § 34-4 shall not be claimed against the debt or lien of the association created by this section.

The association, in order to perfect the lien given by this subsection, shall file, before the expiration of four years from the time such special or regular assessment or maintenance fee became due and payable, in the clerk's office of the county or city in which the project is situated, a memorandum verified by the oath of any officer of the association or its managing agent and containing the following information:

1. The name and location of the project;
2. The name and address of each owner of the time-share on which the lien exists and a description of the unit in which the time-share is situate;
3. The amount of unpaid and past due special or regular assessments or unpaid and past due maintenance fees applicable to the time-share, together with the date when each became due;
4. The amount of any other charges owing occasioned by the failure of the owner to pay the assessments or maintenance fees, including late charges, interest, postage and handling, attorney fees, recording costs and release fees;
5. The name, address and telephone number of the association's trustee, if known at the time, who will be called upon by the association to foreclose on the lien upon the owner's failure to pay as provided in this subsection; and
6. The date of issuance of the memorandum.

Notwithstanding any other provision of this chapter, or any other provision of law requiring documents to be recorded in the deed books of the clerk's office of any court, from July 1, 1981, all memoranda of liens arising under this subsection shall be recorded in the deed books in such clerk's office. Any such memorandum shall be indexed in the general index to deeds, and such general index shall identify the lien as a lien for time-share estate regular or special assessments or maintenance fees.

It shall be the duty of the clerk in whose office such memorandum shall be filed as provided herein to record and index the same as provided in this subsection, in the names of the persons identified therein as well as in the name of the time-share estates owners' association. The cost of recording such memorandum shall be taxed against the owner of the time-share on which the lien is placed. The filing with the clerk of one memorandum on which is listed two or more delinquent time-share estate unit owners is permitted in order to perfect the lien hereby allowed and the cost of filing in this event shall be the clerk's fee as prescribed in subdivision A 2 of § 17.1-275.

D. At any time after perfecting the lien pursuant to this section, the association may sell the

time-share estate at public sale, subject to prior liens. For purposes of this section, the association shall have the power both to sell and convey the time-share estate, and shall be deemed the time-share estate owner's statutory agent for the purpose of transferring title to the time-share estate. A nonjudicial foreclosure sale shall be conducted by a trustee and in accordance with the following:

1. The association shall give notice to the time-share estate owner, prior to advertisement, as required by subdivision 4. The notice shall specify (i) the debt secured by the perfected lien; (ii) the action required to satisfy the debt secured by the perfected lien; (iii) the date, not less than 60 days from the date the notice is given to the time-share estate owner, by which the debt secured by the lien must be satisfied; and (iv) that failure to satisfy the debt secured by the lien on or before the date specified in the notice may result in the sale of the time-share estate. The notice shall further inform the time-share estate owner of the right to bring a court action in the circuit court of the county or city where the time-share project is located to assert the nonexistence of a debt or any other defenses of the time-share estate owner to the sale.
2. After expiration of the 60-day notice period provided in subdivision 1, the association may appoint a trustee to conduct the sale. The appointment of the trustee shall be filed in the clerk's office of the circuit court in the county or city in which the time-share project is located. It shall be the duty of the clerk in whose office such appointment is filed to record and index the same, as provided in this subsection, in the names of the persons identified therein as well as in the name of the association. The association, at its option, may from time to time remove the trustee and appoint a successor trustee.
3. If the time-share estate owner meets the conditions specified in this subdivision prior to the date of the foreclosure sale, the time-share estate owner shall have the right to have enforcement of the perfected lien discontinued prior to the sale of the time-share estate. Such conditions are that the time-share estate owner: (i) satisfy the debt secured by lien that is the subject of the nonjudicial foreclosure sale and (ii) pay all expenses and costs incurred in perfecting and enforcing the lien, including but not limited to advertising costs and reasonable attorney fees.
4. In addition to the advertisement required by subdivision 5, the association shall give written notice of the time, date, and place of any proposed sale in execution of the lien, including the name, address, and telephone number of the trustee, by personal delivery or by mail to (i) the present owner of the time-share estate to be sold at his last known address as such owner and address appear in the records of the association, (ii) any lienholder who holds a note against the time-share estate secured by a deed of trust recorded at least 30 days prior to the proposed sale and whose address is recorded with the deed of trust, and (iii) any assignee of such a note secured by a deed of trust provided the assignment and address of the assignee are likewise recorded at least 30 days prior to the proposed sale. Mailing a copy of the advertisement or the notice containing the same information to the owner by certified or registered mail no less than 14 days prior to such sale and to the lienholders and their assigns, at the addresses noted in the memorandum of lien, by ordinary mail no less than 14 days prior to such sale shall be a sufficient compliance with the requirement of notice.
5. The advertisement of sale by the association shall be in a newspaper having a general circulation in the city or county wherein the time-share estate to be sold and the time-share project, or any portion thereof, lies pursuant to the following provisions:
 - a. The association shall advertise once a week for four successive weeks; however, if the time-

share estate and the time-share project or some portion thereof is located in a city or in a county immediately contiguous to a city, publication of the advertisement five different days, which may be consecutive days, shall be deemed adequate. The sale shall be held on any day following the day of the last advertisement that is no earlier than eight days following the first advertisement nor more than 30 days following the last advertisement.

b. Such advertisement shall be placed in that section of the newspaper where legal notices appear or where the type of time-share estate being sold is generally advertised for sale. The advertisement of sale, in addition to such other matters as the association finds appropriate, shall set forth:

(1) A description of the time-share estate to be sold, which description need not be as extensive as that contained in the deed of trust, but shall identify the time-share project by street address, if any, or, if none, shall give the general location of such time-share project with reference to streets, routes, or known landmarks with further identification of the time-share estate to be sold. Where available, tax map identification may be used but is not required. The advertisement shall also include the date, time, place, and terms of sale and the name of the association. It shall set forth the name, address, and telephone number of the representative, agent, or attorney who is authorized to respond to inquiries concerning the sale; or

(2) In lieu of the requirements of subdivision (1), the advertisement shall set forth the date, time, place, and terms of sale and the name of the association; the street address of the time-share estate to be sold, if any, or if none, the general location of the time-share project; and the name, address, and telephone number of the representative, agent, or attorney who is authorized to respond to inquiries and give additional information concerning the time-share estate to be sold, including providing in hard copy or electronic form a description of the time-share estate to be sold by street address, if any, or, if none, by the general location of the time-share project with reference to streets, routes, or known landmarks, and where available, tax map identification. The advertisement under this subdivision (2) shall also include a website address where the information contained in subdivision (1) is displayed for the time-share estate to be sold.

c. In addition to the advertisement required by subdivisions 5 a and 5 b, the association may give such other further and different advertisement as the association finds appropriate.

6. In the event of postponement of the sale, which postponement shall be at the discretion of the association, advertisement of the postponed sale shall be in the same manner as the original advertisement of sale.

7. Failure to comply with the requirements for advertisement contained in this section shall, upon petition, render a sale of the property voidable by the court. Such petition shall be filed within 60 days of the sale or the right to do so shall lapse.

8. In the event of a sale, the association shall have the following powers and duties:

a. The association may sell two or more time-share estates at the sale. Written one-price bids may be made and shall be received by the trustee from the association or any person for entry by announcement at the sale. Any person other than the trustee may bid at the foreclosure sale, including a person who has submitted a written one-price bid. Upon request to the trustee, any other bidder in attendance at a foreclosure sale shall be permitted to inspect written bids. Unless otherwise provided in the time-share instrument, the association may bid to purchase the time-share estate at a foreclosure sale. The association may own, lease, encumber, exchange, sell, or

convey the time-share estate. Whenever the written bid of the association is the highest bid submitted at the sale, such written bid shall be filed by the trustee with his account of sale required under subdivision 10 and § 64.2-1309. The written bid submitted pursuant to this subsection may be prepared by the association, its agent or attorney.

b. The association may require of any bidder at any sale a cash deposit of as much as 33.33 percent of the sale price before his bid is received, which shall be refunded to him if the time-share estate is not sold to him through action of the trustee. The deposit of the successful bidder shall be applied to his credit at settlement, or if such bidder fails to complete his purchase promptly, the deposit shall be applied to pay the costs and expenses of the sale, and the balance, if any, shall be retained by the association in connection with that sale.

c. The association shall receive and receipt for the proceeds of sale, no purchaser being required to see to the application of the proceeds, and apply the same in the following order: first, to the reasonable expenses of sale, including reasonable attorney fees; second, to the satisfaction of all taxes, levies, and assessments, with costs and interest; third, to the satisfaction of the lien for the time-share estate owners' assessments; fourth, to the satisfaction in the order of priority of any remaining inferior claims of record; and fifth, to pay the residue of the proceeds to the time-share estate owner or his assigns, provided, however, that the association as to such residue shall not be bound by any inheritance, devise, conveyance, assignment or lien of or upon the unit owner's equity, without actual notice thereof prior to distribution.

9. The trustee shall deliver to the purchaser a trustee's deed conveying the time-share estate with special warranty of title. The trustee shall not be required to take possession of the time-share estate prior to the sale thereof or to deliver possession of the time-share estate to the purchaser at the sale.

10. If the sale of a time-share estate is made pursuant to this subsection and the accounting is made by the trustee, the title of the purchaser at such sale shall not be disturbed unless within six months from the date of foreclosure, the sale is set aside by the court or an appeal is allowed by the Supreme Court of Virginia, and a decree is therein entered requiring such sale to be set aside.

When payment or satisfaction is made of a debt secured by the lien perfected by this subsection, such lien shall be released in accordance with the provisions of § 55-66.3. For the purposes of § 55-66.3, any officer of the time-share estate owners' association or its managing agent shall be deemed the duly authorized agent of the lien creditor.

E. The commissioner of accounts to whom an account of sale is returned in connection with the foreclosure of either a lien under subsection C or a purchase money deed of trust taken back by the developer in the sale of a time-share in order to satisfy § 64.2-1309 shall be entitled to a fee, not to exceed \$70, on each foreclosure of a lien under subsection C and not to exceed \$125 on each foreclosure of a purchase money deed of trust taken back by the developer.

F. Any time-share owner within the project having executed a contract for the disposition of the time-share, shall be entitled, upon request, to a recordable statement setting forth the amount of unpaid regular or special assessments or maintenance fees currently levied against that time-share. Such request shall be in writing, directed to the president of the time-share estate owners' association, and delivered to the principal office of the association. Failure of the association to furnish or make available such statement within 20 days from the actual receipt of such written

request shall extinguish the lien created by subsection C as to the time-share involved. Payment of a fee reflecting the reasonable cost of materials and labor, not to exceed the actual cost thereof, may be required as a prerequisite to the issuance of such a statement.

1981, c. 462; 1985, c. 517; 1989, c. 637; 1991, c. 704; 1993, c. 842; 1994, cc. 432, 580; 1998, c. 460; 2001, c. 543; 2006, c. 653; 2007, c. 267; 2012, c. 406; 2013, cc. 259, 327.

