

GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 814
HOUSE BILL 785

AN ACT TO BE KNOWN AS THE NORTH CAROLINA TIME SHARE ACT AS
RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 93A of the General Statutes is hereby amended by adding a new Article thereto as follows:

"Article 4. Time Shares.

"§ 93A-39. Title.—This Article shall be known and may be cited as the 'North Carolina Time Share Act'.

"§ 93A-40. Registration required of time share projects; real estate salesmen license required.—(a) From and after July 1, 1984, it shall be unlawful for any person in this State to engage or assume to engage in the business of a time share salesman without first obtaining a real estate broker or salesman license issued by the North Carolina Real Estate Commission under the provisions of Article I of this Chapter, and it shall be unlawful for a time share developer to sell or offer to sell a time share located in this State without first obtaining a certificate of registration for the time share project to be offered for sale issued by the North Carolina Real Estate Commission under the provisions of this Article.

"§ 93A-41. Definitions.—When used in this Article, unless the context otherwise requires, the term:

- (1) 'Commission' means the North Carolina Real Estate Commission;
- (2) 'Developer' means any person or entity which creates or is engaged in the business of selling its own time shares and shall include any person or entity who controls, is controlled by, or is in common control with the developer which is engaged in creating or selling time shares for the developer;
- (3) 'Enrolled' means paid membership in exchange programs or membership in an exchange program evidenced by written acceptance or confirmation of membership;
- (4) 'Exchange company' means any person operating an exchange program;
- (5) 'Exchange program' means any opportunity or procedure for the assignment or exchange of time shares among purchasers in the same or other time share project;
- (6) 'Managing agent' means a person who undertakes the duties, responsibilities, and obligations of the management of a time share program;
- (7) 'Person' means one or more natural persons, corporations, partnerships, associations, trusts, other entities, or any combination thereof;
- (8) 'Purchaser' means any person other than a developer or lender who owns or acquires an interest or proposes to acquire an interest in a time share;

(9) 'Time share' 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, whether or not coupled with a freehold estate or an estate for years in a time share project or a specified portion thereof, including, but not limited to, a vacation license, prepaid hotel reservation, club membership, limited partnership, or vacation bond;

(10) 'Time share program' means any arrangement for time shares whereby real property has been made subject to a time share;

(11) 'Time share project' means any real property that is subject to a time share program;

(12) 'Time share salesman' means a person who sells or offers to sell on behalf of a developer a time share to a purchaser; and

(13) '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.

"§ 93A-42. Time shares deemed real estate.—(a) A time share is deemed to be an interest in real estate, and shall be governed by the law of this State relating to real estate.

(b) A purchaser of a time share may in accordance with G.S. 47-18 register the instrument by which he acquired his interest and upon such registration shall be entitled to the protection provided by Chapter 47 of the General Statutes for the recordation of other real property instruments. A document transferring or encumbering a time share shall not be rejected for recordation because of the nature or duration of that estate, provided all other requirements necessary to make an instrument recordable are complied with.

"§ 93A-43. Partition.—When a time share is owned by two or more persons as tenants in common or as joint tenants either may seek a partition by sale of that interest but no purchaser of a time share may maintain an action for partition by sale or in kind of the unit in which such time share is held.

"§ 93A-44. Public offering statement.—Each developer shall fully and conspicuously disclose in a public offering statement:

(1) The total financial obligation of the purchaser, which shall include the initial purchase price and any additional charges to which the purchaser may be subject;

(2) Any person who has or may have the right to alter, amend or add to charges to which the purchaser may be subject and the terms and conditions under which such charges may be imposed;

(3) The nature and duration of each agreement between the developer and the person managing the time share program or its facilities;

(4) The date of availability of each amenity and facility of the time share program when they are not completed at the time of sale of a time share;

(5) The specific term of the time share;

(6) The purchaser's right to cancel within five days of execution of the contract and how that right may be exercised under G.S. 93A-45;

(7) A statement that under North Carolina law an instrument conveying a time share must be recorded in the Register of Deeds Office to protect that interest; and

(8) Any other information which the Commission may by rule require.

