



SENATE BILL 877: Exempt Time-Shares/Rule Against Perpetuities

2013-2014 General Assembly

Committee: Senate Judiciary I
Introduced by: Sen. Cook
Analysis of: PCS to First Edition
S877-CSTO-39

Date: June 25, 2014
Prepared by: Shelly DeAdder
Committee Counsel

SUMMARY: Senate Bill 877 would allow timeshare declarations filed prior to July 1, 1984 to be amended to remove certain provisions that will automatically convert individual timeshare ownership interests into tenancy-in-common ownership on a specified date. These timeshares will not be subject to the rule against perpetuities.

The PCS makes a change to subsection (c) to provide that the timeshare board may change the declarations by a two-thirds vote *if* the declarations do not provide otherwise. The PCS removes subsection (d).

[As introduced, this bill was identical to H1253, as introduced by Reps. Tine, Steinburg]

CURRENT LAW: The common-law rule against perpetuities dates back to the 17th century and was created to restrict a person's power to perpetually control ownership and possession of his or her property after death. The common law rule provides that no interest is good unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest. If the interest is not certain to vest in 21 years, the interest is void at its inception. In 1995, the General Assembly enacted legislation to adopt the Uniform Statutory Rule Against Perpetuities. G.S. 41-15 *et seq.* The statutes override the common law rule and establish a "wait and see" approach whereby an interest that would have violated the common law rule is allowed 90 years to vest or terminate.

Timeshares are governed by Article 4 of Chapter 93A of the General Statutes.¹ Some forms of timeshares convey only an interval ownership, not a vested fee simple. Consequently, because of the mechanical operation of the rule against perpetuities, a timeshare declaration that establishes a governing board must include a specific cut-off, or risk being voided by the rule.² This cut off generally sets a specific year in which the interval owners will become tenants in common with a vested property interest.

BILL ANALYSIS: Section 1 of the bill would allow for timeshare declarations adopted and recorded prior to July 1, 1984 to be exempted from the rule against perpetuities and would give Boards of Directors, unless otherwise provided in the declaration, the ability to amend, by a two-thirds vote, any provision in a declaration that:

- Was adopted at the same time as the original recorded declaration
- Converts current individual ownership of timeshare units into tenancy in common

¹ Timeshares established prior to July 1, 1984 are not covered under most of its provisions.

² Homeowners' associations and condominium owners' associations already have statutory provisions exempting them from the rule against perpetuities.



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The remaining portions of Section 1 would (i) declare that title would not be unmarketable solely by failure to comply with the statute, and (ii) clarify that no other right under the timeshare declaration, bylaws, or laws of the State are to be affected by this proposed statute.

Section 2 limits the operation of the bill to Currituck and Dare counties.

EFFECTIVE DATE: The act is effective when it becomes law.