§ 55-370.01. Time-share owners' association books and records; meetings; use of e-mail.

A. Subject to the provisions of subsection B, all books and records, or copies thereof, kept by or on behalf of the association shall be maintained so that such books and records, or portions thereof, are reasonably available for inspection after written request by a member in good standing or his authorized agent. The association may charge such member or his agent a reasonable fee for copying the requested information. No books or records shall be removed from their location by the examining member or his agent. The right of inspection shall exist without reference to the duration of membership and may be exercised only during reasonable business hours and at a mutually convenient time and location, under the supervision of the custodian, and upon 15 days' written notice.

For purposes of this subsection, the requested books and records shall be considered "reasonably available" if copies thereof are delivered to the requesting member or his agent within seven business days of the date the association receives the written request. However, the requesting member or his agent shall be permitted to inspect the books and records wherever located at any reasonable time, under reasonable conditions, and under the supervision of the custodian of the records. The custodian shall supply copies of the records where requested and upon payment of the copying fee.

The association shall provide members of the association with the location of the books and records, along with the name and address of the custodian, by any reasonable method, which may include posting in a reasonable location at the situs of the time-share project or in the annual report required by § 55-370.1.

B. Books and records kept by or on behalf of an association may be withheld from inspection to the extent that they concern:

1. Personnel records;
2. An individual's medical records;
3. Records relating to business transactions that are currently in negotiation;
4. Privileged communications with legal counsel;
5. Complaints against an individual member of the association;
6. Agreements containing confidentiality requirements;
7. Pending litigation;
8. The name, address, phone number, electronic mail address, or other personal information of time-share owners or members of the association, unless such owner or member first approves of the disclosure in writing;
9. Disclosure of information in violation of law; or

10. Meeting minutes or other records of an executive session of the board of directors held in accordance with subsection D.

The association shall be under no obligation to provide requested records to the extent that they are matters of public record or are otherwise readily obtainable from another source.

C. The association shall maintain among its records a complete, up-to-date list of the names and addresses of all current members in good standing who are owners of time-share estates in the time-share project. The association shall not publish such list or provide a copy of it to any time-share owner or to any third party except the board of directors or the developer. However, the association shall mail to those persons listed on the list materials provided by any member in good standing, upon written request of that member, if the purpose of the mailing is to advance legitimate association business. The use of any proxies solicited in this manner must comply with the provisions of the time-share instrument and this chapter. A mailing requested for the purpose of advancing legitimate association business shall occur within 45 days after receipt of a request from a member in good standing. The board of directors of the association shall be responsible for determining the appropriateness of any mailing requested pursuant to this subsection whose decision in this regard shall be final. The association shall be paid in advance for the association's actual costs in performing the mailing, including but not limited to postage, supplies, reasonable labor, and attorney fees.

D. Meetings of the board of directors shall be open to all members of record who are eligible to vote and who are in good standing. Minutes shall be recorded and shall be available as provided in subsection A. The board of directors may convene in closed session to consider personnel matters; consult with legal counsel; discuss and consider contracts, potential or pending litigation, and matters involving violations of the time-share instrument or rules and regulations adopted pursuant thereto for which a member, his family members, tenants, guests, or other invitees are responsible; or discuss and consider the personal liability of members to the association upon the affirmative vote in open meeting to assemble in closed session. The motion shall state specifically the purpose for the closed session. Reference to the motion and the stated purpose for the closed session shall be included in the minutes. The board of directors shall restrict the consideration of matters during the closed portions of meetings only to those purposes specifically exempted and stated in the motion. No contract, motion, or other action adopted, passed, or agreed to in closed session shall become effective unless the board of directors, following the closed session, reconvenes in open meeting and takes a vote on such contract, motion, or other action, which shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law.

E. Notwithstanding any provisions of the Virginia Nonstock Corporation Act (§ [13.1-801](#) et seq.) to the contrary:

1. The bylaws of the association may prescribe different quorum requirements for meetings of its members;
2. A director of the association may be removed from the office pursuant to any procedure provided in its articles of incorporation and, if none is provided, may be removed at a meeting called expressly for that purpose, with or without cause, by such vote as would suffice for his election.

F. Whenever in this chapter communication between the board of directors and a member of the association is required by mail, any electronic means may be used in the alternative, including e-mail, provided such electronic communication is personal and only between such board and such member.

G. Filings with the board may be made by any electronic means providing such board is willing to accept same.

2006, c. 653;2007, c. 267.

§ 55-370.1. Time-share estate owners' association annual report.

A. Commencing with the time-share estate program and within 180 days after the close of each fiscal year thereafter, an annual report shall be prepared and distributed to all time-share estate owners. The annual report required hereby shall be prepared and distributed for each time-share estate project registered with the Board. During the developer control period, the annual report shall be prepared and distributed to all time-share purchasers by the developer or its designated managing entity and thereafter by the association.

B. The annual report shall contain the following:

1. The full legal name of the time-share project and its address;
2. The full legal name of the association;
3. A list of the names and mailing addresses of the members of the association's board of directors and the name of the person who prepared the report;
4. The managing entity's name, address, and contact person, if any, for the project;
5. A statement of whether or not the developer control period has terminated for the time-share estate project;
6. Financial statements of the association audited by an independent certified public accounting firm of the association that contain at least the following:
 - a. A balance sheet as of the end of the fiscal year;
 - b. An income statement as of the end of the fiscal year; and
 - c. A statement of the net changes in the financial position of the association for the fiscal year just ended;
7. A statement of the time-share estates occupancy expenses, the regular assessment, and any special assessments or other charges due for the current year from each time-share estate owner;
8. A copy of the current budget reflecting the anticipated time-share estate occupancy expenses along with:
 - a. A statement as to who prepared the budget;
 - b. A statement of the budgetary assumptions concerning occupancy factors;
 - c. A description of any provision made in the budget for reserves for repairs and replacement;
 - d. A statement of any other reserves;

e. The projected financial liability for each time-share estate owner, including a statement of (i) the nature of all charges, assessments, maintenance fees, and other expenses that may be assessed, (ii) the current amounts assessed, and (iii) the method and formula for changing any such assessments; and

f. A statement of any services not reflected in the budget that the developer provides, or expenses that it pays, that the association expects may become a time-share expense at any subsequent time, and the projected time-share expense assessment attributable to each of those services or expenses for the association and for each time-share; and

9. A statement of the location of the books and records of the association along with the name and contact address of the custodian of such books and records.

C. In lieu of the annual report required by subsection A, during the first 12 months of the time-share program, the developer or the association shall prepare a budget that shall contain the information contained in subdivision B 8.

1985, c. 517; 1991, c. 704; 1994, c. 580; 1998, c. 460; 2014, c. 533.

§ 55-371. Time-share instrument for project.

In addition to the requirements of § 55-367, the time-share instrument for a time-share use program shall prescribe and outline reasonable arrangements for the management and operation of the time-share use program and for the maintenance, repair, and furnishing of time-share use units comprising same, which arrangements shall include, but need not be limited to, provisions for the following:

1. Standards and procedures for upkeep, repair and interior furnishing of time-share use units, for the replacements of such furnishings, and for providing maid, cleaning, linen, and similar services to the units during use and occupancy periods;
2. Adoption of standards and rules of conduct governing the use, enjoyment, and occupancy of time-share use units by owners;
3. Payment by the developer of the costs and expenses of operating the time-share use program and owning and maintaining the time-share use units comprising it;
4. Selection of a managing agent to act for and on behalf of the developer should the developer elect not to undertake the duties, responsibilities, and obligations of the management of the time-share use program;
5. Procedures for establishing the rights of time-share use owners to occupancy, use, and enjoyment of time-share use units by prearrangement or under a first-reserved, first-served priority system;
6. Procedures for imposing and collecting regular and/or special assessments, maintenance, or use fees from time-share use owners as necessary to defray all time-share expenses and in providing materials and services to the units, as herein required of the developer;
7. Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the occupancy, use, and enjoyment of time-share use units by time-share use owners, their guests, and other users. The costs associated with securing and maintaining such insurance shall be a time-share expense. Nothing herein shall be construed to

obligate the developer to secure insurance on the conduct of the time-share use owners, their guests and other users, or the personal effects or property of such owners, guests, and users;

8. Methods for providing compensating or alternate use periods or monetary compensation to a time-share use owner if a time-share use unit cannot be made available for the period to which the owner is entitled by schedule or by a confirmed reservation; and

9. Procedures for imposing a monetary penalty or suspension of a time-share use owner's rights and privileges in the time-share use program or project or termination of the time-share use itself for failure of the time-share use owner to comply with the provisions of the time-share use instrument, the rules and regulations established by the developer with respect to the occupancy, use and enjoyment of the time-share use units, or the failure to pay the charges imposed by the developer against the time-share use owner for providing the materials and services as herein required of the developer. Except in matters where the time-share use owner has failed to pay the charge imposed by the developer for a period of less than sixty days after it has become due and payable, the owner shall be given notice and the opportunity to be heard.

1981, c. 462; 1985, c. 517; 1994, c. 580; 1998, c. 460.

§ 55-372. Partition.

No action for partition of a unit may be maintained except as permitted by the time-share instrument, or by subsection C of § 55-373.

1981, c. 462.

§ 55-373. Termination of certain time-shares.

A. This section applies to all time-share estate programs and, when provided by the time-share instrument, to time-share use programs.

B. A time-share project may be terminated in whole by the developer at any time and for any reason if such developer is the sole owner of all time-shares within the time-share project. Such termination shall be accomplished by the developer executing and recording a termination document where the time-share instrument is recorded. Time-shares subject to this section also may be terminated by written agreement of the time-share owners having at least fifty-one percent of the time-shares, or by such larger percentage as may otherwise be provided in the time-share instrument. The termination agreement shall specify a date upon which it shall become void, unless it is recorded before that date in the clerk's office of the appropriate court where the time-share project is located.

C. If the termination agreement sets forth the material terms of a contract or proposed contract under which an estate or interest in each time-share unit equal to the sum of the time-shares therein is to be sold and designates a trustee to effect the sale, the termination agreement becomes effective upon recordation, and title to that estate or interest vests upon termination in the trustee for the benefit of the time-share owners, to be transferred pursuant to the contract. If the termination agreement does not set forth the material terms of a contract or proposed contract under which an estate or interest in each time-share unit equal to the sum of the time-shares therein is to be sold and designates a trustee to effect the sale, the termination agreement becomes effective upon recordation, and title to an estate or interest in each time-share unit equal to the sum of the time-shares therein vests upon termination in the time-share owners thereof in proportion to their respective interests as provided in subsection F, and liens on the

time-shares shall accordingly encumber those interests; and in this instance, any co-owner of that estate or interest may thereafter maintain an action for partition or for allotment or sale in lieu of partition pursuant to the laws of the Commonwealth.

