

Article 4.
Time Shares.

§ 93A-39. Title.

This Article shall be known and may be cited as the "North Carolina Time Share Act." (1983, c. 814, s. 1.)

§ 93A-40. Registration required of time share projects; real estate license required.

(a) It shall be unlawful for any person in this State to engage or assume to engage in the business of a time share developer or time share salesperson to sell or offer to sell a time share located in this State without the time share developer 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. A time share salesperson shall be a licensed real estate broker subject to the provisions of this Chapter unless the time share salesperson (i) meets the requirement for exemption set forth in G.S. 93A-2(c)(1) or (ii) is an employee of the registered time share developer, whose income is reported on IRS Form W-2 of the registered time share developer.

(b) A person responsible as general partner, corporate officer, joint venturer or sole proprietor who intentionally acts as a time share developer, allowing the offering of sale or the sale of time shares to a purchaser, without first obtaining registration of the time share project under this Article shall be guilty of a Class I felony. (1983, c. 814, s. 1; 1987, c. 516, s. 16; 2000-140, s. 19(b); 2005-395, s. 19; 2019-195, s. 4.)

§ 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 a time share or a time share project or program, purchases a time share for purpose of resale, 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, but a person who purchases a time share for his or her occupancy, use, and enjoyment shall not be deemed a 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;
- (5a) "Independent escrow agent" means a licensed attorney located in this State or a financial institution located in this State;
- (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;
- (7a) "Project broker" means a natural person licensed as a real estate broker and designated by the developer to supervise brokers at the time share project;
- (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 of a time share project. "Time share" shall also include a vacation license, prepaid hotel reservation, club membership, limited partnership, vacation bond, or a plan or system where the right to use a time share unit or units for periods of time is awarded or apportioned on the basis of points, vouchers, split, divided, or floating use, even if on a competitive basis with other purchasers;
- (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;
- (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;
- (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;
- (12) "Time share salesperson" 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. (1983, c. 814, s. 1; 1985, c. 578, s. 1; 1999-229, ss. 13, 14.; 2000-140, s. 19(b); 2005-395, s. 20; 2011-217, s. 19.)

§ 93A-42. Time shares deemed real estate.

(a) A time share which in whole or in part burdens or pertains to real property in this State 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 which burdens or pertains to real property located in the State may in accordance with G.S. 47-18 register the time share instrument by which the purchaser acquired the 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 time share instrument 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. An instrument concerning a time share which burdens or pertains to no real property

located in this State shall not be recorded in the office of the register of deeds in any county in this State.

- (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 180 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 federally insured depository institution or a trust institution authorized to do business in this State. The trust or escrow account may be interest-bearing and the interest earned shall belong to the developer, if agreed upon in writing by the purchaser; provided, however, if the time share instrument is not recorded within the time periods specified in this section, then the interest earned shall belong to the purchaser. The independent escrow agent shall return all payments to the purchaser at the expiration of 180 days following the execution of the contract of sale by the purchaser, unless prior to that time the time share instrument has been recorded. However, if prior to the expiration of 180 days following the execution of the contract of sale, the developer and the purchaser provide their written consent to the independent escrow agent, the developer's obligation to record the time share instrument and the escrow period may be extended for an additional period of 120 days. 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 the independent escrow agent.

(e) In no event shall the developer be required to record a time share instrument if the purchaser is in default of the purchaser's 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. (1983, c. 814, s. 1; 1985, c. 578, ss. 2, 3; 1989, c. 302; 2001-487, s. 23(i); 2011-217, s. 20; 2017-25, s. 1(k).)

§ 93A-42.1. Construction and validity of declarations adopted prior to the Time Share Act.

(a) All provisions contained in time share declarations adopted and recorded at the appropriate register of deeds office prior to July 1, 1984, are severable.

(b) The rule against perpetuities may not be applied to defeat any provision of time share declarations or bylaws adopted and recorded at the appropriate register of deeds office prior to July 1, 1984.

(c) Except as otherwise provided in the time share declaration, the board of directors of a time share project may, by an affirmative vote of two-thirds of the board, amend a

provision within the time share declaration, provided that the provision to be changed meets all of the following criteria:

- (1) The provision was adopted as part of the original time share declaration recorded prior to July 1, 1984.
- (2) The provision either converts or provides a mechanism to convert ownership of time share units to tenancy in common.

(d) Title or interest in a time share project or unit is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the time share declaration to comply with this section. Whether a substantial failure to comply with this section impairs marketability shall be determined by the laws of this State relating to marketability.

(e) This section shall not otherwise impair the ability of the individual time share owner's right under the time share declaration, bylaws, or the laws of this State to vote to terminate the time share project or to amend the declaration to provide for the termination of the time share project and interests. (2014-99, s. 1.)

§ 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. (1983, c. 814, s. 1.)

§ 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. (1983, c. 814, s. 1.)

§ 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. 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.

