

§ 93A-44. Contract of sale; public offering statement.

(a) The contract of sale between a developer and a purchaser for the sale and purchase of a timeshare must include the following:

- (1) The name and address of the developer.
- (2) The name and address of the timeshare program being offered.
- (3) An identification or legal description of the timeshare being sold, including whether any interest in real property or personal property is being conveyed and the number of years constituting the term of the timeshare program or the timeshare if less than the term of the timeshare program.
- (4) If the purchaser acquires a timeshare in a specific timeshare project, the name and location of the timeshare project to which the specific timeshare relates.
- (5) A statement that the purchaser should refer to the timeshare public offering statement for more information required to be provided to the purchaser.
- (6) The initial purchase price and all additional charges to which the purchaser may be subject in connection with the purchase of the timeshare, such as financing, or which will be collected from the purchaser on or before closing, such as the current year's annual assessment or any initial or special fee together with a description of the purpose of such initial or special fee.
- (7) A statement disclosing the amount of the periodic assessments currently assessed against or collected from owners who own similar types of timeshares in that timeshare program.
- (8) The name and address of the independent escrow agent required by G.S. 93A-45(d).
- (9) The purchaser's address for the purposes of delivery of any notices.
- (10) The date the purchaser signs the contract of sale.
- (11) The following statement in conspicuous type:
"Any resale of this timeshare must be accompanied by certain disclosures in accordance with the North Carolina Timeshare Act."
- (12) A statement in conspicuous type immediately prior to the purchaser's signature block in substantially the following form:
"You may cancel this contract of sale without any penalty or obligation before midnight five days after the date you sign this contract of sale or received the required public offering statement and all documents required to be delivered to you, whichever is later. If you decide to cancel this contract of sale, you must notify the developer in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to the developer at [insert address]. Any attempt to obtain a waiver of your cancellation right is void and of no effect. While you may execute all closing documents in advance, the closing on your purchase before expiration of your five-day cancellation period is prohibited."

(b) Prior to the execution of a contract of sale by a purchaser, each developer shall provide the purchaser with a public offering statement and shall obtain from the purchaser a written acknowledgement of receipt of the public offering statement and any documents required to be delivered to the purchaser. In addition to any other information that the developer discloses, the public offering statement must contain the following:

- (1) A cover page stating only the name of the timeshare program and in conspicuous type, substantially the following statement:
"This public offering statement contains important matters to be considered in acquiring a timeshare. The statements contained in this public offering statement are only summary in nature. Purchaser should refer to all references,

accompanying exhibits, contract documents, finance documents, and sales materials. Purchaser should not rely upon oral representations as being correct. The developer is prohibited from making any representations other than those contained in the contract of sale and this public offering statement."

- (2) The name and principal address of the developer.
- (3) A general description of the timeshare program, including the nature and types of timeshares in the timeshare program and if it is a multisite timeshare program.
- (4) A description of the duration of the timeshare program and whether it includes timeshares having a shorter duration than the duration of the timeshare program.
- (5) A description of the method by which an owner can reserve, use, and occupy the timeshare units, including the following:
 - a. The name and principal address of the entity that owns the reservation system and the entity responsible for operating the reservation system, their relationship to the developer, and the duration of any agreement for operating the reservation system.
 - b. A summary of the material rules governing access to and use of the reservation system, including (i) a description of the limitations, restrictions, or priorities applied in the operation of the timeshare program, (ii) if such limitations, restrictions, or priorities are not uniformly applied, a description of the manner in which they are applied, (iii) an explanation of any priority reservation features that affect an owner's ability to make reservations for the use of a given timeshare unit on a first-come, first-served basis, (iv) whether the owner must be in good standing with respect to payment of all sums due the managing entity in order to reserve, use, or occupy a timeshare unit, and (v) the terms and conditions for making, deferring, or cancelling reservations, including any transaction fees or other charges and, if applicable, a statement that such fees or charges are subject to change without owner approval.
 - c. Any periodic adjustment or amendment to the reservation system that may be conducted in order to respond to owner use patterns and changes in owner use demand for the timeshare units, timeshare projects, or timeshare periods. If ownership or use of the timeshare program is based on a point system, a statement indicating the circumstances by which the point values may change, the extent of such changes, and the person or entity responsible for the changes.
 - d. Whether and under what circumstances an owner may lose the right to reserve, use, or occupy a timeshare unit without being provided with a substitute reservation, use, or occupancy.
 - e. The disposition of timeshares or time periods that are not reserved by owners prior to the start of the timeshare period or prior to the start of any established point in time and who has the right to reserve and benefit from such unreserved timeshares or timeshare periods.
 - f. If the operator of the reservation system is going to exercise the right granted to it by G.S. 93A-63(d) to reserve, deposit, or rent the timeshare periods or timeshare units for the purpose of facilitating the use or future use of the timeshare periods or timeshare units or other benefits made available through the timeshare program by owners, a

statement in conspicuous type, in substantially the following form, shall be included:

"The managing entity shall have the right to forecast anticipated reservation and use of the timeshare period or timeshare units and is authorized to reasonably reserve, deposit, or rent the timeshare period or timeshare units for the purpose of facilitating the use or future use of the accommodations or other benefits made available through the timeshare program by the owners."