D. Except as otherwise specified in the termination agreement, so long as the former time-share owners or their trustee holds title to the estate or interest equal to the sum of the time-shares, each former time-share owner and his successor in interest have the same rights with respect to the use, enjoyment and occupancy in the former time-share unit that he would have had if termination had not occurred, together with the same liabilities and other obligations imposed by this act or the time-share instrument.

E. After termination of all time-shares in a time-share project and adequate provision for payment of the claims of the creditors for time-share expenses, distribution shall be made, in proportion to their respective interests as provided in subsection F, to the former time-share owners and their successors in interest of (i) the proceeds of any sale pursuant to this section, (ii) the proceeds of any personalty held for the use and benefit of the former time-share owners, and (iii) any other funds held for the use and benefit of the former time-share owners.

F. The time-share instrument may specify the respective fractional or percentage interest in the estate or interest in each unit equal to the sum of the time-share therein that will be owned by each former time-share owner. Otherwise, not more than 180 days prior to the termination, an appraisal shall be made of the fair market value of each time-share by 1 or more impartial qualified appraisers selected either by the trustee designated in the termination agreement, or by the managing entity if no trustee was so designated. The appraisal shall also state the corresponding fractional or percentage interests calculated in proportion to those values and in accordance with this subsection. A notice stating all of those values and corresponding interests and the return address of the sender shall be sent by certified or registered mail, by the managing entity or the trustee designated in the termination agreements, to all of the time-share owners. The appraisal governs the magnitude of each interest unless (i) at least twenty-five percent of the time-share owners deliver, within sixty days after the date the notices were mailed, written disapprovals to the return address of the sender of the notice, or (ii) the final judgment of a court of competent jurisdiction, entered during or after that period, holds that the appraisal should be set aside. The appraisal and the calculation of interests must be made in accordance with the following:

1. If the termination agreement sets forth the material terms of a contract or proposed contract for the sale of the estate or interests equal to the sum of the time-shares, each time-share conferring a right of occupancy during a limited number of time periods must be appraised as if the time until the date specified for the conveyance of the property had already elapsed. Otherwise, each time-share of that kind must be appraised as if the time until the date specified pursuant to subsection B had already elapsed.

2. The interest of each time-share owner is the value of the time-share he owned divided by the sum of the values of all time-shares in the unit or units to which his time-share applies.

G. Foreclosure or enforcement of a lien or encumbrance against all of the time-shares in a time-share project does not of itself terminate those time-shares.

1981, c. 462; 1985, c. 517; 2006, c. [653](#).

Article 3. Protection of Purchasers.

§ 55-374. Public offering statement.

A. The developer shall prepare and distribute to each prospective purchaser prior to the execution of a contract for the purchase of a time-share, a copy of the current public offering statement about which the time-share relates. The public offering statement shall fully and accurately disclose the material characteristics of the time-share project registered under this chapter and such time-share offered, and shall make known to each prospective purchaser all material circumstances affecting such time-share project. A developer need not make joint disclosures concerning two or more time-share projects owned by the developer or any related entity unless such projects are included in the same time-share program and marketed jointly at any of the time-share projects. The proposed public offering statement shall be filed with the Board, and shall be in a form prescribed by its regulations. The public offering statement may limit the information provided for the specific time-share project to which the developer's registration relates. The public offering statement shall include the following only to the extent a given disclosure is applicable; otherwise no reference shall be required of the developer or contained in the public offering statement:

1. The name and principal address of the developer and the time-share project registered with the Board about which the public offering statement relates, including:

a. The name, principal occupation and address of every director, partner, limited liability company manager, or trustee of the developer;

b. The name and address of each person owning or controlling an interest of 20 percent or more in each time-share project registered with the Board;

c. The particulars of any indictment, conviction, judgment, decree or order of any court or administrative agency against the developer or managing entity for violation of a federal, state, local or foreign country law or regulation in connection with activities relating to time-share sales, land sales, land investments, security sales, construction or sale of homes or improvements or any similar or related activity;

d. The nature of each unsatisfied judgment, if any, against the developer or the managing entity, the status of each pending suit involving the sale or management of real estate to which the developer, the managing entity, or any general partner, executive officer, director, limited liability company manager, or majority stockholder thereof, is a defending party, and the status of each pending suit, if any, of significance to any time-share project registered with the Board; and

e. The name and address of the developer's agent for service of any notice permitted by this chapter.

2. A general description of the time-share project registered with the Board and the units and common elements promised available to purchasers, including without limitation, the developer's estimated schedule of commencement and completion of all promised and incomplete units and common elements.

3. As to all time-shares offered by the developer:

a. The form of time-share ownership offered in the project registered with the Board;

- b. The types, duration, and number of units and time-shares in the project registered with the Board;
 - c. Identification of units that are subject to the time-share program;
 - d. The estimated number of units that may become subject to the time-share program;
 - e. Provisions, if any, that have been made for public utilities in the time-share project including water, electricity, telephone, and sewerage facilities;
 - f. A statement to the effect of whether or not the developer has reserved the right to add to or delete from the time-share program a time-share project or any incidental benefit or alternative purchase; and
 - g. If the developer utilizes the possibility of reverter, a statement to that effect referring the purchaser to the reverter deed for an explanation thereof.
4. In a time-share estate program, a copy of the annual report or budget required by § 55-370.1, which copy may take the form of an exhibit to the public offering statement. In the case where multiple time-share projects are registered with the Board, the copy or exhibit may be in summary form.
 5. In a time-share use program where the developer's net worth is less than \$250,000, a current audited balance sheet and where the developer's net worth exceeds such amount, a statement by such developer that its equity in the time-share program exceeds that amount.
 6. Any initial or special fee due from the purchaser at settlement together with a description of the purpose and method of calculating the fee.
 7. A description of any liens, defects, or encumbrances affecting the time-share project and in particular the time-share offered to the purchaser.
 8. A general description of any financing offered by or available through the developer.
 9. A statement that the purchaser has a nonwaivable right of cancellation, referring such purchaser to that portion of the contract in which such right may be found.
 10. If the time-share interest in a condominium unit may be conveyed before that unit is certified as substantially complete in accordance with § 55-79.58, a statement of the developer's obligation to complete the unit. Such statement shall include the approximate date by which the condominium unit shall be completed, together with the form and amount of the bond filed in accordance with subsection B of § 55-79.58:1.
 11. Any restraints on alienation of any number or portion of any time-shares.
 12. A description of the insurance coverage provided for the benefit of time-share owners.
 13. The extent to which financial arrangements, if any, have been provided for completion of any incomplete but promised time-share unit or common element being then offered for sale, including a statement of the developer's obligation to complete the promised units and common elements comprising the time-share project that have not begun, or begun but not yet completed.
 14. The extent to which a time-share unit may become subject to a tax or other lien arising out of

claims against other owners of the same unit.

15. The name and address of the managing entity for the project.

16. Copies of the project instrument and the association's articles of incorporation and bylaws, each of which may be a supplement to the public offering statement.

17. Any services that the developer provides or expense it pays and that it expects may become at any subsequent time a time-share expense of the owners, and the projected time-share expense liability attributable to each of those services or expenses for each time-share.

18. A description of the terms of the deposit escrow requirements, including a statement that deposits may be removed from escrow at the termination of the cancellation period.

19. A description of the facilities, if any, provided by the developer to the association in a time-share estate project for the management of the project.

20. Any other information required by the Board to assure full and fair meaningful disclosure to prospective purchasers.

B. If any prospective purchaser is offered the opportunity to subscribe to or participate in any exchange program, the public offering statement shall include as an exhibit or supplement, the disclosure document prepared by the exchange company in accordance with § 55-374.2 and a brief narrative description of the exchange program which shall include the following:

1. A statement of whether membership or participation in the program is voluntary or mandatory;

2. The name and address of the exchange company together with the names of its top three officers and directors;

3. A statement of whether the exchange company or any of its top three officers, directors, or holders of a 10 percent or greater interest in the exchange company has any interest in the developer, managing entity or the time-share project;

4. A statement that the purchaser's contract with the exchange company is a contract separate and distinct from the purchaser's contract with the developer; and

5. A brief narrative description of the procedure whereby exchanges are conducted.

C. The public offering statement of a conversion time-share project shall also include the following, which may take the form of an exhibit to the public offering statement:

1. A specific statement of the amount of any initial or special fee, if any, due from the purchaser of a time-share on or before settlement of the purchase contract and the basis of such fee occasioned by the fact that the project is a conversion time-share project;

2. Information on the actual expenditures, if available, made on all repairs, maintenance, operation, or upkeep of the building or buildings within the last three years. This information shall be set forth in a tabular manner within the proposed budget of the project. If such building or buildings have not been occupied for a period of three years then the information shall be set forth for the period during which such building or buildings were occupied;

3. A description of any provisions made in the budget for reserves for capital expenditures and an

explanation of the basis for such reserves occasioned by the fact that the project is a conversion time-share project, or, if no provision is made for such reserves, a statement to that effect; and

4. A statement of the present condition of all structural components and major utility installations in the building, which statement shall include the approximate dates of construction, installations, and major repairs as well as the expected useful life of each such item, together with the estimated cost, in current dollars, of replacing each such component.

D. In the case of a conversion project, the developer shall give at least 90 days' notice to each of the tenants of the building or buildings which the developer intends to submit to the provisions of this chapter. During the first 60 days of such 90-day period, each of these tenants shall have the exclusive right to contract for the purchase of a time-share from the unit he occupies, but only if such unit is to be retained in the conversion project without substantial alteration in its physical layout. Such notice shall be hand delivered or sent by first-class mail, return receipt requested, and shall inform the tenants of the developer's intent to create a conversion project. Such notice may also constitute the notice to terminate the tenancy as provided for in § 55-222, except that, despite the provisions of § 55-222, a tenancy from month to month may only be terminated upon 120 days' notice as set forth herein when such termination is in regard to the creation of a conversion project. If, however, a tenant so notified remains in possession of the unit he occupies after the expiration of the 120-day period with the permission of the developer, in order to then terminate the tenancy, such developer shall give the tenant a further notice as provided in § 55-222.

The developer of a conversion project, shall, in addition to the requirements of § 55-391.1, include with the application for registration a copy of the notice required by this subsection and a certified statement that such notice which fully complies with the provisions of this subsection shall be, at the time of the registration of the conversion project, mailed or delivered to each of the tenants in the building or buildings for which registration is sought.

E. The developer shall amend the public offering statement to reflect any material change in the time-share program or time-share project. If the developer has reserved in the time-share instrument the right to add to or delete incidental benefits or alternative purchases, the addition or deletion thereof shall not constitute a material change. Prior to distribution, the developer shall file with the Board the public offering statement amended to reflect any material change.

F. The Board may at any time require a developer to alter or supplement the form or substance of the public offering statement to assure full and fair disclosure to prospective purchasers. A developer may, in its discretion, prepare and distribute a public offering statement for each product offered or one public offering statement for all products offered.

