

### **§ 93A-61. Management.**

(a) For each timeshare program, the developer shall provide for a managing entity, which shall be either the developer, a third-party management firm, or timeshare owners' association.

(b) The managing entity may not furnish the name, address, electronic mail address, or contact information of any owner to any person, including any other owner or authorized agent of an owner, unless the owner whose name, address, electronic mail address, or contact information is requested first approves the disclosure in writing. The managing entity shall maintain among its records and provide to the Commission upon request a complete list of the names and addresses of all owners in the timeshare program. The managing entity shall update this list at least quarterly. The managing entity may not publish this owners' list or provide a copy of it to any owner or to any third party other than the Commission. However, the managing entity shall mail to those owners listed on the owners' list materials provided by any owner, upon the written request of that owner, if the purpose of the mailing is to advance legitimate business of the timeshare program, including, but not limited to, a proxy solicitation for any purpose, including the recall of one or more directors elected by the owners or the discharge of the management firm. The managing entity shall be responsible for determining the appropriateness of any requested mailing. The owner who requests the mailing must reimburse the managing entity in advance for the actual, reasonable costs in performing the mailing. A mailing requested for the purpose of advancing legitimate business of the timeshare program shall occur within 30 days after receipt of a request from an owner.

(c) The predecessor in interest, or a transfer service provider for the predecessor in interest, shall deliver to the managing entity a copy of the timeshare instrument, which shall be a copy of the recorded timeshare instrument if the timeshare is a timeshare estate, together with the name and mailing address of the successor in interest within 15 days after the date of transfer, and after such delivery, the successor in interest shall be listed by the managing entity as the owner of the timeshare on the books and records. The managing entity shall not be liable to any person for any inaccuracy in the books and records arising from the failure of the predecessor in interest to timely and correctly notify the managing entity of the name and mailing address of the successor in interest.

(d) The managing entity shall make the books and records reasonably available for inspection by any owner or the authorized agent of an owner. The managing entity may charge the owner a reasonable fee for copying or providing the requested information; however, any owner or agent of an owner shall be permitted to personally inspect and examine the books and records wherever located at any reasonable time, under reasonable conditions, and under the supervision of the custodian of those records. All books and financial records of the timeshare program must be maintained in accordance with generally accepted accounting practices. The managing entity may require any owner or authorized agent of an owner to execute and provide a reasonable confidentiality or nondisclosure agreement prohibiting the disclosure of books and records to nonowners.

(e) All notices or other information sent by a managing entity may be delivered to an owner by electronic mail, provided that the owner first consents electronically to the use of electronic mail for notice purposes. The consent to receive notice by electronic mail is effective until revoked by the owner.

(f) An officer, director, or agent of a timeshare owners' association shall discharge their duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner they reasonably believe to be in the interests of the timeshare owners' association. An officer, director, or agent of a timeshare owners' association shall be exempt from liability for monetary damages unless the officer, director, or agent breached or failed to perform their duties and the breach of, or failure to perform, those duties constitutes a violation of criminal law, constitutes a transaction from which the officer, director,

or agent derived an improper personal benefit, either directly or indirectly, or constitutes recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(g) If a state of emergency is declared pursuant to the North Carolina Emergency Management Act or by any governmental agency with authority in the locale in which timeshare property is located, then the following apply:

- (1) The managing entity may, but is not required to, exercise the following powers:
  - a. Conduct board meetings and owner meetings with notice given in any practicable manner, including publication, radio, conspicuous posting on the timeshare property, electronic means, or any other means the board deems reasonable under the circumstances. Notice of board decisions may be communicated in the same manner as notice of the meetings is given.
  - b. Cancel and reschedule any timeshare owners' association meeting.
  - c. Name as assistant officers persons who are not directors of the board. Named assistant officers shall have the same authority as the executive officers to whom they are assistants during the state of emergency to accommodate the incapacity or unavailability of any officer of the timeshare owners' association.
  - d. Relocate the managing entity's principal office or designate alternative principal offices or conduct business remotely.
  - e. Enter into agreements with government agencies to assist in responding to the emergency.
  - f. Implement an emergency plan for which a state of emergency is declared. The emergency plan may include, but is not limited to, shutting down all or any portion of timeshare units, amenities, or timeshare projects, including shutting off systems or utilities.
  - g. Determine that all or any portion of the timeshare property is unavailable for entry or occupancy by owners or any other person to protect the health, safety, or welfare of owners or persons or to properly respond to the emergency. Should any person enter or occupy the timeshare property when the board has declared the timeshare property is unavailable for entry or occupancy for those persons, and without board approval, the board and the association shall be immune from liability or injury to persons or property arising from that failure or refusal.
  - h. Require occupancy of timeshare units to be aggregated in certain parts of the timeshare property even if other parts of the timeshare property are habitable.
  - i. Require the evacuation of all or any portion of the timeshare property in the event of a mandatory evacuation order or in order to respond to the emergency. Should any person fail or refuse to evacuate the timeshare property where the board has required evacuation, the board and the association shall be immune from liability or injury to persons or property arising from that failure or refusal.
  - j. Make a determination whether all or any portion of the timeshare property can be safely inhabited or occupied; provided, however, any determination is not conclusive as to any determination of habitability pursuant to applicable law or the timeshare declaration.

- k. Temporarily suspend or modify rules and regulations concerning the physical use of all or any portion of the timeshare property.
  - l. Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus or disease notwithstanding timeshare declaration provisions regarding owner approval of changes to the timeshare units or amenities.
  - m. Regardless of any provision to the contrary and even if such authority does not specifically appear in the timeshare declaration, levy special assessments without a vote of the owners.
  - n. Without owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs, to respond to the emergency, or to carry out the duties of the association when operating funds are insufficient.
  - o. Temporarily suspend or modify timeshare program reservation system rules and regulations to manage owner reservations and use rights in the best interests of the owners as a whole, including cancelling existing reservations, extending expiring use rights, or suspending or modifying priority periods and priority reservation rights. A temporary suspension or modification shall be permitted even if owners must compete for reservation and use of timeshare periods and timeshare units on a more than one-to-one use night to use right ratio.
  - p. Toll the expiration of any claim of lien arising under G.S. 93A-62(d)(4) for the duration of the state of emergency, provided that the beginning and ending dates for each period of tolling are recorded in the public records and the owner is notified of the end of the tolling period.
  - q. Modify or suspend assessment and collection requirements and activity, including deferring due dates or waiving late charges and interest, provided that all owners are treated equally as of the date of modification and suspension, and owners who have previously made timely payments have their future assessments adjusted in a manner that fairly compensates them for making timely payments in advance of the modification or suspension.
- (2) The emergency powers authorized and exercised shall be limited to that time reasonably necessary to protect the health, safety, and welfare of the managing entity and the owners and reasonably necessary to mitigate further damage and make emergency repairs, notwithstanding the termination of the state of emergency. Further, the managing entity may take any actions that are necessary to implement the exercised powers even if the implementation takes place after the termination of the state of emergency, provided that the implementation is necessary and does not go beyond the scope of the exercised power.
- (3) In the exercise of emergency powers, the managing entity may take into account the economic consequences of the emergency to the owners; however, the managing entity shall give greater weight to the health, safety, and welfare of the managing entity and the owners and mitigation of further damage and adhere to the business judgment rule in balancing economic considerations with owner opportunity to enjoy the use of the timeshare property.
- (4) In the exercise of the emergency powers, the managing entity will be deemed to have met any duty of care if the managing entity has relied upon advice of

emergency management officials or upon the advice of licensed professionals with applicable expertise. (2021-163, s. 1(c); 2021-192, s. 5(a).)