The public offering statement shall also contain a one page cover containing a summary of the text of the statement.

"§ 93A-45. Purchaser's right to cancel; escrow; violation.—(a) A developer shall, before transfer of a time share and no later than the date of any contract of sale, provide a prospective purchaser with a copy of a public offering statement containing the information required by G.S. 93A-44. The contract of sale is voidable by the purchaser for five days after the execution of the contract. The contract shall conspicuously disclose the purchaser's right to cancel under this subsection and how that right may be exercised. An instrument transferring a time share shall not be recorded until five days after the execution of the contract of sale.

(b) A purchaser may elect to cancel within the time period set out in subsection (a) by hand delivering or by mailing notice to the developer or the time share salesman. Cancellation under this section is without penalty and upon receipt of the notice all payments made prior to cancellation must be refunded immediately.

(c) Any payments received by a time share developer or time share salesman in connection with the sale of a time share shall be immediately deposited by such developer or salesman in a trust or escrow account in an insured bank or savings and loan association in North Carolina and shall remain in such account for 10 days or cancellation by the purchaser, whichever occurs first. Payments held in such trust or escrow accounts shall be deemed to belong to the purchaser and not the developer. In lieu of such escrow requirements, the Commission shall have the authority to accept, in its discretion, alternative financial assurances adequate to protect the purchaser's interest during the contract cancellation period, including but not limited to a surety bond, corporate bond, cash deposit or irrevocable letter of credit in an amount equal to the escrow requirements.

(d) If a developer fails to provide a purchaser to whom a time share is transferred with the statement as required by subsection (a), the purchaser, in addition to any rights to damages or other relief, is entitled to receive from the developer an amount equal to ten percent (10%) of the sales price of the time share not to exceed three thousand dollars (\$3,000). A receipt signed by the purchaser stating that he has received the statement required by subsection (a) is *prima facie* evidence of delivery of such statement.

"§ 93A-46. Prizes.—An advertisement of a time share which includes the offer of a prize or other inducement shall fully comply with the provisions of Chapter 75 of the General Statutes.

"§ 93A-47. Time shares proxies.—No proxy, power of attorney or similar device given by the purchaser of a time share regarding the management of the time share program or its facilities shall exceed one year in duration, but the same may be renewed from year to year.

"§ 93A-48. Exchange programs.—(a) If a purchaser is offered the opportunity to subscribe to any exchange program, the developer shall, except as provided in

subsection (b), deliver to the purchaser, prior to the execution of (i) any contract between the purchaser and the exchange company, and (ii) the sales contract, at least the following information regarding such exchange program:

- (1) The name and address of the exchange company;
- (2) The names of all officers, directors, and shareholders owning five percent (5%) or more of the outstanding stock of the exchange company;
- (3) Whether the exchange company or any of its officers or directors has any legal or beneficial interest in any developer or managing agent for any time share project 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 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 thereto may be made;
- (8) A complete and accurate description of the procedure to qualify for and effectuate exchanges;
- (9) A complete and accurate description of all limitations, restrictions, or priorities employed in the operation of the exchange program, including, but not limited to, limitations on exchanges based on seasonality, unit size, or levels of occupancy, expressed in boldfaced type, and, in the event that such limitations, restrictions, or priorities are not uniformly applied by the exchange program, a clear description of the manner in which they are applied;
- (10) Whether exchanges are arranged on a space available basis and whether any guarantees of fulfillment of specific requests for exchanges are made by the exchange program;
- (11) Whether and under what circumstances an owner, in dealing with the exchange company, may lose the use and occupancy of his time share in any properly applied for exchange without his being provided with substitute accommodations by the exchange company;
- (12) The expenses, fees or range of fees for participation by owners in the exchange program, a statement whether any such fees may be altered by the exchange company, and the circumstances under which alterations may be made;