G. In the case of a time-share project located outside the Commonwealth, (i) the developer may amend the public offering statement to reflect any additions or deletions of a time-share project to the existing time-share program registered in the Commonwealth, and (ii) similar disclosure statements required by other situs laws governing time-sharing may be acceptable alternative disclosure statements.

H. The developer shall prepare and distribute to each prospective purchaser prior to the execution of a purchase contract for a registered alternative purchase, a copy of the public offering statement about which such alternative purchase relates. The public offering statement shall fully and accurately disclose the material characteristics of such alternative purchase. The

public offering statement for an alternative purchase shall be filed with the Board and shall be in a form prescribed by its regulations, if any.

The public offering statement for an alternative purchase need not contain any information about the time-share project, time-share program or the time-shares offered by the developer which was initially offered to such purchaser by the developer. If the developer so elects, the public offering statement for an alternative purchase is not required to have any exhibits.

I. The public offering statement may be in any format, including a compact disc, provided the prospective buyer has available for review, along with ample time for any questions and answers, a copy of the public offering statement prior to his execution of a contract.

1981, c. 462; 1983, c. 59; 1984, c. 455; 1985, c. 517; 1986, c. 359; 1989, c. 637; 1994, c. 580; 1998, c. 460; 1999, c. 560; 2001, c. 543; 2004, c. 143; 2006, c. 653; 2007, c. 267; 2014, cc. 39, 716.

§ 55-374.1. Certain advertising practices regulated.

A. Any offering which includes a gift or prize must disclose therein, with the same prominence as such offer:

1. The retail value of each gift or prize;
2. The approximate odds against any given person obtaining each gift or prize if all persons to whom the advertisement is disseminated do what is necessary to qualify for the award of the gift or prize;
3. If the number of gifts or prizes to be awarded is limited, a statement of the number of gifts or prizes to be awarded or in lieu thereof, the nature of such limitation;
4. All rules, terms, requirements, and conditions which must be fulfilled before a prospective purchaser may claim any gift or prize, including whether the prospective purchaser is required to attend a sales presentation in order to receive the gift or prize;
5. The date upon which the offer expires; and
6. A statement to the effect that the offer is being made for the purpose of soliciting the purchase of a time-share, time-share interest, interval ownership, interval ownership interest, vacation ownership, vacation ownership interest or product, as appropriate.

B. Any gift or prize offered in connection with an offering shall be delivered to the prospective purchaser no later than the day the purchaser attends a sales presentation, if required, and if not, on the day the purchaser appears to claim it, whether or not he purchases a time-share. In the event the supply of gifts or prizes is exhausted at the time required for delivery, the developer shall give the prospective purchaser a written, unconditional promise to deliver such gift or prize no later than 30 days from the date required for delivery. If such gift or prize is not obtainable, the developer shall deliver an item of equal or greater value.

C. The offering or sale of any product registered with the Board is exempt from the Virginia Travel Club Act (§ 59.1-445 et seq.), the Virginia Condominium Act (§ 55-79.39 et seq.), the Virginia Securities Act (§ 13.1-501 et seq.), the Virginia Home Solicitation Sales Act (§ 59.1-21.1 et seq.), the Subdivided Land Sales Act (§ 55-336 et seq.), Chapter 27.2 (§ 55-525.8 et seq.) of Title 55, and the Prizes and Gifts Act (§ 59.1-415 et seq.).

1983, c. 59; 1984, c. 333; 1985, c. 517; 1991, c. 704; 1994, c. 580; 1996, c. 372; 1998, c. 460; 2006, c.

§ 55-374.2. Exchange programs.

A. Any exchange company which offers an exchange program in the Commonwealth shall prepare and register with the Board a disclosure document including, but not limited to, the following:

1. The name and address of the exchange company;
2. The names and addresses of the top three officers, all directors, and, if the exchange company is privately held, all shareholders owning five percent or more interest in the exchange company;
3. Whether the exchange company or any of its officers or directors has any legal or beneficial interest in any developer or managing agent for any time-share program participating in the exchange program and, if so, the name and location of the time-share project and the nature of the interest;
4. Unless the exchange company is also the developer or an affiliate, a statement that the purchaser's contract with the exchange company is a contract separate and distinct from the sales contract;
5. Whether the purchaser's participation in the exchange program is dependent upon the continued affiliation of the time-share project with the exchange program;
6. Whether the purchaser's membership or participation, or both, in the exchange program is voluntary or mandatory;
7. A complete and accurate description of the terms and conditions of the purchaser's contractual relationship with the exchange company and the procedure by which changes in the terms and conditions of the exchange contract 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;
11. Whether and under what circumstances an owner, in dealing with the exchange company, may lose the use of occupancy of his time-share in any properly applied for exchange, without being provided with substitute accommodations by the exchange company;
12. The fees or range of fees for participation by owners in the exchange program, a statement of 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 time-share property, accommodation or facility participating in the exchange program;

14. The number of units in each property participating in the exchange program 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 owners with respect to each time-share program or other property who are eligible to participate 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 owners currently eligible to participate in the exchange program;

16. The disposition made by the exchange company of time-shares deposited with the exchange program by owners eligible to participate in the exchange program and not used by the exchange company in effecting exchanges;

17. The following information, which, except as provided in subsection B of this section, 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 for each year no later than July 1 of the succeeding year, beginning no later than July 1, 1985:

a. The number of owners enrolled in the exchange program. Such numbers shall disclose the relationship between the exchange company and owners as being either fee paying or gratuitous in nature;

b. The number of time-share properties, accommodations or facilities eligible to participate in the exchange program;

c. The percentage of confirmed exchanges, which shall be the number of exchanges confirmed by the exchange company 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-shares for which the exchange company has an outstanding obligation to provide an exchange to an owner who relinquished a time-share during the year in exchange for a time-share in any future year;

e. The number of exchanges confirmed by the exchange company during the year.

18. A statement in boldfaced type to the effect that the percentage described in subdivision 17 c of this subsection is a summary of the exchange requests entered with the exchange company in the period reported and that the percentage does not indicate a purchaser's or owner's probabilities of being confirmed to any specific choice or range of choices, since availability at individual locations may vary.

B. The information required by subsection A shall be accurate as of a date which is no more than 30 days prior to the date on which the information is delivered to the purchaser, except that the information required by subsection A, subdivisions 2, 12, 13, 14, 15, and 16 shall be accurate as of December 31 of the preceding year if the information is delivered between July 1 and December 31 of any year; information delivered between January 1 and June 30 of any year shall be accurate as of December 31 of the year prior to the preceding year. At no time shall such information be accurate as of a date which is more than eighteen months prior to the date of delivery. All references in this section to the word "year" shall mean calendar year.

C. In the event an exchange company offers an exchange program directly to the purchaser, the exchange company shall deliver to such purchaser, simultaneously with such offering and prior to the execution of any contract between the purchaser and the exchange company, the information set forth in subsection A, above. The requirements of this subsection shall not apply to any renewal of a contract between a purchaser and an exchange company.

D. Each exchange company must include the statement set forth in subdivision 18 of subsection A on all promotional brochures, pamphlets, advertisements, or other materials disseminated by the exchange company which also contain the percentage of confirmed exchanges described in subdivision 17 c of subsection A.

E. An exchange company shall, on or before July 1 of each year, file with the Board and the association for the time-share program in which the time-shares are offered or disposed, the information required by this section with respect to the preceding year. If the Board determines that any of the information supplied fails to meet the requirements of this section, the Board may undertake enforcement action against the exchange company in accordance with the provisions of Article 6 (§ 55-396 et seq.) of this chapter. No developer shall have any liability arising out of the use, delivery or publication by the developer of written information provided to it by the exchange company pursuant to this section. Except for written information provided to the developer by the exchange company, no exchange company shall have any liability with respect to (i) any representation made by the developer relating to the exchange program or exchange company, or (ii) the use, delivery or publication by the developer of any information relating to the exchange program or exchange company. The failure of the exchange company to observe the requirements of this section, or the use by it of any unfair or deceptive act or practice in connection with the operation of the exchange program, shall be a violation of this section.

F. The Board may establish by regulation reasonable fees for registration of the exchange company disclosure document. All fees shall be remitted by the Board to the Treasurer of the Commonwealth, and shall be placed to the credit of the Common Interest Community Management Information Fund established pursuant to § 55-529.

1985, c. 517; 1998, c. 460; 2008, cc. 851, 871.

§ 55-375. Escrow of deposits.

A. Any deposit made in connection with the purchase or reservation of a product shall be held in escrow. All cash deposits shall be held in a separate bank account labeled and designated solely for that purpose.

Such escrow account shall be insured by an instrumentality of the federal government and located in Virginia. All deposits shall be held in escrow until (i) delivered to the developer upon expiration of the purchaser's cancellation period provided the purchaser's right of cancellation has not been exercised, (ii) delivered to the developer because of the purchaser's default under a contract to purchase a time-share, or (iii) refunded to the purchaser. Failure to establish escrow accounts or to make the deposits as required by this section is prima facie evidence of willful violation of this section.

B. The developer shall disclose in the contract or in the public offering that the deposit may not be held in escrow after expiration of the cancellation period and that such deposit is not protected as an escrow after expiration of the cancellation period. This disclosure shall include a statement of whether or not the developer reserves the option to sell or assign any promissory

note given by a purchaser to another entity, whether or not such entity is affiliated with the developer. Both disclosures shall appear in boldfaced type of a minimum size of 10 points.

C. There shall be filed with the Common Interest Community Board a bond, letter of credit, or cash for the purpose of protecting all deposits escrowed pursuant to subsection A, in favor of the time-share purchasers. The bond, letter of credit, or cash shall be in an amount equal to the total of the deposits in escrow at any given time or \$25,000, whichever is greater. Such bond, letter of credit, or cash shall be maintained for so long as the developer offers time-shares in the project. The bond shall be with a surety company authorized to do business in Virginia.

1981, c. 462; 1984, c. 429; 1985, c. 517; 1994, c. 580; 1998, c. 460; 2006, c. 653; 2008, cc. 851, 871.

§ 55-376. Purchaser's rights of cancellation.

A. A purchaser shall have the right to cancel the contract until midnight of the seventh calendar day following the execution of such contract. If the seventh calendar day falls on a Sunday or legal holiday, then the right to cancel the contract shall expire on the day immediately following that Sunday or legal holiday. Cancellation is to be without penalty, and all payments made by the purchaser before cancellation must be refunded within forty-five days after receipt of the notice of cancellation.

B. If the purchaser elects to cancel a contract pursuant to subsection A, he shall only do so either (i) by hand-delivering the notice to the developer at its principal office or at the project or (ii) by mailing the notice by certified United States mail, return receipt requested, to the developer or its agent designated in the contract. Any such notice sent by certified mail shall be effective on the date postmarked.

