

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

H.B. 531  
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40333-MQ-111

Short Title: Timeshare Act Changes. (Public)

Sponsors: Representative Howard.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE CHANGES TO THE NORTH CAROLINA TIMESHARE ACT.

3 The General Assembly of North Carolina enacts:

4 **SECTION 1.(a)** G.S. 93A-34 reads as rewritten:

5 "**§ 93A-34. Certification required; application for certification; fees; requirements for**  
6 **certification.**

7 ...

8 (b1) Applications for education providers utilizing methods other than only distance  
9 education shall contain all of the following:

- 10 (1) Name and address of the applicant.  
11 (2) Names, biographical data, and qualifications of director, administrators, and  
12 instructors.  
13 (3) Description of education provider school facilities and equipment, if any.  
14 (4) Description of course or courses to be offered and instructional materials to  
15 be utilized.  
16 (5) Information on policies and procedures regarding administration, record  
17 keeping, entrance requirements, registration, tuition and fees, grades, student  
18 progress, attendance, and student conduct.  
19 (6) Copies of bulletins, catalogues, and other official publications.  
20 ~~(7) Copy of bond required by G.S. 93A-36.~~  
21 (8) Any additional information as the Commission may deem necessary to enable  
22 it to determine the adequacy of the instructional program and the ability of the  
23 applicant to operate in such a manner as would best serve the public interest.

24 ...."

25 **SECTION 1.(b)** G.S. 93A-36 is repealed.

26 **SECTION 1.(c)** Article 4 of Chapter 93A of the General Statutes reads as rewritten:

27 "Article 4.

28 ~~"Time Shares. Timeshares.~~

29 "**§ 93A-39. Title.**

30 This Article shall be known and may be cited as the "North Carolina ~~Time Share~~ Timeshare  
31 Act."

32 "**§ 93A-40. Registration required of ~~time share projects;~~ timeshare programs; real estate**  
33 **license required.**

34 (a) ~~It~~ Unless exempt under this Article, it shall be unlawful for any person in this State to  
35 engage or assume to engage in the business of a ~~time share developer or time share timeshare~~  
36 salesperson without first obtaining a real estate broker license issued by the North Carolina Real



\* D R H 4 0 3 3 3 - M Q - 1 1 1 \*

1 Estate Commission under the provisions of Article 1 of this Chapter unless the timeshare  
2 salesperson (i) meets the requirement for exemption set forth in G.S. 93A-2(c)(1) or (ii) is an  
3 employee of the registered timeshare developer whose income is reported on IRS Form W-2 of  
4 the registered timeshare's developer. It shall be unlawful for a timeshare developer to sell or offer  
5 to sell a time share located in this State without the time share developer timeshare required to  
6 be registered in this State pursuant to this Article without first obtaining a certificate of  
7 registration for the time share project to be offered for sale issued by the North Carolina Real  
8 Estate Commission under the provisions of this Article. A time share salesperson shall be a  
9 licensed real estate broker subject to the provisions of this Chapter unless the time share  
10 salesperson (i) meets the requirement for exemption set forth in G.S. 93A-2(c)(1) or (ii) is an  
11 employee of the registered time share developer, whose income is reported on IRS Form W-2 of  
12 the registered time share developer. Article.

13 (b) A person responsible as general partner, corporate officer, joint venturer-venture, or  
14 sole proprietor who intentionally acts as a ~~time share~~ timeshare developer, allowing the offering  
15 of sale or the sale of ~~time shares~~ timeshares to a purchaser, without first obtaining registration of  
16 the ~~time share~~ timeshare project under this Article shall be guilty of a Class I felony.

17 (c) The provisions of this Article shall not apply to the following:

- 18 (1) Any arrangement, plan, scheme, or method, including a timeshare program,  
19 wherein the contractually specified maximum total financial obligation on the  
20 owner's part is three thousand dollars (\$3,000) or less during the entire term  
21 of the plan.
- 22 (2) Any arrangement, plan, scheme, or method, including a timeshare program, if  
23 the initial term and any renewal term are each for a period of five years or less,  
24 regardless of the owner's contractually specified maximum total financial  
25 obligation, if any; provided, however, that (i) the period of any optional  
26 renewal term which the owner, in the owner's sole discretion, may  
27 affirmatively elect to exercise, whether or not for additional consideration,  
28 shall not be included, and (ii) the period of any automatic renewals shall be  
29 included unless an owner has the right to terminate the membership at any  
30 time and receive a pro rata refund or the owner receives a notice no less than  
31 30 days and no more than 60 days prior to any renewal term informing the  
32 owner of the right to terminate at any time prior to the date of automatic  
33 renewal.
- 34 (3) The offering or sale, in another jurisdiction, of a timeshare program containing  
35 timeshare units located in this State; provided, however, that the timeshare  
36 program has been registered with the Commission.
- 37 (4) The offering or sale, in this State, of a timeshare program containing only  
38 timeshare units located in another jurisdiction or jurisdictions.
- 39 (5) The offering or sale of no more than seven timeshares within a five-year  
40 period by a consumer timeshare reseller who has acquired the timeshares for  
41 their own use and occupancy and who later offers it for resale, provided that  
42 the owner complies with the provisions of G.S. 93A-67.
- 43 (6) The offering or sale by a managing entity, not otherwise a developer, or a third  
44 party engaged by the managing agent, of 50 or fewer timeshares in the  
45 timeshare program which it manages in a given calendar year to purchasers  
46 who are not existing owners of that timeshare program, provided that the  
47 managing entity complies with the provisions of G.S. 93A-67.
- 48 (7) The conveyance, assignment, or transfer of more than seven timeshares to a  
49 purchaser who subsequently conveys, assigns, or transfers all acquired  
50 timeshares to a single purchaser in a single transaction, which transaction may  
51 occur in stages.