- (13) The name and address of the site of each time share project or other property which is participating in the exchange program;
- (14) The number of units in each project or other 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 project or other property which 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 who are 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) below, shall be independently audited by a certified public accountant 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:
 - a. The number of owners enrolled in the exchange program and 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 projects or other properties eligible to participate in the exchange program categorized by those having a contractual relationship between the developer or the association and the exchange company and those having solely a contractual relationship between the exchange company and owners directly;
 - 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 or other intervals for which the exchange company has an outstanding obligation to provide an exchange to an owner who relinquished a time share or interval during the year in exchange for a time share or interval in any future year; and

- e. The number of exchanges confirmed by the exchange company during the year; and
- (18) A statement in boldfaced type to the effect that the percentage described in subparagraph (17)c. of subsection (a) 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/owner's probabilities of being confirmed to any specific choice or range of choices, since availability at individual locations may vary.

The purchaser shall certify in writing to the receipt of the information required by this subsection and any other information which the Commissioners may by rule require.

(b) The information required by subdivisions (a), (2), (3), (13), (14), (15), and (17) shall be accurate as of December 31 of the year preceding the year in which the information is delivered, except for information delivered within the first 180 days of any calendar year which shall be accurate as of December 31 of the year two years preceding the year in which the information is delivered to the purchaser. The remaining 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.

(c) In the event an exchange company offers an exchange program directly to the purchaser or owner, the exchange company shall deliver to each purchaser or owner, concurrently with the offering and prior to the execution of any contract between the purchaser or owner and the exchange company the information set forth in subsection (a) above. The requirements of this paragraph shall not apply to any renewal of a contract between an owner and an exchange company.

(d) All promotional brochures, pamphlets, advertisements, or other materials disseminated by the exchange company to purchasers in this State which contain the percentage of confirmed exchanges described in (a)(17)c. must include the statement set forth in (a)(18).

"§ 93A-49. Service of process on exchange company.—Any exchange company offering an exchange program to a purchaser shall be deemed to have made an irrevocable appointment of the Commission to receive service of lawful process in any proceeding against the exchange company arising under this Article.

"§ 93A-50. Securities laws apply.—The North Carolina Securities Act, Chapter 78A, shall also apply, in addition to the laws relating to real estate, to time shares deemed to be investment contracts or to other securities offered with or incident to a time share; provided, in the event of such applicability of the North Carolina Securities Act, any offer or sale of time shares registered under this Article shall not be subject to the provisions of G.S. 78A-24 and any real estate broker or salesman registered under Article 1 of this Chapter shall not be subject to the provisions of G.S. 78A-36.

"§ 93A-51. Rule-making authority.—The Commission shall have the authority to adopt rules and regulations that are not inconsistent with the provisions of this Article and the General Statutes of North Carolina. The Commission may prescribe forms and procedures for submitting information to the Commission.

"§ 93A-52. Application for registration of time share project; denial of registration; renewal; reinstatement; and termination of developer's interest.—(a)

Prior to the offering in this State of any time share located in this State, the developer of the time share project shall make written application to the Commission for the registration of the project. The application shall be accompanied by a fee in an amount fixed by the Commission but not to exceed fifteen hundred dollars (\$1500), and shall include a description of the project, copies of proposed time share instruments including public offering statements, sale contracts, deeds, and other documents referred to therein, information pertaining to any marketing or managing entity to be employed by the developer for the sale of time shares in a time share project or the management of the project, information regarding any exchange program available to the purchaser, an irrevocable appointment of the Commission to receive service of any lawful process in any proceeding against the developer or the developer's salesmen arising under this Article, and such other information as the Commission may by rule require.

Upon receipt of a properly completed application and fee and upon a determination by the Commission that the sale and management of the time shares in the time share project will be directed and conducted by persons of good moral character, the Commission shall issue to the developer a certificate of registration authorizing the developer to offer time shares in the project for sale. The Commission shall within 15 days after receipt of an incomplete application, notify the developer by mail that the Commission has found specified deficiencies, and shall, within 45 days after the receipt of a properly completed application, either issue the certificate of registration or notify the developer by mail of any specific objections to the registration of the project. The certificate shall be prominently displayed in the office of the developer on the site of the project.