C. If, because of the occurrence of a material change, the public offering statement is amended between the time of contracting to purchase a time-share and the time of settlement, the developer shall provide the amended public offering statement to the purchaser and the right of cancellation shall renew from the date of delivery of such amended public offering statement. This subsection shall not apply if the public offering statement is amended by the developer because of a change which is not material or to disclose any change which is an aspect or result of the orderly development of the time-share project in accordance with the project instrument.

D. The right to cancel the contract as provided by this section shall not be waivable by the time-share purchaser and any provision in the contract or time-share documents indicating a waiver shall be void.

E. A statement of the purchaser's right of cancellation as set forth in subsections A and B shall appear in the contract above the purchaser's signature line. Such statement shall appear in type no smaller than any other provisions of the contract, and the caption "PURCHASER'S NONWAIVABLE RIGHT TO CANCEL" shall appear immediately preceding it in conspicuous, bold-face type.

1981, c. 462; 1983, c. 147; 1984, c. 572; 1985, c. 517; 1991, c. 704; 1994, c. 580; 1998, c. 460.

§ 55-376.1. Possibility of reverter.

A. A possibility of reverter contained in a reverter deed for a time-share estate subject to reverter is valid, enforceable in law and in equity, and shall operate to transfer title to the time-share estate from each grantee therein back to the developer provided the following conditions are satisfied:

1. The reverter deed from the developer contains the possibility of reverter by insertion of the language required by subsection E;
 2. A grantee in the reverter deed is in default and has been provided thereafter with at least two written notices to this effect with no less than a 10-calendar day right to cure in each notice;
 3. A grantee in the reverter deed has been provided with no less than 30 calendar days within which to cure the default before exercise of the possibility of reverter occurs;
 4. At the time of exercise of the possibility of reverter, the developer is the sole holder of the note and the sole beneficiary under the deed of trust;
 5. The exercise by the developer of the possibility of reverter is evidenced by an affidavit duly recorded where the reverter deed was recorded which contains the following information:
 - a. A description of the time-share project and time-share estate and a statement that upon recordation of the affidavit, title to such time-share estate reverts back to the developer;
 - b. A description and recitation of the reverter deed which contained the possibility of reverter and a reference of when and where such deed was recorded and its recording information;
 - c. A recitation that the purchaser defaulted in or violated a consumer document and failed to cure such default or violation within a period of no less than 30 calendar days;
 - d. A description of the note and deed of trust with a recitation that (i) the developer is the sole holder of the note and the sole beneficiary under the deed of trust, (ii) such note is cancelled and declared void, and (iii) such deed of trust is automatically released;
 - e. A recitation that such purchaser's rights and entitlements in the time-share estate, the time-share project and the time-share program are extinguished effective the date of recordation of the affidavit;
 - f. The signature of a duly authorized representative of the developer verified under oath as to its truth of the statements contained therein; and
 6. A copy of the recorded affidavit described in subdivision A 5 is sent by the developer to each purchaser at his address as maintained by developer or the association, along with the statement from the developer explaining the consequences of such affidavit with emphasis on subparts a, d and e of subdivision A 5.
- B. The recordation of the affidavit referred to in subdivision A 5 shall automatically:
1. Transfer title to the time-share estate from each grantee in the reverter deed to the developer without the need of a deed to the developer or consent from such grantee;
 2. Declare null and void and act as an automatic release of the deed of trust or mortgage given by such grantee to finance a portion of the purchase price of the time-share estate with no deficiency resulting;
 3. Void and act as an automatic release of any debt from such grantee to the developer arising out of the purchase or financing of the time-share estate as evidenced by the note; and
 4. Extinguish any ownership or other property right or entitlements such grantee has in and to

the time-share estate, the time-share project and the time-share program.

C. The clerk of court shall record such affidavit in the land books where the time-share project is located indexing the purchaser in the grantor indices and the developer in the grantee indices. For indexing purposes only, the purchaser shall be referred to as the grantor and the developer as the grantee. The cost of recording the affidavit shall be limited to the clerk's fee only.

D. In the exercise of the possibility of reverter, the developer shall be liable to the purchaser for his failure to comply with the provisions of this section; however, such failure shall not operate to defeat or diminish the transfer of title to the time-share estate from each grantee in the reverter deed to the developer upon recordation of the affidavit referred to in subdivision A 5. The developer's liability shall be limited to the amount paid by such purchaser towards the purchase price of the time-share estate exclusive of interest and closing costs but without offset for the purchaser's utilization of the time-share program. The court shall award court costs and reasonable attorney's fees to the prevailing party.

E. The reverter deed shall contain the following statement in order to possess the possibility of reverter. The opening phrase shall be in bold face, 10-point type as follows:

Loss of Time-Share Estate. Developer has inserted into this deed a "possibility of reverter." By this concept, should a grantee of this reverter deed default in or violate an obligation imposed by a consumer document for a period of at least 60 days and fail to cure such violation or default within no less than 30 calendar days thereafter, title to the time-share will revert back to the developer upon the developer recording an affidavit to this effect where this reverter deed is recorded. Only the developer can elect to exercise the possibility of reverter. Each grantee in this reverter deed will be sent at least two notices of default or violation within the 30-day period with no less than 10 days to cure in each instance. The notice will be sent to the address of each grantee maintained at the office of the developer or the association. After the cure period has lapsed and the developer records the affidavit, title to the time-share estate will automatically vest in the developer and any note executed by grantee will be deemed canceled and any recorded deed of trust securing such note shall be automatically released. The possibility of reverter will itself lapse and become null and void at the soonest to occur of the following: (i) the deed of trust is released of record, (ii) a statement that the deed of trust is released of record is executed and recorded by the developer with a date of when the possibility of reverter was or is to lapse, or (iii) when the time-share program terminates pursuant to either the Virginia Real Estate Time-Share Act or the time-share instrument which created such program.

F. The filing of the affidavit referred to in subdivision A 5 shall not result in the requirement of any filing under Chapter 12 (§ [64.2-1200](#) et seq.) of Title 64.2.

G. Any possibility of reverter not otherwise exercised by the developer pursuant to this section shall itself lapse and become null and void at the soonest to occur of the following: (i) the deed of trust is released of record, (ii) a statement that the deed of trust is released of record is executed and recorded by the developer with a date of when the possibility of reverter was or is to lapse, or (iii) when the time-share program terminates pursuant to either this chapter or the time-share instrument.

H. In exercising the possibility of reverter, the developer shall be entitled to retain as liquidated damages all monies paid by the purchaser in conformity with any consumer document.

I. The exercise of the possibility of reverter shall not operate to diminish or eliminate (i) any debt

of the purchaser to the time-share association or other third party occasioned by ownership of the time-share estate or participation in the time-share program or (ii) any recorded lien junior in priority to the deed of trust lien referred to in this section.

2004, c. 143.

§ 55-376.2. Recording and delivery of deed.

At such time as the time-share estate purchaser has fulfilled all of his obligations under the contract and is entitled to a deed for his time-share estate, the developer shall file or cause to be filed within 180 days therefrom, with the clerk of the circuit court where the time-share project is located, such deed for recordation. Upon receipt of the recorded deed returned from the clerk's office, the developer shall, within 45 days therefrom, send or cause to be sent the original deed to the time-share estate purchaser.

2006, c. 653.

§ 55-376.3. Liability limited; liability actions prohibited.

A. Except as provided in subsection B, a project professional is not liable for injury to or death of a participant resulting from the inherent risks of project activities, so long as the warning contained in § 55-376.4 is posted as required. Except as provided in subsection B, no participant or participant's representative may maintain an action against or recover from a project professional for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of project activities; provided that in any action for damages against a project professional for a project activity, the project professional shall plead the affirmative defense of assumption of the risk of project activity by the participant.

B. Nothing in subsection A shall prevent or limit the liability of a project professional if the project professional does any one or more of the following:

1. Commits an act or omission that constitutes negligence or willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death to the participant;
2. Has actual knowledge or reasonably should have known of a dangerous condition on the land or in the facilities or equipment used in the project activity, or the dangerous propensity of a particular animal used in such activity and does not make the danger known to the participant, and the danger proximately causes injury, damage, or death to the participant; or
3. Intentionally injures the participant.

C. Any limitation on legal liability afforded by this section to a project professional is in addition to any other limitations of legal liability otherwise provided by law.

2007, c. 267.

§ 55-376.4. Warning required.

A. The developer, association, or other project professional shall post and maintain signs that contain the warning notice specified in subsection B. One sign shall be placed in a clearly visible location at the entrance to the project and another at the site of the project activity. The warning notice shall consist of a sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by a project professional for the providing of

professional services, instruction, or the rental of equipment to a participant, whether or not the contract involves project activities on or off the time-share project or at the site of the project activity, shall contain in clearly readable print the warning notice specified in subsection B.

B. The signs and contracts described in subsection A shall contain the following notice of warning:

"WARNING: Under Virginia law, there is no liability for an injury to or death of a participant in a project activity conducted at this location if such injury or death results from the inherent risks of the project activity. Inherent risks of project activities include, among others, risks of injury inherent to land, equipment, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this project activity."

C. Failure to comply with the requirements concerning warning signs and notices provided in this section shall prevent a project professional from invoking the privileges of immunity provided by this chapter.

2007, c. 267.

§ 55-376.5. Buyer's Acknowledgment.

A. Prior to the execution of a purchase contract, a purchaser shall be given a separate written document, titled "Buyer's Acknowledgment," to be signed by the purchaser and a representative of the developer other than the salesperson for the transaction.

B. The Buyer's Acknowledgment shall contain the following:

1. The name and address of the developer;
2. The name and address of the time-share project;
3. Whether the developer currently offers a resale or rental program or a buy-back program; and
4. The following statement in at least 10-point boldface type: "There is no assurance that a purchaser may resell a time-share for a certain price or on particular terms. By signing below, purchaser acknowledges that this purchase is (i) for personal use and enjoyment and not for commercial or investment purposes and (ii) not being made based upon any representation that the time-share has any future market value or resale potential."

2012, c. 751.

§ 55-377. Repealed.

Repealed by Acts 1985, c. 517.

§ 55-379. Repealed.

Repealed by Acts 1994, c. 580.

§ 55-380. Resale of time-shares.

A. In the event of any resale of a time-share by a time-share owner, other than the developer, such owner shall obtain from the developer or managing agent in the case of a time-share use program or from the time-share estate owners' association in the case of a time-share estate program and furnish to the purchaser prior to settlement on an executed agreement to purchase

the time-share, a certificate of resale which shall include the following:

1. A statement disclosing the effect on the proposed transfer of any right of first refusal or other restraint on transfer of the time-share or any portion thereof;
2. A copy of the time-share instrument;
3. A copy of the current bylaws and rules and regulations of the time-share estate owners' association, if any, and the amendments thereto;
4. A copy of the current annual report prepared pursuant to § 55-370.1;
5. A statement setting forth the amount of any expense liability and unpaid time-share expense or special assessment currently due and payable from the selling time-share owner, including the disclosures of any liens against the time-share due to the nonpayment of such fees or charges;
6. A statement of the nature and status of any known and pending suits or judgments against the developer, managing entity, or time-share owners' association with reference to the time-share project; and
7. A copy of a Buyer's Acknowledgment form required by § 55-376.5.

