

GENERAL ASSEMBLY OF NORTH CAROLINA  
1985 SESSION

CHAPTER 578  
HOUSE BILL 589

AN ACT TO REQUIRE RECORDATION OF TIME SHARE INSTRUMENTS AND  
TO PROVIDE OTHER PROTECTIONS FOR TIME SHARE PURCHASERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 93A-41 is amended by adding four subdivisions to read:

"(5a) 'Independent escrow agent' means a licensed attorney located in this State or a financial institution located in this State;

(7a) 'Project broker' means a natural person licensed as a real estate broker and designated by the developer to supervise brokers and salesmen at the time share project;

(9a) 'Time share instrument' means an instrument transferring a time share or any interest, legal or beneficial, in a time share to a purchaser, including a contract, installment contract, lease, deed, or other instrument;

(11a) 'Time share registrar' means a natural person who is designated by the developer to record or cause time share instruments and lien releases to be recorded and to fulfill the other duties imposed by this Article;"

Sec. 2. G.S. 93A-42(b) is amended by inserting the words "time share" between the words "the" and "instrument" in the first sentence; and by deleting the word "document" in the second sentence and substituting the words "time share instrument".

Sec. 3. G.S. 93A-42 is amended by adding at the end new subsections (c), (d), (e), and (f) to read:

"(c) The developer shall record or cause to be recorded a time share instrument:

(1) not less than six days nor more than 45 days following the execution of the contract of sale by the purchaser; or

(2) not later than 120 days following the execution of the contract of sale by the purchaser, provided that all payments made by the purchaser shall be placed by the developer with an independent escrow agent upon the expiration of the 10-day escrow period provided by G.S. 93A-45(c).

(d) The independent escrow agent provided by G.S. 93A-42(c)(2) shall deposit and maintain the purchaser's payments in an insured trust or escrow account in a bank or savings and loan association located in this State. The independent escrow agent shall return all payments to the purchaser at the expiration of 120 days following the execution of the contract of sale by the purchaser, unless prior to that time the time share instrument has been recorded. Upon recordation of the time share instrument, the independent escrow agent shall pay the purchaser's funds to the developer. Upon request

by the Commission, the independent escrow agent shall promptly make available to the Commission inspection of records of money held by him.

(e) In no event shall the developer be required to record a time share instrument if the purchaser is in default of his obligations.

(f) Recordation under the provisions of this section of the time share instrument shall constitute delivery of that instrument from the developer to the purchaser."

Sec. 4. G.S. 93A-45(a) is amended by deleting the last sentence of that subsection and substituting the following:

"The purchaser may not waive this right of cancellation. Any oral or written declaration or instrument that purports to waive this right of cancellation is void."

Sec. 5. G.S. 93A-52(d) is amended by deleting the phrase "seven hundred fifty dollars (\$750.00)" and substituting the phrase "one thousand five hundred dollars (\$1,500)".

Sec. 6. G.S. 93A-54(a) is amended as follows:

- (1) by deleting the words "or any developer" in the second sentence of the first paragraph and substituting ", developer, or project broker"; and
- (2) by deleting the words "or developer" in the third sentence of the first paragraph and substituting ", developer, or project broker"; and
- (3) by rewriting the second paragraph to read:

"The Commission shall have the power to suspend or revoke at any time a real estate license issued to a time share salesman or project broker, or a certificate of registration of a time share project issued to a developer; or to reprimand or censure such salesman, developer, or project broker; 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, developer, or project broker to be guilty of:"

Sec. 7. G.S. 93A-54(a)(9) is amended by inserting between the word "Article" and the semicolon the following:

"or failing to place with an independent escrow agent the funds of a time share purchaser when required by G.S. 93A-42(c)".

Sec. 8. G.S. 93A-54(a)(13) is amended by deleting the phrase "registration; or" and substituting the phrase "registration;"

Sec. 9. G.S. 93A-54(a)(14) is amended by deleting the phrase "Commission." and substituting the phrase "Commission;"

Sec. 10. G.S. 93A-54(a) is amended by adding at the end new subdivisions (15) and (16) to read:

"(15) Failing to record or cause to be recorded a time share instrument as required by G.S. 93A-42(c), or failing to provide a purchaser the protection against liens required by G.S. 93A- 57(a); or (16) Failing as a time share project broker to exercise reasonable and adequate supervision of the conduct of sales at his project or location by the brokers and salesmen under his control."

Sec. 11. G.S. 93A-56 is rewritten to read:

**"§ 93A-56. Penalty for violation of Article.**—Except as provided in G.S. 93A-58, any person violating the provisions of this Article shall be guilty of a misdemeanor and shall be punished by a fine, imprisonment, or both, in the discretion of the court."

Sec. 12. G.S. 93A-57(a) is rewritten to read:

"(a) Prior to any recordation of the instrument transferring a time share, the developer shall record and furnish notice to the purchaser of a release or subordination 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 lienholder 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."

Sec. 13. Article 4 of Chapter 93A of the General Statutes is amended by adding at the end two new sections to read:

**"§ 93A-58. Registrar required; criminal penalties; project broker.**—(a) Every developer of a registered project shall, by affidavit filed with the Commission, designate a natural person to serve as time share registrar for its registered projects. The registrar shall be responsible for the recordation of time share instruments and the release of liens required by G.S. 93A- 42(c) and G.S. 93A-57(a). A developer may, from time to time, change the designated time share registrar by proper filing with the Commission and by otherwise complying with this subsection. No sales or offers to sell shall be made until the registrar is designated for a time share project.

The registrar has the duty to ensure that the provisions of this Article are complied with in a time share project for which he is registrar. No registrar shall record a time share instrument except as provided by this Article.

(b) A time share registrar shall be guilty of a Class J felony if he knowingly or recklessly fails to record or cause to be recorded a time share instrument as required by this Article.

(c) The developer shall designate for each project and other locations where time shares are sold or offered for sale a project broker. The project broker shall act as supervising broker for all persons licensed as salesmen at the project or other location and shall directly, personally, and actively supervise all persons licensed as brokers or salesmen at the project or other location in a manner to reasonably ensure that the sale of time shares will be conducted in accordance with the provisions of this Chapter.

**"§ 93A-59. Preservation of time share purchaser's claims and defenses.**—(a) For one year following the execution of an instrument of indebtedness for the purchase of a time share, the purchaser of a time share may assert against the seller, assignee of the seller, or other holder of the instrument of indebtedness, any claims or defenses available against the developer or the original seller, and the purchaser may not waive the right to assert these claims or defenses in connection with a time share purchase. Any recovery by the purchaser on a claim asserted against an assignee of the seller or other holder of the instrument of indebtedness shall not exceed the amount paid by the purchaser under the instrument. A holder shall be the person or entity with the rights of a holder as set forth in G.S. 25-3- 301.

(b) Every instrument of indebtedness for the purchase of a time share shall set forth the following provision in a clear and conspicuous manner:

'NOTICE

FOR A PERIOD OF ONE YEAR FOLLOWING THE EXECUTION OF THIS INSTRUMENT OF INDEBTEDNESS, ANY HOLDER OF THIS INSTRUMENT OF INDEBTEDNESS IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE PURCHASER COULD ASSERT AGAINST THE SELLER OF THE TIME SHARE. RECOVERY BY THE PURCHASER SHALL NOT EXCEED AMOUNTS PAID BY THE PURCHASER UNDER THIS INSTRUMENT."

Sec. 14. This act shall become effective January 1, 1986.

In the General Assembly read three times and ratified, this the 3rd day of July, 1985.