

§ 93A-68. Timeshare transfer services.

(a) In the course of advertising, marketing, promoting, offering, sale, or performance of any timeshare transfer services, no person shall do any of the following:

- (1) Engage in any timeshare transfer services for compensation, or the expectation of receiving compensation, without first obtaining a written timeshare transfer services agreement signed by the consumer timeshare reseller that complies with this section.
- (2) Fail to provide both the consumer timeshare reseller and the independent escrow agent required by this section with an executed copy of the timeshare transfer services agreement.
- (3) Advise, suggest, or assist with advising or suggesting that a consumer timeshare reseller cease making any payment of assessments, ad valorem real estate taxes, or any other sums imposed against the consumer resale timeshare, or any payment of any amounts due to a mortgagee or other lienor under a mortgage or other lien or encumbrance secured by the consumer resale timeshare.
- (4) Represent, expressly or by implication, that (i) a consumer timeshare reseller cannot or should not contact or communicate with the developer, managing entity, exchange company, mortgagee, or lienor or (ii) the developer, managing entity, exchange company, mortgagee, or lienor is prohibited from contacting or communicating with the consumer timeshare reseller.
- (5) Offer, obtain, negotiate, arrange, or assist with offering, obtaining, negotiating, arranging a timeshare transfer service that disposes of the consumer resale timeshare through foreclosure of the consumer resale timeshare for (i) the nonpayment of assessments, ad valorem real estate taxes, or any other sums imposed against the consumer resale timeshare or (ii) nonpayment of amounts due to a mortgagee or other lienor under a mortgage or other lien encumbrance secured by the consumer resale timeshare.
- (6) Charge or accept a fee for obtaining, negotiating, arranging, or assisting with obtaining, negotiating, or arranging the voluntary relinquishment of a consumer resale timeshare to a managing entity in lieu of payment of assessments or ad valorem real estate taxes.

(b) A consumer timeshare reseller has the right to cancel the timeshare transfer services agreement until midnight of the fifth day after the execution of the timeshare transfer services agreement. The consumer timeshare reseller may not waive this right of cancellation. Any oral or written declaration or instrument that purports to waive this right of cancellation is void. Cancellation under this section is without penalty, and the refund of all monies received by the transfer service provider shall be made within 20 days of demand therefor by the consumer timeshare reseller or within five days after receipt of cleared funds from the consumer timeshare reseller, whichever is later.

(c) Each timeshare transfer services agreement shall contain the following:

- (1) A statement that no fee, cost, or other compensation may be received by or paid to the transfer service provider before the delivery to the consumer timeshare reseller of written evidence that all promised timeshare transfer services have been performed, including:
 - a. Delivery to both the consumer timeshare reseller and the timeshare program managing entity of a copy of the recorded timeshare instrument or other legal document evidencing the transfer of ownership of or legal title to the consumer resale timeshare to the

transferee, accompanied by the full name, address, and other known contact information for the transferee.

- b. Delivery to the consumer timeshare reseller of a copy of the legal document executed by the vendor or obligee evidencing the mutually agreed upon termination of the timeshare instrument or timeshare loan obligation relating to the consumer resale timeshare.
- (2) The name, address, current phone number, and current email address of the independent escrow agent required by this section.
 - (3) A specific, detailed description of each timeshare transfer service promised to be provided, including a statement of the last date by which each promised service will be fully performed, and including a statement that the transfer service provider will deliver to the consumer timeshare reseller written notice of the full performance of each timeshare transfer service, together with a copy of the legal document evidencing the completed performance of the service.
 - (4) The total cost to the consumer timeshare reseller of each timeshare transfer service promised to be provided pursuant to subdivision (3) of this subsection together with an itemized list of all of the fees and costs that comprise the total cost of that service.
 - (5) The terms or conditions of any refund, cancellation, exchange, or repurchase policy for a timeshare transfer service, including the circumstances under which a guaranteed or nonguaranteed, full or partial refund will be granted.
 - (6) A statement in conspicuous type that nonpayment of a timeshare loan obligation or assessment obligation may lead to a foreclosure action or other proceeding that could result in the loss of ownership of the timeshare and negative consequences for the consumer timeshare reseller's credit and tax liability.
 - (7) A statement in substantially the following form in conspicuous type immediately preceding the space in the timeshare transfer services agreement provided for the consumer timeshare reseller's signature:

[Insert transfer service provider name] has agreed to provide you with timeshare transfer services under this timeshare transfer services agreement. After those services have been fully performed, the transfer service provider is obligated to provide you with written notice of full performance and a copy of the recorded instrument or other legal document evidencing the transfer or assignment of your timeshare, the termination of your timeshare contract, or the release from a timeshare loan or assessment obligation. Any fee or other compensation paid by you under this agreement before full performance by [Insert transfer service provider name] must be held in escrow by the escrow agent specified in this agreement, and the transfer service provider is prohibited from receiving any such fee or other compensation until all promised timeshare transfer services have been performed.

Timeshare Owner's Right of Cancellation

You have an unwaivable right to cancel this agreement for any reason within five days after the date you sign this agreement. If you decide to cancel this contract, you must notify [insert name of transfer service provider] in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to [insert name and mailing address of transfer service provider] or to [insert transfer service provider's email address]. Your refund will be made within 20 days after receipt of notice of

cancellation or within five days after receipt of funds from your cleared check, whichever is later.