B. The developer, managing agent, or such officer of the time-share owners' association as the bylaws may specify, shall furnish the certificate of resale prescribed by subsection A hereof upon the written request of any purchaser within 30 days of the receipt of such request. Payment of the reasonable costs of preparing the certificate may be required as a prerequisite to the issuance of the certificate, but such fee shall not exceed \$50.

C. A time-share owner providing a certificate pursuant to subsection A is not liable to the purchaser for any erroneous information included in the certificate, other than for judgment liens against the time-share being sold.

D. A purchaser is not liable for any unpaid time-share expense liability or fee greater than the amount set forth in the certificate prepared in conformity with subsection A. A time-share owner is not liable to a purchaser for the failure or delay of the provider to provide the certificate in a timely manner, but the purchase contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until transfer, whichever occurs first.

E. All rights of redress of a purchaser against a selling time-share owner, the developer, managing agent, or the association for the failure to obtain or receive the statement required by subsection A are conclusively waived upon settlement on the time-share occurring.

F. The responsibilities imposed by this section on the developer, managing agent, time-share estate owners' association, or selling time-share owner shall not be waived.

1981, c. 462; 1985, c. 517; 1989, c. 637; 1994, c. 580; 1998, c. 460; 2012, c. 751.

§ 55-380.1. Required resale disclosures.

A. In addition to the requirements of § 55-394.1, before receiving anything of value for providing or offering to provide a resale service, a reseller shall disclose in writing to the owner of a resale time-share:

1. The name and permanent business address of the reseller;

2. A commencement and transaction date for such resale service;
 3. The names and addresses of any affiliates and the primary website address used by the reseller and such affiliates to be used to promote the resale time-share;
 4. Whether the reseller's rights are exclusive and, if so, the scope of such rights and length of the exclusivity period;
 5. Whether any person, other than the owner, may occupy, rent, exchange, or use the resale time-share during the resale service;
 6. The name of any person other than the owner who will receive any rent or other consideration from the use of the resale time-share during the resale service;
 7. A description of each resale service to be provided and the fees, costs, or commissions for each;
 8. A description sufficient to identify the resale time-share;
 9. The jurisdiction issuing the license for any services by a licensed real estate broker or salesperson; and
 10. The following in at least 10-point conspicuous type:
 - a. The ratio of (i) the number of resale time-shares listed for sale to the number of resale time-shares actually sold by the reseller for each of the past two calendar years or (ii) the total amount of advance fees collected compared with the total amount of fees and commissions received by the reseller upon sale of resale time-shares for the past two calendar years and followed by this statement: "Do not rely on past performance as an indicator of the likelihood of sale of your time-share."; and
 - b. If the retail service is limited to the placement of advertisements: "There is no guarantee that you will sell your time-share at all or within any period of time by placing this advertisement. Our only obligation to you is to post your advertisement on our website for the agreed length of time and forward all inquiries we receive to you."
- B. A resale transfer contract shall include the following disclosures by the reseller:
1. The disclosures required by subdivisions A 1 through A 7;
 2. A description legally sufficient for the transfer of the resale time-share;
 3. A description of the document by which the owner is to (i) grant rights in the resale time-share to the reseller or any other person, including a power of attorney or similar document, and (ii) transfer the resale time-share to a subsequent purchaser;
 4. Any fees or costs the time-share owner is required to pay or reimburse to the reseller or transfer company to complete the transfer;
 5. The date by which the transfer of the resale time-share from the owner to the reseller, a third person, or a subsequent purchaser will be completed, not to exceed 180 days from the effective date of the resale transfer contract;
 6. If the resale time-share will be transferred to a transferee other than a subsequent purchaser,

the contact information of such transferee;

7. A statement that the reseller will (i) provide the owner written evidence of transfer of the resale time-share to a subsequent purchaser within 30 days of such transfer and (ii) send notice of the transfer to the association and managing entity of the time-share program for the resale transfer and any exchange company in which the resale time-share was enrolled; and

8. The following in 10-point boldface type:

a. "No later than 180 days from the date of this agreement, we will transfer your time-share to another person. If transfer does not occur within that period, we will pay or reimburse to you the cost of ownership of your time-share for that period. If we breach our agreement, you will continue to be responsible for such cost of ownership."; and

b. "Your time-share may be sold at any price by us without your approval. If sold for a price in excess of our fee, we have no obligation to send you the excess."

C. A resale purchase contract shall require the reseller to obtain the certificate of resale described in subsection A of § 55-380 and shall also include the following:

1. A description legally sufficient for transfer of the resale time-share;

2. The name and address of the developer or managing agent for a time-share use project or the association for a time-share estate project;

3. Identification of the party responsible for notifying the developer, managing entity, association, or exchange company, as the case may be, of the transfer of the resale time-share;

4. Identification of the first year in which the subsequent purchaser is entitled to use and occupy the resale time-share; and

5. The following statement in 10-point boldface type: "A certificate of resale is required to be provided to you containing important documents concerning the time-share project for your review. Settlement waives the right to receipt of such information."

2012, c. 751.

§ 55-381. Liens.

A. In the case of time-share estate transfers, unless the purchaser expressly agrees to take subject to or assume a lien prior to transferring a time-share estate other than by deed in lieu of foreclosure, the developer shall either: (i) record or furnish to the purchaser as part of settlement, releases of all liens affecting that time-share estate or (ii) provide a surety bond or title insurance against the lien, as provided for liens on real estate in this Commonwealth.

B. Unless a time-share owner or his predecessor in title agrees otherwise with the lienor, if a lien other than an underlying mortgage or deed of trust becomes effective against more than one time-share in a time-share project, any time-share owner is entitled to a release of a time-share from the lien upon payment of the amount of the lien attributable to the time-share. The amount of the payment shall be proportionate to the ratio that the time-share owner's liability bears to the liabilities of all time-share owners whose interests are subject to the lien. Upon receipt of payment, the lien-holder shall promptly deliver to the time-share owner a release of the lien covering that time-share. After payment, the managing entity may not assess or have a lien against that time-share for any portion of the expenses incurred in connection with that lien.

1981, c. 462; 1991, c. 704 .

§ 55-382. Effect of violations on rights of action; attorney's fees; prior determination of Real Estate Board required for certain violations.

A. If a developer or any other person subject to this chapter violates any provision hereof or any provision of the time-share instrument, any person or class of persons adversely affected by the violation has a claim for appropriate relief. The court may also award reasonable attorney's fees to the prevailing party.

B. Prior to the commencement of any action alleging a failure to comply with the provisions of § 55-375 or 55-386, however, an aggrieved owner shall first seek a determination from the Board as to whether compliance with § 55-375 or 55-386 has occurred. The Board shall make such determination within 120 days of the request therefore.

1981, c. 462; 1985, c. 517; 1998, c. 460; 2008, c. 376.

§ 55-383. Statute of limitations; actions; limitation on rescission rights.

A. Except as otherwise provided in § 55-389, a judicial proceeding where the sufficiency of the time-share instrument, the accuracy of the public offering statement, or validity of any contract of purchase is in issue and a rescission of the contract or damages is sought shall be commenced within two years after the date of the contract of purchase, notwithstanding that the purchaser's terms of payments may extend beyond this period of limitation; however, with respect to the enforcement of provisions in the contract of purchase which require the continued furnishing of services and the reciprocal payments to be made by the purchaser, the period of bringing a judicial proceeding will continue for a period of two years for each breach.

Rescission of the contract shall not be granted by the court unless (i) the inaccuracy of the public offering statement or the insufficiency of the time-share instrument directly and adversely affected the purchaser's right to participate in the time-share program or to own his time-share or (ii) at the time of the contract, the developer has sold more time-shares than there are time-share units that have been completed or bonded to accommodate such sales. Further, if damages are awarded, the amount of the damages shall be limited to actual damages sustained.

B. If a developer has substantially complied in good faith with the provisions of this chapter, a nonmaterial error or omission shall not be actionable. A nonmaterial error or omission shall not be sufficient to permit a purchaser to cancel a contract after the cancellation period provided by § 55-376 has expired.

1981, c. 462; 2006, c. 653; 2008, c. 376.

§ 55-384. Class actions.

A. No time-share owner can bring an action on behalf of other time-share owners unless he has received the written authorization to represent all other time-share owners within the project.

B. Notwithstanding the provisions of subsection A of this section, the association may bring an action on behalf of the time-share owners with the authorization of the time-share owners within the project upon the two-thirds majority vote of the board of directors, if such action is found to be in the best interest of the association.

C. For purposes of this section, the developer shall not be deemed a time-share owner and his

written permission shall not be required.

1981, c. 462; 1989, c. 637 .

§ 55-385. Financial records.

The person or entity responsible for either making or collecting common expense assessments or maintenance assessments shall keep detailed financial records. All financial and other records shall be made reasonably available at such person's or entity's office for examination by any time-share owner and his authorized agents.

1981, c. 462.

§ 55-386. Developer's obligation to complete.

A. The developer shall complete all promised and incomplete units and common elements being offered and described in the time-share instrument and the public offering statement. The developer shall be excused for the period or periods of delay in the completion of such promised units and common elements when delayed, hindered, or prevented from doing so by causes beyond the developer's control which shall include: (i) labor disputes not caused by the developer; (ii) riots; (iii) civil commotion or insurrection; (iv) war or warlike operations; (v) governmental restrictions, regulations or control; (vi) inability to obtain any materials or services; (vii) fire or other casualties; (viii) acts of God; or (ix) forces not under the control or supervision of the developer.

B. The developer shall file with the Board a payment and performance bond in the sum equal to 100 percent of the estimated cost of completing all promised and incomplete units and common elements comprising the time-share project described in the time-share instrument and the public offering statement. Such bond shall be conditioned upon the completion of such units and common elements in conformity with the plans and specifications for such improvements. The bond shall be with a surety company authorized to do business in the Commonwealth. The Board may accept cash or an irrevocable letter of credit in lieu of the bond required by this section. The Board shall be the sole determiner of the form, amount, content, obligee and conditions of the letter of credit. Should it become necessary for the Board to call upon the letter of credit in order to assure completion of the improvements, the Board shall have the authority to petition a court of competent jurisdiction to appoint a receiver to administer such completion.

1981, c. 462; 1983, c. 59; 1985, c. 517; 1994, c. 580; 1998, c. 460.

Article 4. Financing.

§ 55-387. Financing of time-share programs.

In the developer's financing of a time-share program, the developer shall retain financial records of the schedule of payments required to be made and the payments made by it to any person or entity which is the holder of an underlying blanket mortgage, deed of trust, contract of sale, or other lien or encumbrance.

1981, c. 462; 1985, c. 517.

§ 55-388. Purchaser's rights under developer's foreclosure.