- g. Any use or transaction fees or charges to be paid by owners for the reservation, use, or occupancy of any timeshare units or amenities and, if applicable, a statement that the fees or charges are subject to change without owner approval.
 - h. The rules governing the making, cancelling, or transferring of reservations.
- (6) For each timeshare project, the following information:
- a. A description of the existing timeshare units and future timeshare units committed to be constructed or obtained, including the location of the timeshare project or timeshare projects in the timeshare program, and the number of bedrooms, number of bathrooms, sleeping capacity, and whether the timeshare unit contains a full kitchen for each timeshare project.
 - b. A description of any existing amenities and future amenities committed to be constructed or obtained, and whether such amenities are included as part of the ownership of a timeshare or made separately available and on what basis.
 - c. The estimated date that future timeshare units or amenities will be available as committed, and a description of financial arrangements for the completion or acquisition of future timeshare units or amenities as committed.
 - d. A description of the method and timing for performing maintenance of the timeshare units.
- (7) A statement indicating that, on an annual basis, the one-to-one use right to use ratio will be maintained through the duration of the timeshare program, except temporarily pursuant to G.S. 93A-61(g), or temporarily as a result of a casualty or eminent domain action.
- (8) For multisite timeshare programs, a description of (i) any reserved rights to make additions, substitutions, or deletions of timeshare units, amenities, or timeshare projects, (ii) who has the authority to make such additions, substitutions, or deletions and whether owners have the right to consent, and (iii) the basis upon which such timeshare units, amenities, or timeshare projects may be added to, substituted for, or deleted from the timeshare program.
- (9) With respect to the managing entity for the timeshare program, the following information, if applicable:
- a. The name and principal address of the managing entity of the timeshare program.
 - b. Whether the managing entity for any timeshare project is different than the managing entity of the multisite timeshare program.
 - c. If there is a timeshare owners' association at a timeshare project or for a multisite timeshare program, whether owners are members of the

timeshare owners' association, together with a general description of their rights and responsibilities with respect to the timeshare owners' association.

- d. If there is a management firm, the term of the management agreement.
- (10) A description of the method for calculating and apportioning assessments among owners, including the developer, together with a description of the consequences to the owner if assessments are not timely paid. The description shall also include whether reserves for the timeshare units and amenities have been established, and if not, or if any reserves are not fully funded, a statement to that effect in conspicuous type.
 - (11) If the developer intends to guarantee the level of assessments for the timeshare program, a statement disclosing that the developer may be excused from the payment of the developer's share of the assessments which would have been assessed against developer-owned timeshares during the guarantee period.
 - (12) A statement that the timeshare to be acquired by the purchaser and the timeshare property, on or before closing, (i) will be free and clear of any interest in or lien or encumbrance against the timeshare and the timeshare property by the developer or any interest holders or (ii) are the subject of a recorded subordination and notice to creditors instrument pursuant to G.S. 93A-57.
 - (13) A description of any civil or criminal suit or adjudication or disciplinary actions material to the timeshare program of which the developer has knowledge, including any bankruptcy of the developer that is pending or that has occurred within the past five years.
 - (14) A description of the insurance insuring the timeshare property for damage and destruction and insuring owners and, if applicable, the timeshare owners' association.
 - (15) A description of the requirements for, or restraint on, the transfer or rental of a timeshare, including any right of first refusal or the imposition of any fees or charges.
 - (16) A statement disclosing that any funds paid to the developer in connection with the purchase of a timeshare shall be held by an independent escrow agent in accordance with G.S. 93A-45(d) or that the developer has provided financial assurances in an amount equal to or in excess of the funds that would otherwise be held by the independent escrow agent, and that if the purchaser elects to exercise the right of cancellation or the developer defaults under the contract of sale, any funds paid to the developer shall be returned to the purchaser, as set forth in G.S. 93A-45(c).
 - (17) If the developer or managing entity provides purchasers with the opportunity to become a member of an exchange program in connection with the purchase of the timeshare, the name and address of the exchange company and the material terms of the opportunity.
 - (18) Any person who has or may have the right to alter, amend, or add to fees and charges to which the owner may be subject and the terms and conditions under which those fees and charges may be imposed.
 - (19) In conspicuous type, a statement in substantially the following form:
"The purchase of a timeshare should be based upon its value as a vacation experience or for spending leisure time, and not considered for purposes of acquiring an appreciating investment or with an expectation that the timeshare may be rented or resold."

- (20) A statement that under North Carolina law a timeshare instrument conveying a timeshare estate located in this State must be recorded in the register of deeds office at closing.
 - (21) Any other information which the Commission may by rule require. The Commission is also authorized to prescribe by rule the form of the public offering statement that must be furnished by the developer to each purchaser.
- (c) Prior to the execution of a contract of sale by a purchaser, the following documents, including any amendments, shall also be provided to the purchaser either attached as an exhibit to the public offering statement or provided as a separate supplement with the public offering statement:
- (1) The timeshare declaration.
 - (2) The timeshare owners' association articles of incorporation and bylaws, if applicable.
 - (3) Any timeshare unit or timeshare project rules and regulations.
 - (4) Timeshare program reservation system rules and regulations.
 - (5) An estimate of the current year's operating budget for the timeshare program.
 - (6) For multisite timeshare programs where a timeshare is provided in a particular timeshare unit or timeshare project, the applicable documents governing the timeshare unit or timeshare project set forth in subdivisions (1) through (5) of this subsection must also be separately provided as part of the public offering statement.
- (d) Contemporaneously with the execution of a contract of sale by a purchaser, a copy of the contract of sale signed by the purchaser, receipt for the public offering statement signed by the purchaser, any financing documents signed by the purchaser, and any other document signed by the purchaser at the time of execution of the contract of sale shall be provided to the purchaser.
- (e) If the purchaser receives documents electronically at the time of execution of a contract of sale, the developer shall provide the purchaser a separate paper or email copy of the purchaser's cancellation rights in conspicuous type as described in G.S. 93A-44(a)(12).
- (f) The developer is prohibited from making any representations other than those contained in the contract of sale and the public offering statement. (1983, c. 814, s. 1; 2021-163, s. 1(c); 2021-192, s. 5(a).)