IMPORTANT: It is recommended that you contact your developer, managing entity, mortgagee, or lienor before signing this agreement. Your developer, management entity, mortgagee, or lienor may be willing to negotiate a payment plan, restructure your debt obligation, or accept the transfer of your timeshare free of charge.

(d) If the timeshare transfer services to be provided include relief to be obtained from the consumer timeshare reseller's managing entity, mortgagee, or lienor, the timeshare transfer service provider may not do the following:

- (1) Request or receive payment of any fee or other consideration until the consumer timeshare reseller has executed a written agreement between the consumer timeshare reseller and the consumer timeshare reseller's managing entity, mortgagee, or lienor incorporating the offer of relief the timeshare transfer service provider obtained from the managing entity, mortgagee, or lienor.
- (2) Fail to disclose, on a separate page, in conspicuous type, substantially the following statement at the time the timeshare transfer service provider furnishes the consumer timeshare reseller with the written agreement specified in subsection (c) of this section, the following:

Important Notice

This is an offer of relief we obtained from your [insert name of managing entity, mortgagee, or lienor]. You may accept or reject the offer. If you reject the offer, you do not have to pay us for this service. If you accept the offer, you will have to pay us [insert total amount] for this service.

(e) Before entering into any timeshare transfer services agreement, a person providing timeshare transfer services shall establish an escrow account with an independent escrow agent for the purpose of protecting the funds or other property of consumer timeshare resellers required to be escrowed by this subsection. The independent escrow agent shall maintain the escrow account only in such a manner as to be under the direct supervision and control of the independent escrow agent. The independent escrow agent shall have a fiduciary duty to each consumer timeshare reseller to maintain the escrow account in accordance with good accounting practices and to release the consumer timeshare reseller's funds or other property from escrow only in accordance with this section.

(f) All funds that are received from or on behalf of a consumer timeshare reseller under a timeshare transfer services agreement shall be deposited into the escrow account. A fee, cost, or other compensation that is due or that will be paid to the transfer service provider must be held in the escrow account until the transfer service provider has fully complied with all of the obligations under the timeshare transfer services agreement and this section.

(g) The funds required to be escrowed may only be released from escrow as follows:

- (1) On the order of the transfer service provider upon presentation of an affidavit by the transfer service provider that all promised timeshare transfer services have been performed as set forth in the timeshare transfer services agreement, including delivery to both the consumer timeshare reseller and the timeshare program managing entity of either, as applicable: (i) a copy of the recorded instrument or other legal document evidencing the transfer of ownership of or legal title to the consumer resale timeshare to the transferee or (ii) a copy of the legal document executed by the vendor or obligee evidencing the termination of the timeshare instrument or timeshare loan obligation relating to the consumer resale timeshare.

- (2) To a managing entity to pay any assessments, transfer fees, or other moneys owed with respect to the consumer resale timeshare or to pay a governmental agency for the purpose of completing and perfecting the transfer.
- (h) The independent escrow agent shall retain all timeshare transfer services agreements, escrow account records, and affidavits received pursuant to this subsection for a period of five years.
- (i) A transfer service provider, an agent or third-party service provider for the transfer services provider, or an independent escrow agent who intentionally fails to comply with the provisions of this subsection concerning the establishment of an escrow account, deposits of funds into escrow, withdrawal therefrom, and maintenance of records is guilty of a Class E felony.
- (j) The provisions of this section that apply to transfer service providers do not apply to any of the following:
- (1) A resale broker who offers timeshare transfer services to a consumer timeshare reseller, so long as the resale broker complies in all respects with the provisions of Article 1 of this Chapter.
 - (2) An attorney who is licensed in this State and a member in good standing or a title insurer or agent licensed in this State in good standing who offers timeshare transfer services to a consumer timeshare reseller.
 - (3) A mortgagee or servicer or lienor, or agent or contractor of a mortgagee or servicer or lienor, to the extent that any of them offers timeshare transfer services to an obligor related to a mortgage, lien, or other encumbrance of a mortgagee, servicer, or lienor against the obligor's timeshare.
- (k) This section shall not apply to the transfer of ownership of a consumer resale timeshare from a consumer timeshare reseller to the developer or managing entity of that timeshare program unless and only to the extent the transfer includes the assistance of a transfer service provider.
- (l) Only an attorney licensed in this State or any person authorized to perform nonjudicial foreclosures pursuant to this Article may offer services to a consumer timeshare reseller in connection with an involuntary transfer, or proposed involuntary transfer, of a consumer resale timeshare.
- (m) Notwithstanding obligations placed upon any other persons by this section, it is the duty of a transfer service provider to supervise, manage, and control all aspects of the offering of timeshare transfer services by any agent or employee of the transfer service provider. Any violation of this section that occurs during such offering shall be deemed a violation by the transfer service provider as well as by the person actually committing the violation.
- (n) Providing timeshare transfer services in this State, including acting as an agent or third-party service provider for a transfer service provider, constitutes operating, conducting, engaging in, or carrying on a business or business venture in this State.
- (o) An owner, managing entity, or developer may bring an action for injunctive relief and recover their reasonable attorneys' fees and costs against a timeshare service provider for a violation of this section.
- (p) Upon a consumer timeshare reseller's request, the developer or managing entity shall provide information regarding relinquishment or other disposition options of the consumer timeshare reseller's timeshare available to the timeshare reseller through the developer or managing entity, if available.
- (q) Any violation of this section is an unfair or deceptive act or practice prohibited by G.S. 75-1.1. (2021-163, s. 1(c); 2021-192, s. 5(a); 2022-75, s. 17(b).)