The developer shall promptly report to the Commission any and all changes in the information required to be submitted for the purpose of the registration. The developer shall also immediately furnish the Commission complete information regarding any change in its interest in a registered time share project. In the event a developer disposes of, or otherwise terminates its interest in a time share project, the developer shall certify to the Commission in writing that its interest in the time share project is terminated and shall return to the Commission for cancellation the certificate of registration.

(b) In the event the Commission finds that there is substantial reason to deny the application for registration as a time share project, the Commission shall notify the applicant that such application has been denied and shall afford the applicant an opportunity for a hearing before the Commission to show cause why the application should not be denied. In all proceedings to deny a certificate of registration, the provisions of Chapter 150A of the General Statutes shall be applicable.

(c) The acceptance by the Commission of an application for registration shall not constitute the approval of its contents or waive the authority of the Commission to take disciplinary action as provided by this Article.

(d) All certificates of registration granted and issued by the Commission under the provisions of this Article shall expire on the 30th day of June following issuance thereof, and shall become invalid after such date unless reinstated. Renewal of such

certificate may be effected at any time during the month of June preceding the date of expiration of such registration upon proper application to the Commission and by the payment of a renewal fee fixed by the Commission but not to exceed seven hundred fifty dollars (\$750.00) for each time share project. The developer shall, when making application for renewal, also provide a copy of the report required in G.S. 93A-48. Each certificate reinstated after the expiration date thereof shall be subject to a late filing fee of fifty dollars (\$50.00) in addition to the required renewal fee. In the event a time share developer fails to reinstate the registration within 12 months after the expiration date thereof, the Commission may, in its discretion, consider the time share project as not having been previously registered, and thereby subject to the provisions of this Article relating to the issuance of an original certificate. Duplicate certificates may be issued by the Commission upon payment of a fee of one dollar (\$1.00) by the registrant developer.

"§ 93A-53. Register of applicants; roster of registrants; registered projects; financial report to Secretary of State.—(a) The Executive Director of the Commission shall keep a register of all applicants for certificates of registration, showing for each the date of application, name, business address, and whether the certificate was granted or refused.

(b) The Executive Director of the Commission shall also keep a current roster showing the name and address of all time share projects registered with the Commission. The roster shall be kept on file in the office of the Commission and be open to public inspection.

(c) On or before the first day of September of each year, the Commission shall file with the Secretary of State a copy of the roster of time share projects registered with the Commission and a report containing a complete statement of income received by the Commission in connection with the registration of time share projects for the preceding fiscal year ending June 30th attested by the affidavit of the Executive Director of the Commission. The report shall be made a part of those annual reports required under the provisions of G.S. 93A-5.

"§ 93A-54. Disciplinary action by Commission.—(a) The Commission shall have power to take disciplinary action. Upon its own motion, or on the verified complaint of any person, the Commission may investigate the actions of any time share salesman or any developer of a time share project registered under this Article, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a time share salesman or developer has violated any of the provisions of this Article, the Commission may hold a hearing on the allegations of misconduct. All such hearings shall be conducted in accordance with the provisions of Chapter 150A of the General Statutes.

The Commission shall have power to suspend or revoke at any time a real estate license issued to a time share salesman or a certificate of registration of a time share project issued to a developer, or to reprimand or censure such salesman or developer, or to fine such developer in the amount of five hundred dollars (\$500.00) for each violation of this Article, if, after a hearing, the Commission adjudges either the salesman or developer to be guilty of:

- (1) Making any willful or negligent misrepresentation or any willful or negligent omission of material fact about any time share or time share project;
- (2) Making any false promises of a character likely to influence, persuade, or induce;
- (3) Pursuing a course of misrepresentation or making of false promises through agents, salesmen, advertising or otherwise;
- (4) Failing, within a reasonable time, to account for all money received from others in a time share transaction, and failing to remit such monies as may be required in G.S. 93A-45 of this Article;
- (5) Acting as a time share salesman or time share developer in a manner as to endanger the interest of the public;
- (6) Paying a commission, salary, or other valuable consideration to any person for acts or services performed in violation of this Article;
- (7) Any other conduct which constitutes improper, fraudulent, or dishonest dealing;
- (8) Performing or undertaking to perform any legal service as set forth in G.S. 84-2.1, or any other acts not specifically set forth in that section;
- (9) Failing to deposit and maintain in a trust or escrow account in an insured bank or savings and loan association in North Carolina all money received from others in a time share transaction as may be required in G.S. 93A-45 of this Article;
- (10) Failing to deliver to a purchaser a public offering statement containing the information required by G.S. 93A-44 and any other disclosures that the Commission may by regulation require;
- (11) Failing to comply with the provisions of Chapter 75 of the General Statutes in the advertising or promotion of time shares for sale, or failing to assure such compliance by persons engaged on behalf of a developer;
- (12) Failing to comply with the provisions of G.S. 93A- 48 in furnishing complete and accurate information to purchasers concerning any exchange program which may be offered to such purchaser;
- (13) Making any false or fraudulent representation on an application for registration; or
- (14) Violating any rule or regulation promulgated by the Commission.

(b) Following a hearing, the Commission shall also have power to suspend or revoke any certificate of registration issued under the provisions of this Article or to reprimand or censure any developer when the registrant has been convicted or has entered a plea of guilty or no contest upon which final judgment is entered by a court of competent jurisdiction in this State, or any other state, of the criminal offenses of: embezzlement, obtaining money under false pretense, fraud, forgery, conspiracy to defraud, or any other offense involving moral turpitude which would reasonably affect the developer's performance in the time share business.

(c) The Commission may appear in its own name in superior court in actions for injunctive relief to prevent any person or entity from violating the provisions of this Article or rules promulgated by the Commission. The superior court shall have the power to grant these injunctions even if criminal prosecution has been or may be instituted as a result of the violations, or regardless of whether the person or entity has been registered by the Commission.

(d) Each developer shall maintain or cause to be maintained complete records of every time share transaction including records pertaining to the deposit, maintenance, and withdrawal of money required to be held in a trust or escrow account, or as otherwise required by the Commission, under G.S. 93A-45 of this Article. The Commission may inspect these records periodically without prior notice and may also inspect these records whenever the Commission determines that they are pertinent to an investigation of any specific complaint against a registrant.

"§ 93A-55. Private enforcement.—The provisions of the Article shall not be construed to limit in any manner the right of a purchaser or other person injured by a violation of this Article to bring a private action.

"§ 93A-56. Penalty for violation of Article.—Any person violating the provisions of this Article shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be punished by a fine or imprisonment, or by both fine and imprisonment, in the discretion of the court.

"§ 93A-57. Release of liens.—(a) Prior to any recordation of the instrument transferring a time share the developer shall record or furnish to the purchaser a release of all liens affecting that time share or shall provide a surety bond or insurance against the lien from a company acceptable to the Commission as provided for liens on real estate in this State, or such underlying lien document shall contain a provision wherein the lien holder subordinates its rights to that of a time share purchaser who fully complies with all of the provisions and terms of the contract of sale.

(b) Unless a time share owner or a time share owner who is his predecessor in title agree otherwise with the lienor, if a lien other than a 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 his time share from a lien upon payment of the amount of the lien attributable to his time share. The amount of the payment must 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 agent may not assess or have a lien against that time share for any portion of the expenses incurred in connection with that lien."

Sec. 2. Sections 93A-51, 93A-52 and 93A-53 of this act shall become effective January 1, 1984, and all additional sections shall become effective July 1, 1984.

In the General Assembly read three times and ratified, this the 19th day of July, 1983.