- 1           (8)    A purchaser's acquisition, or the right to acquire, more than seven timeshare  
2           interests from an owner in connection with a loan, securitization, conduit, or  
3           similar financing arrangement transaction and who subsequently arranges for  
4           all or a portion of the timeshares to be offered by a developer in the ordinary  
5           course of business on its own behalf or on behalf of the purchaser.  
6           (9)    The offering of an accommodation, product, service, discount, or other benefit  
7           which is incidental to the timeshare program and which is not necessary for  
8           any accommodation of the timeshare program to be available for use by an  
9           owner in a manner consistent in all material respects with the manner  
10          portrayed by any promotional material, advertising, or public offering  
11          statement.

12   **"§ 93A-41. Definitions.**

13       When used in this Article, unless the context otherwise requires, the term:

- 14          (1)    Assessment. – The share of funds required for the payment of common  
15          expenses which is assessed from time to time against each owner by the  
16          managing entity.  
17          (2)    Board. – The board of directors of a timeshare owners' association.  
18          (3)    Closing or close. – One of the following:  
19               a.    For the sale and purchase of a timeshare estate, conveyance of the legal  
20               or beneficial title to the timeshare estate as evidenced by the delivery  
21               of a timeshare instrument for conveyance of legal title or beneficial  
22               title to the purchaser or to the clerk of superior court in the county  
23               where the timeshare estate is located for recording.  
24               b.    For the sale and purchase of a timeshare use, the final execution and  
25               delivery by all parties of the last document necessary for vesting in the  
26               purchaser the full rights available under the timeshare program.  
27          ~~(4)~~(4) "Commission" means the Commission. – The North Carolina Real Estate  
28          Commission; Commission.  
29          (5)    Common expense. – All of the following:  
30               a.    Those expenses, fees, or taxes properly incurred for the maintenance,  
31               operation, and repair of the timeshare units or facilities, or both,  
32               constituting the timeshare program.  
33               b.    Any other expenses, fees, or taxes designated as common expenses in  
34               a timeshare declaration.  
35          (6)    Conspicuous type. – A print type that is separated on all sides from other type  
36          and print and that is either (i) print type in upper- and lowercase letters two  
37          point sizes larger than the largest nonconspicuous type, exclusive of headings,  
38          on the page on which it appears, but not less than 10-point type, or (ii) where  
39          the use of 10-point type would be impractical or impossible, a different style  
40          of type or print that is conspicuous under the circumstances.  
41          (7)    Consumer resale timeshares. – One of the following:  
42               a.    A timeshare owned by an owner.  
43               b.    One or more reserved occupancy rights relating to a timeshare owned  
44               by an owner.  
45               c.    One or more reserved occupancy rights relating to, or arranged  
46               through, an exchange program in which an owner is a member.  
47          (8)    Consumer timeshare reseller. – An owner who acquires a timeshare for their  
48          own use and occupancy and later offers the timeshare or the occupancy rights  
49          associated with the timeshare for resale or rental, or who contracts with a  
50          transfer service provider.