The developer whose project is subject to an underlying blanket lien or encumbrance shall protect a nondefaulting purchaser from foreclosure or cancellation by the lien holder by securing from such lien holder or placing of record a nondisturbance clause, subordination agreement, or

partial release of the lien as to that time-share sold to such purchaser.

1981, c. 462; 1985, c. 517.

§ 55-389. Protection of lien holder.

Any lien holder of a time-share interest in any time-share program shall have the following rights:

1. The lien holder shall have its lien rights preserved as against any purchaser of a time-share who claims that the time-share instrument is invalid, void or voidable, thirty days after written notice by certified mail or personal delivery has been given by the developer or lien holder to the purchaser. The notice must state that the developer has assigned the receivables to the lien holder and that the purchaser has thirty days within which to object and specify the invalidity or defect contained within such time-share instrument. The notice required by this section may be included in the blanket encumbrance, in the contract, or in any note, deed of trust or mortgage executed by the purchaser in connection with the purchaser's deferred purchase of a time-share.
2. Any purchaser who fails to indicate that the time-share instrument is invalid, void, or voidable as provided in subdivision 1 waives, or is estopped to raise, the same in any subsequent enforcement of the collection of the receivable by the lien holder.

1981, c. 462; 1985, c. 517; 1998, c. 460.

Article 5. Registration.

§ 55-390. Registration of time-share program required.

A. A developer may not offer or dispose of any interest in a time-share program unless the time-share project and its program have been properly registered with the Board. A developer may accept a nonbinding reservation together with a deposit if the deposit is placed in an escrow account with an institution having trust powers within this Commonwealth and is refundable at any time at the purchaser's option. In all cases, the reservation must require a subsequent affirmative act by the purchaser via a separate instrument to create a binding obligation. A developer may not dispose of or transfer a time-share while an order revoking or suspending the registration of the time-share program is in effect. In the case of a time-share project located outside this Commonwealth and properly registered in the situs, the Board may accept a substitute application for registration.

B. [Repealed.]

C. The developer shall maintain records of names and addresses of current independent contractors employed by it for time-share sales purposes.

1981, c. 462; 1983, c. 59; 1985, c. 517; 1994, c. 580.

§ 55-391. Repealed.

Repealed by Acts 1985, c. 517.

§ 55-391.1. Application for registration.

A. The application for registration shall be filed in a form prescribed by the Board's regulations and shall include the following:

1. An irrevocable appointment to the Board to receive service of process in any proceeding

arising under this chapter against the developer or the developer's agent if nonresidents of the Commonwealth;

2. The states or jurisdictions in which an application for registration or similar document has been filed and any adverse order, judgment, or decree entered in connection with the time-share project by the regulatory authorities in each jurisdiction or by any court;
3. The applicant's name, address, and the organizational form, including the date, and jurisdiction under which the applicant was organized, and the address of its principal office and each of its sales offices in the Commonwealth;
4. The name, address, and principal occupation for the past five years of every officer of the applicant or person occupying a similar status or performing similar functions, and the extent and nature of his interest in the applicant or the time-share project as of a specified date within thirty days of the filing of the application;
5. A statement, in a form acceptable to the Board, of the condition of the title to the time-share project including encumbrances as of a specified date within thirty days of the date of application by a title opinion of a licensed attorney not a salaried employee, officer or director of the applicant or owner, or by other evidence of a title acceptable to the Board;
6. A copy of the instruments which will be delivered to a purchaser to evidence his interest in the time-share and copies of the contracts and other agreements which a purchaser will be required to agree or to sign;
7. A copy of any management agreements, employment contracts or other contracts or agreements affecting the use, maintenance or access of all or any part of the time-share project;
8. A statement of the zoning and other governmental regulations affecting the use of the time-share, including the site plans and building permits and their status, any existing tax and existing or proposed special taxes or assessments which affect the time-share;
9. A narrative description of the promotional plan for the disposition of the time-shares;
10. The proposed public offering statement and its exhibits;
11. Any bonds required to be posted pursuant to the provisions of this chapter;
12. The time-share owners' annual report or budget required by § 55-370.1 to the extent available;
13. A description of each product the developer seeks to register with the Board; and
14. Any other information which the Board believes necessary to assure full and fair disclosure.

B. The developer shall immediately report to the Board any material changes in the information contained in an application for registration.

C. Nothing shall prevent a developer from registering with the Board a time-share project where construction is yet to begin, or if begun, is not yet complete.

Code 1950, § 55-391; 1981, c. 462; 1985, c. 517; 1994, c. 580; 1998, c. 460; 2011, c. 605.

§ 55-392. Repealed.

Repealed by Acts 1985, c. 517.

§ 55-392.1. Filing fee.

The Board may by regulation establish reasonable fees for registration. Until such regulations are adopted by the Board, the fee shall be in an amount equal to \$1 per time-share, except that the initial application fee shall not be less than \$500 nor more than \$1,500, and the fee for any application for registration of additional units shall be not less than \$200. All fees shall be remitted by the Board to the Treasurer of the Commonwealth, and shall be placed to the credit of the Common Interest Community Management Information Fund established pursuant to § 55-529.

Code 1950, § 55-392; 1981, c. 462; 1985, c. 517; 2008, cc. 851, 871.

§ 55-393. Repealed.

Repealed by Acts 1985, c. 517.

§ 55-393.1. Receipt of application; effectiveness of registration.

A. Upon receipt of the application for registration in proper form, the Board, within five business days, shall issue a notice of filing to the applicant. Within twenty days after receipt of the application the Board shall review the application to determine whether the application and supporting documents satisfy the requirements of this chapter and the Board's regulations. Within sixty days from the date of the notice of filing, the Board shall enter an order registering or rejecting the application. If no order of rejection is entered within sixty days from the date of the notice of filing, the time-share project shall be deemed registered unless the applicant has consented in writing to a delay.

B. If the Board determines after review of the application and documents provided by the applicant that the requirements of § 55-391.1 have been met, it shall issue an order registering the time-share project and shall designate the form of the public offering statement.

C. If the Board determines that any of the requirements of § 55-391.1 have not been met, the Board shall notify the applicant that the application for registration must be corrected in the particulars specified within twenty days. If the requirements are not met within the time allowed, the Board shall enter an order rejecting the registration which shall include the findings of fact upon which the order is based. The order rejecting the registration shall become effective twenty days after issuance. During this twenty-day period the applicant may petition for reconsideration and shall be entitled to a hearing or to correct the particulars specified in the Board's notice. Such order of rejection shall not take effect, in any event, until such time as the hearing, if requested, is given to the applicant.

Code 1950, § 55-393; 1981, c. 462; 1985, c. 517.

§ 55-394. Repealed.

Repealed by Acts 1985, c. 517.

§ 55-394.1. Annual report; amendments.

A. The developer shall file a report in the form prescribed by the Board's regulations by June 30 of each year the registration is effective. The developer of any time-share project initially registered with the Board between January and June shall not be required to file an annual report for the year in which it was initially registered. The report shall reflect any material changes in

information contained in the original application for registration or in the immediately preceding annual report, whichever is later, and shall be accompanied by the appropriate fee established by the Board's regulations or pursuant to § 55-392.1.

B. During the developer control period in a time-share estate program, the developer shall file a copy of the unit owners' association annual report required by § 55-370.1 along with the annual report required by this section.

C. The developer shall amend or supplement its registration with the Board to report any material change in the information required by §§ 55-374 and 55-391.1. Such amendments or supplemental information shall be filed with the Board within 20 business days after the occurrence of the material change.

Code 1950, § 55-394; 1981, c. 462; 1985, c. 517; 1998, c. 460; 2006, c. 653; 2012, cc. 481, 797.

§ 55-394.2. Termination of registration.

A. In a time-share estate program, if the annual report indicates that the developer has transferred title to the time-share owners' association and that no further development rights exist, the Board shall issue an order terminating the registration of time-share projects.

B. The Board shall issue an order terminating the registration of a time-share project upon application by the developer in which the developer states that no further development right of the project is anticipated and that the developer has ceased sales of time-shares at the project.

C. Notwithstanding any other provisions of this chapter, the Board may administratively terminate the registration of a time-share project if:

1. The developer has not filed an annual report in accordance with § 55-394.1 for three or more consecutive years; or
2. The developer's registration with the State Corporation Commission, if applicable, has not been active for five or more consecutive years.

2012, cc. 481, 797.

§ 55-394.3. Registration required for time-share resellers; exemptions; prohibited practices.

A. A reseller shall not provide or offer to provide any resale service unless he is registered with the Board.

B. The application for registration shall be filed in a form prescribed by the Board's regulations and shall include such information as required by the Board. A reseller shall immediately report to the Board any material changes in the information contained in an application for registration. The Board may by regulation establish reasonable fees for registration under this section. All fees shall be remitted by the Board to the Treasurer of Virginia, and shall be placed to the credit of the Common Interest Community Management Information Fund established pursuant to § 55-529.

C. The registration requirements shall not apply to:

1. A person who solely or with affiliates engages in a resale service with respect to an aggregate of no more than 12 resale time-shares per calendar year;
2. A person who owns or acquires more than 12 resale time-shares and who subsequently transfers all such resale time-shares to a single purchaser in a single transaction;

3. The owner, its agents, and employees of a regularly published newspaper, magazine, or other periodical publication of general circulation; broadcast station; website; or billboard, to the extent their activities are limited to solicitation and publication of advertisements and the transmission of responses to the persons who place the advertisements. Any person who would otherwise be exempt from this chapter pursuant to this section shall not be exempt if the person (i) solicits the placement of the advertisement by representing that the advertisement will generate cash, a certain price, or a similar type of representation for the time-share owner's resale time-share, (ii) makes a recommendation as to the sales price for which to advertise the resale time-share, (iii) makes any representations to the person placing the advertisement regarding the success rate for selling resale time-shares advertised with such person, or (iv) makes any misrepresentations as described in this chapter;

4. Sale by a developer or a party acting on its behalf of a resale time-share under a current registration of the time-share program in which the resale time-share is included;

5. Sale by an association, managing entity, or a party acting on its behalf of a resale time-share owned by the association provided the sale is in compliance with subsection C of § 55-380.1; or

6. Attorneys, title agents, title companies, or escrow companies providing closing services in connection with the transfer of a resale time-share.

D. No reseller shall:

1. Fail to disclose information in writing concerning the marketing, sale, or transfer of resale time-shares required by this chapter prior to accepting any consideration or with the expectation of receiving consideration from any time-share owner, seller, or buyer.

2. Make false or misleading statements concerning offers to buy or rent; the value, pricing, timing, or availability of resale time-shares; or numbers of sellers, renters, or buyers when engaged in time-share resale activities.

3. Misrepresent the likelihood of selling a resale time-share interest.

4. Misrepresent the method by or source from which the reseller or lead dealer obtained the contact information of any time-share owner.