(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 salesperson. 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 salesperson in connection with the sale of the time share shall be immediately deposited by the developer or salesperson in a trust or escrow account in a federally insured depository institution or a trust institution authorized to do business in this State 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 the purchaser has received the statement required by subsection (a) is prima facie evidence of delivery of the statement. (1983, c. 814, s. 1; 1985, c. 578, s. 4.; 2000-140, s. 19(b); 2001-487, s. 23(j); 2017-25, s. 1(l).)

§ 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. (1983, c. 814, s. 1.)

§ 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. (1983, c. 814, s. 1.)

§ 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 the 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 the owner's time share in any properly applied for exchange without 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 requested 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 sub-subdivision c. of subdivision (17) 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/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 Commission 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). (1983, c. 814, s. 1; 2001-487, s. 23(k).)

§ 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. (1983, c. 814, s. 1.)

§ 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 registered under Article 1 of this Chapter shall not be subject to the provisions of G.S. 78A-36. (1983, c. 814, s. 1.; 2000-140, s. 19(b); 2005-395, s. 21.)

§ 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. (1983, c. 814, s. 1.)

§ 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 one thousand five hundred dollars (\$1,500), 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 time share salespersons 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 150B 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 one thousand five hundred dollars (\$1,500) 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 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. Except as prescribed by Commission rules, all fees paid pursuant to this Article shall be nonrefundable. (1983, c. 814, s. 1; 1985, c. 578, s. 5; 1987, c. 827, s. 1; 1999-229, s. 15.; 2000-140, s. 19(b); 2005-395, s. 22.)

§ 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) The Commission shall include a copy of the roster of time share projects current on the preceding June 30 and a statement of the income received by the Commission in connection with the registration of time share projects during the fiscal year ending on June 30 with the report required by G.S. 93B-2. (1983, c. 814, s. 1; 2011-217, s. 21.)

§ 93A-54. Disciplinary action by Commission.

(a) The Commission has 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 salesperson, developer, or project broker 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 salesperson, developer, or project broker has violated any of the provisions of this Article, the Commission may hold a hearing on the allegations of misconduct.

The Commission has the power to suspend or revoke at any time a real estate license issued to a time share salesperson or project broker, or a certificate of registration of a time share project issued to a developer; or to reprimand or censure such salesperson, 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 salesperson, developer, or project broker 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, salespersons, 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 salesperson 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 broker's trust or escrow account as defined by G.S. 93A-6(g) all money received from others in a time share transaction as may be required in G.S. 93A-45 of this Article or failing to place with an independent escrow agent the funds of a time share purchaser when required by G.S. 93A-42(c);

- (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;
- (14) Violating any rule or regulation promulgated by the Commission;
- (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 a project or location by the brokers and salespersons under the time share project broker's control.

(a1) The clear proceeds of fines collected pursuant to subsection (a) of this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(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.

(e) When a licensee is accused of any act, omission, or misconduct under this Article which would subject the licensee to disciplinary action, the licensee may, with the consent and approval of the Commission, surrender the licensee's license and all the rights and

privileges pertaining to it for a period of time to be established by the Commission. A licensee who surrenders a license shall not be eligible for, or submit any application for, licensure as a real estate broker or registration of a time share project during the period of license surrender. For the purposes of this section, the term licensee shall include a time share developer. (1983, c. 814, s. 1; 1985, c. 578, ss. 6-10; 1987, c. 516, ss. 17, 18; 1998-215, s. 138.; 2000-140, s. 19(b); 2001-487, s. 23(l); 2005-395, s. 23; 2011-217, s. 22.)

§ 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. (1983, c. 814, s. 1.)

§ 93A-56. Penalty for violation of Article.

Except as provided in G.S. 93A-40(b) and G.S. 93A-58, any person violating the provisions of this Article shall be guilty of a Class 1 misdemeanor. (1983, c. 814, s. 1; 1985, c. 578, s. 11; 1987, c. 516, s. 19; 1993, c. 539, s. 658; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 93A-57. Release of liens.

(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.

(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. (1983, c. 814, s. 1; 1985, c. 578, s. 12.)

§ 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 the person is registrar. No registrar shall record a time share instrument except as provided by this Article.

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

A person responsible as general partner, corporate officer, joint venturer or sole proprietor of the developer of a time share project is guilty of a Class I felony if the person intentionally allows the offering for sale or the sale of time share to purchasers without first designating a time share registrar.

(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 time share salespersons at the project or other location and shall directly, personally, and actively supervise all such persons 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. (1985, c. 578, s. 13; 1987, c. 516, s. 20; 1993, c. 539, s. 1289; 1994, Ex. Sess., c. 24, s. 14(c); 2000-140, s. 19(b); 2001-487, s. 23(m); 2005-395, s. 24.)

§ 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."

(1985, c. 578, s. 13.)

§§ 93A-60 through 93A-69. Reserved for future codification purposes.