- 1           ~~(2)~~(9) "Developer" means any Developer. – Any person or entity which (i) creates a  
2           time share or a time share project or program, timeshare, timeshare project,  
3           timeshare program, (ii) purchases a time share timeshare for purpose of resale,  
4           or (iii) is engaged in the business of selling its own time shares timeshares it  
5           owns or controls and shall include any person or entity who controls, is  
6           controlled by, or is in common control with the developer which is engaged  
7           in creating or selling time shares timeshares for the developer, but a person  
8           who purchases a time share for his or her occupancy, use, and enjoyment shall  
9           not be deemed a developer; developer.
- 10          (10) Electronic. – Relating to technology having electrical, digital, magnetic,  
11          wireless, optical, electromagnetic, or similar capabilities.
- 12          ~~(3)~~(11) "Enrolled" means paid membership in exchange programs or membership in  
13          an exchange program evidenced by written acceptance or confirmation of  
14          membership; Enrolled. – Membership in an exchange program.
- 15          ~~(4)~~(12) "Exchange company" means any Exchange company. – Any person operating  
16          an exchange program; program.
- 17          ~~(5)~~(13) "Exchange program" means any opportunity or procedure for the assignment  
18          or exchange of time shares among purchasers in the same or other time share  
19          project; Exchange program. – Any method, arrangement, or procedure for the  
20          voluntary exchange of the right to use and occupy timeshare units among  
21          owners, even if enrollment is not voluntary.
- 22          (14) Foreclosing party. – A trustee, mortgagee, managing entity, or their authorized  
23          agent who has the designated authority to pursue a nonjudicial foreclosure  
24          proceeding pursuant to G.S. 93A-62.
- 25          ~~(5a)~~(15) "Independent escrow agent" means a Independent escrow agent. – A licensed  
26          attorney located in this State State, or a financial institution located in this  
27          State; a federally insured depository institution or licensed title insurance  
28          underwriter or agency, lawfully doing business in this State, which agrees to  
29          make its records of the account available for inspection by the Commission's  
30          representative; provided, however, that (i) the independent escrow agent is not  
31          a relative or an employee of the developer or managing entity, or of any  
32          officer, director, affiliate, or subsidiary thereof, (ii) there is no financial  
33          relationship, other than the payment of fiduciary fees, between the  
34          independent escrow agent and the developer or managing entity, or any  
35          officer, director, affiliate, or subsidiary thereof, and (iii) compensation paid  
36          by the developer to an independent escrow agent is not paid from funds in the  
37          escrow account unless and until the developer is otherwise entitled to receive  
38          the disbursement of such funds from the escrow account in accordance with  
39          this Article. A person shall not be disqualified to serve as an independent  
40          escrow agent solely because of any of the following:
- 41                a. A nonemployee, attorney-client relationship exists between the  
42                developer or managing entity and the independent escrow agent or any  
43                officer, director, affiliate, or subsidiary thereof.
- 44                b. The independent escrow agent provides the developer or managing  
45                entity with routine banking services which do not include construction  
46                or receivables financing or any other lending activities.
- 47                c. The independent escrow agent performs closings for the developer or  
48                issues owner's or lender's title insurance commitments or policies in  
49                connection with such closings.

- 1                    d. The independent escrow agent is a licensed attorney or a licensed title  
2                    insurance underwriter or agency and performs timeshare transfer  
3                    services.
- 4                    (6) "Managing agent" means a person who undertakes the duties, responsibilities,  
5                    and obligations of the management of a time share program;
- 6                    (16) Interestholder. – A developer, a mortgagee, judgment creditor, or other lienor,  
7                    or any other person having an interest in or lien or encumbrance against the  
8                    real property or personal property comprising or underlying the timeshare  
9                    property, including the timeshares and the timeshare units, but excluding the  
10                   timeshare declaration and any encumbrance placed against an owner's  
11                   timeshare securing the owner's payment of purchase money financing for the  
12                   purchase. With respect to a multisite timeshare program which contains  
13                   timeshare units that are also part of an underlying timeshare program or  
14                   condominium or other property regime, the term does not include a developer,  
15                   a mortgagee, judgment creditor, or other lienor, or any other person having an  
16                   interest in or lien or encumbrance against a timeshare in an underlying  
17                   timeshare program or against a timeshare unit or other accommodation in an  
18                   underlying condominium or property regime, except as to any timeshare,  
19                   timeshare unit, or other accommodation that is specifically subject to, or  
20                   otherwise dedicated to, the multisite timeshare program.
- 21                   (17) Lead dealer. – A person who sells or otherwise provides a resale service  
22                   provider or any other person with personal contact information for five or  
23                   more purchasers or owners. If a lead dealer is not a natural person, the term  
24                   shall also include the natural person providing personal contact information  
25                   to a resale service provider or other person on behalf of the lead dealer entity.  
26                   The term does not include developers, managing entities, or exchange  
27                   companies to the extent they provide others with personal contact information  
28                   about purchasers or owners of timeshares in their own timeshare programs or  
29                   members of their own exchange programs. The term does not include persons  
30                   providing personal contact information that is not designed specifically or  
31                   primarily to identify owners of timeshares even though the information  
32                   provided may include five or more purchasers or owners.
- 33                   (18) Managing entity. – A person who has the duties, responsibilities, and  
34                   obligations of managing a timeshare project or timeshare program, including  
35                   a timeshare owners' association or a management firm.
- 36                   (19) Multisite timeshare program. – A timeshare program under which an owner  
37                   obtained, by any means, a recurring right to reserve, use, or occupy timeshare  
38                   units of more than one timeshare project through the mandatory use of a  
39                   reservation system in competition with other owners in the same timeshare  
40                   program.
- 41                   (20) One-to-one use night to use right ratio. – The ratio of the number of owners  
42                   eligible to use the timeshare units on a given night to the number of timeshare  
43                   units available for use within the timeshare program on that night, such that  
44                   the total number of owners eligible to use the timeshare units during a given  
45                   calendar year never exceeds the total number of timeshare units available for  
46                   use in the timeshare program during that year. For purposes of the calculation  
47                   under this definition, each owner must be counted at least once, and no  
48                   individual timeshare units may be counted more than 365 times per calendar  
49                   year or more than 366 times per leap year. An owner who is delinquent in the  
50                   payment of timeshare program assessments shall continue to be considered