5. Misrepresent price or value increases or decreases, assessments, special assessments, maintenance fees, or taxes or guaranteeing sales or rentals in order to obtain money or property.

6. Make false or misleading statements concerning the identity of the reseller or any of its affiliates or the time-share resale entity's or any of its affiliate's experience, performance, guarantees, services, fees, or commissions, availability of refunds, length of time in business, or endorsements by or affiliations with developers, management companies, or any other third parties.

7. Misrepresent whether or not the reseller or its affiliates, employees, or agents hold, in any state or jurisdiction, a current real estate sales or broker's license or other government-required license.

8. Misrepresent how funds will be utilized in any time-share resale activity conducted by the reseller.

9. Misrepresent that the reseller or its affiliates, employees, or agents have specialized education, professional affiliations, expertise, licenses, certifications, or other specialized knowledge or qualifications.
10. Make false or misleading statements concerning the conditions under which a time-share owner, seller, or buyer may exchange or occupy the resale time-share interest.
11. Represent that any gift, prize, membership, or other benefit or service will be provided to any time-share owner, seller, or buyer without providing such gift, prize, membership, or other benefit or service in the manner represented.
12. Misrepresent the nature of any resale time-share interest or the related time-share plan.
13. Misrepresent the amount of the proceeds, or fail to pay the proceeds, of any rental or sale of a resale time-share interest as offered by a potential renter or buyer to the time-share owner who made such resale time-share interest available for rental or sale through the reseller.
14. Fail to transfer any resale time-share interests as represented and required by this chapter or to provide written evidence to the time-share owner of the recording or transfer of such time-share owner's resale time-share interest as required by this chapter.
15. Fail to pay any annual assessments, special assessments, personal property or real estate taxes, or other fees relating to an owner's resale time-share interest as represented or required by this chapter.
16. Misrepresent or misuse the intended purpose of a power of attorney or similar document to the detriment of any grantor of such power of attorney.

2012, c. 751.

§ 55-394.4. Recordkeeping by resellers.

A. If contact information has been obtained by a reseller from any source, including a lead dealer, the reseller and lead dealer shall maintain the following records for a period of five years from the last date of contact between the reseller and the owner:

1. The name; home address; work address, if different; telephone number; email address, if any; and a copy of a current government-issued photographic identification (e.g., driver's license, passport, or military identification card) of the lead dealer who provided the contact information;
2. The date, time, and place of the transaction at which the contact information was obtained, along with the amount of consideration paid and a signed receipt from the lead dealer or copy of a cancelled check; and
3. A copy of the contact information obtained in the exact form and media in which received.

B. A reseller shall maintain records for at least five years after each transaction involving resale service including resale transfer agreements and resale purchase agreements.

C. In any civil or criminal action based on a violation of this section, there shall be a presumption that contact information was wrongfully obtained if a reseller or lead dealer fails to produce the records required by this section.

D. Any person who establishes that a reseller or lead dealer wrongfully obtained or wrongfully

used contact information with respect to time-share owners or members of an exchange program shall, in addition to any other remedies that may be available in law or equity, be entitled to recover from such reseller or lead dealer an amount equal to \$1,000 for each time-share owner or member about whom contact information was wrongfully obtained or used. The prevailing person in any such action shall also be entitled to recover reasonable attorney fees and costs.

2012, c. 751.

§ 55-394.5. Alternative purchase; registration.

A. The application for registration of an alternative purchase shall be filed in a form prescribed by the Board and shall include the following:

1. A general description of the types of alternative purchases offered;
2. A copy of the terms and conditions applicable to the alternative purchases; and
3. The name, address, and contact information of the developer offering the alternative purchases.

B. Any material change to the standard terms and conditions applicable to an alternative purchase shall be filed with the Board within 30 days of such change being effective. Changes to the length of stay, location, or price shall not require an amendment of the registration, provided the terms and conditions applicable to such alternative purchases are on file with the Board.

C. The provisions of §§ 55-374 and 55-375 shall not apply to alternative purchases registered under this section.

2014, c. 623.

§ 55-395. Repealed.

Repealed by Acts 1985, c. 517.

Article 6. Administration.

§ 55-396. General powers and duties of Board.

A. The Board may adopt, amend, and repeal rules and regulations and issue orders consistent with and in furtherance of the objectives of this chapter. The Board may prescribe forms and procedures for submitting information to the Board.

B. The Board may accept grants in aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions, in furtherance of the objectives of this chapter.

C. The Board may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices, and may develop information that may be useful in the discharge of the Board's duties.

D. 1. If the Board determines after legal notice and opportunity for hearing that a developer or reseller or an agent of a developer or reseller has:

- a. Made any representation in any document or information filed with the Board which is false or misleading;

- b. Engaged or is engaging in any unlawful act or practice;
- c. Disseminated or caused to be disseminated orally, or in writing, any false or misleading promotional materials in connection with a time-share program;
- d. Concealed, diverted, or disposed of any funds or assets of any person in a manner impairing rights of purchasers of time-shares in the time-share program;
- e. Failed to perform any stipulation or agreement made to induce the Board to issue an order relating to that time-share program;
- f. Otherwise violated any provision of this chapter or any of the Board's rules and regulations or orders; or
- g. Disposed of any time-share in a project without first complying with the requirements of this chapter, it may issue an order requiring the developer to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the Board will carry out the purposes of this chapter.

2. If the Board makes a finding of fact at a hearing that the public interest will be irreparably harmed by delay in issuing an order, as prescribed in subdivision 1 of this subsection, it may issue a temporary cease and desist order. With the issuance of a temporary cease and desist order, the Board, by registered mail or other personal written service, shall give notice of the issuance to the developer or the reseller. Every temporary cease and desist order shall include in its terms:

- a. A provision clearly stating the reasons for issuing such cease and desist order, the date of the hearing on its issuance, and the nature and extent of the facts and findings on which the order was based;
- b. A provision that a hearing by the Board may be held, after due notice but not more than fifteen days from the date such temporary cease and desist order is effective, to determine whether or not a cease and desist order as called for in the immediately preceding subsection shall be issued;
- c. A provision that such temporary cease and desist order may remain in full force for a period of not more than fifteen days from the date of its issuance or the date on which the Board has determined that an order as prescribed in subdivision 1 of this subsection is to be issued, whichever shall occur first; and
- d. A provision that a failure to comply with such temporary cease and desist order will be a violation of this chapter. The Board shall not issue more than one temporary cease and desist order with reference to such finding of fact as prescribed in this subsection.

E. The Board may also issue a cease and desist order if the developer has not registered the time-share program as required by this chapter or if a reseller has not registered as required by this chapter.

F. The Board, after notice and hearing, may issue an order revoking the registration of the developer's time-share program or the registration of a reseller upon determination that such developer, reseller, or agent thereof has failed to comply with a cease and desist order issued by the Board affecting the developer's time-share program or the reseller.

G. If it appears that any person has engaged, is engaging, or is about to engage in any act or

practice in violation of this chapter or any of the Board's rules, regulations or orders applicable thereto, the Board, without prior administrative proceedings, may bring suit in the circuit court of the city or county in which any portion of the time-share project is located to enjoin that act or practice or for other appropriate relief. The Board is not required to post a bond or prove that no adequate remedy at law exists.

H. Upon request of a time-share owner, the Board shall, in accordance with subsection B of § 55-382, issue its determination whether compliance with § 55-375 or 55-386 has occurred.

1981, c. 462; 1985, c. 517; 1998, c. 460; 2008, c. 376; 2011, c. 605; 2012, c. 751.

§ 55-397. Cancellation of cease and desist order; reinstatement of registration of developer.

A. The Board shall stipulate to the developer or reseller the reason for any cease and desist order, or revocation of registration as outlined in § 55-396, by no later than the time such order or revocation is to become effective.

B. Should the developer or reseller satisfy the Board that it has corrected the reasons for the cease and desist order or revocation of registration, then the Board shall promptly cancel such order or reinstate the registration, and thereafter the developer or reseller may continue its offering or disposition of time-shares.

1981, c. 462; 2012, c. 751.

§ 55-398. Board regulation of public offering statement.

The Board may at any time require a developer to alter or supplement the form or substance of a public offering statement to assure adequate and accurate disclosure to prospective purchasers.

1981, c. 462.

§ 55-399. Investigations.

A. The Board may:

1. Make necessary public or private investigations within or outside this Commonwealth to determine whether any person has violated or is about to violate any provision of this chapter or any rule, regulation, or order issued hereunder, or to aid in the enforcement of this chapter in prescribing rules, regulations and forms hereunder;

2. Require or permit any person to file a statement in writing, under oath or otherwise as the Board determines, as to all facts and circumstances concerning the matter to be investigated.

B. For the purpose of any investigation or proceeding under the chapter, the Board may administer oaths or affirmations, and upon such motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the 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.

C. Any proceeding or hearing of the Board under this chapter, wherein witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter is to be produced to ascertain material evidence, shall take place within the County of Henrico and such proceeding shall be held before the Board sitting in regular session, but not less frequently than monthly.

D. Upon failure to obey a subpoena or to answer questions propounded by the Board, and upon reasonable notice to all persons affected thereby, the Board may apply to the Circuit Court of the County of Henrico for an order compelling compliance.

E. Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

1981, c. 462; 2009, c. 557; 2011, c. 605.

§ 55-399.1. Proceedings before the Board.

A. Any proceeding or hearing of the Board under this chapter wherein witnesses are subpoenaed and their attendance required for the taking of evidence or the production of documents to ascertain material evidence, shall take place in the County of Henrico.

B. Except as otherwise provided in this chapter, all hearings under this chapter shall be in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and shall be conducted by a hearing officer in accordance with § 2.2-4024.

1985, c. 517; 2009, c. 557.

§ 55-400. Penalties.

A. Any person who willfully violates any of the provisions of § 55-374, 55-374.1, 55-374.2, 55-375, 55-376, 55-381, 55-385, or 55-390, or any order issued pursuant to §§ 55-396 through 55-399 shall be guilty of a Class 5 felony.

Any person who willfully violates any of the provisions of § 55-376.5, 55-380.1, or 55-394.3 or any order issued pursuant to §§ 55-396 through 55-399 regarding a violation of § 55-376.5, 55-380.1, or 55-394.3 shall be guilty of a Class 1 misdemeanor.

Each violation shall be deemed a separate offense.

B. Any developer, member, agent or affiliate of any developer of time-shares registered pursuant to § 55-393.1, or any reseller, who violates any provision of this chapter or regulations promulgated pursuant to this chapter, and who is not criminally prosecuted, may be subject to a monetary penalty. If it has been determined by the Board upon or after a hearing that a respondent has violated this chapter or the Board's rules and regulations, the Board shall proceed to determine the amount of the monetary penalty for such violation, which shall not exceed \$2,000 for each violation. Such penalty may be sued for and recovered in the name of the Commonwealth.

1981, c. 462; 1983, c. 59; 1985, c. 517; 1991, c. 704; 2012, c. 751.