- 1 eligible to use the timeshare units of the timeshare program for purposes of  
2 calculating the one-to-one use night to use right ratio.
- 3 (21) Owner. – Any person, other than a developer, who has acquired a timeshare.  
4 ~~(7)(22) "Person" means one Person. – One or more natural persons, corporations,~~  
5 ~~partnerships, associations, trusts, other entities, or any combination~~  
6 ~~thereof;thereof.~~
- 7 (23) Personal contact information. – Any information that can be used to contact a  
8 purchaser or an owner, including, but not limited to, the purchaser's or owner's  
9 name, address, telephone number, and email address.
- 10 ~~(7a)(24) "Project broker" means a Program broker. – A natural person licensed as a~~  
11 ~~real estate broker and designated by the developer to supervise brokers at the~~  
12 ~~time share project;timeshare program.~~
- 13 ~~(8)(25) "Purchaser" means any person other than a developer or lender who owns or~~  
14 ~~acquires an interest or proposes to acquire an interest in a time~~  
15 ~~share;Purchaser. – Any person, other than a developer, who is advertised or~~  
16 ~~solicited to acquire a timeshare, offered a timeshare, or enters into a timeshare~~  
17 ~~instrument to acquire a timeshare.~~
- 18 (26) Regulated party. – Any developer, exchange company, managing entity,  
19 timeshare owners' association, timeshare owners' association director or  
20 officer, third-party management firm, independent escrow agent, lead dealer,  
21 resale broker, resale service provider, resale advertiser, timeshare transfer  
22 provider, timeshare registrar, any other person having duties or obligations  
23 pursuant to this Article, and any of their respective assignees or agents.
- 24 (27) Resale advertiser. – Any person who offers, personally or through an agent,  
25 resale advertising services to consumer timeshare resellers for compensation  
26 or valuable consideration, regardless of whether the offer is made in person,  
27 by mail, by telephone, through the internet, or by any other medium of  
28 communication. The term does not include any of the following:
- 29 a. A resale broker to the extent that resale advertising services are offered  
30 in connection with timeshare resale brokerage services and no fee for  
31 the resale advertising service is collected in advance.
- 32 b. A developer or managing entity to the extent that either of them offers  
33 resale advertising services to owners of timeshares in their own  
34 timeshare programs.
- 35 c. A newspaper, periodical, or website owner, operator, or publisher,  
36 unless the newspaper, periodical, or website owner, operator, or  
37 publisher derives more than ten percent (10%) of its gross revenue  
38 from providing resale advertising services.
- 39 (28) Resale advertising service. – Any good or service relating to, or a promise of  
40 assistance in connection with, advertising or promoting the resale or rental of  
41 a consumer resale timeshare located or offered within this State, including any  
42 offer to advertise or promote the sale or purchase of any such interest.
- 43 (29) Resale broker. – Any person who is issued a brokers license by the North  
44 Carolina Real Estate Commission under the provisions of Article 1 of this  
45 Chapter and who offers or provides resale brokerage services to consumer  
46 timeshare resellers for compensation or valuable consideration, regardless of  
47 whether the offer is made in person, by mail, by telephone, through the  
48 internet, or by any other medium of communication. The term includes any  
49 agent or employee of a resale broker.

- 1           (30) Resale brokerage services. – With respect to a consumer resale timeshare  
2 located or offered within this State, any activity that directly or indirectly  
3 consists of any of the activities regulated under G.S. 93A-1.
- 4           (31) Resale service provider. – Any resale advertiser, or other person or entity,  
5 including any agent or employee of that person or entity, who offers or uses  
6 telemarketing, direct mail, email, or any other means of communication in  
7 connection with the offering of resale brokerage or resale advertising services  
8 to consumer timeshare resellers. The term does not include (i) developers or  
9 managing entities to the extent they offer resale brokerage or resale  
10 advertising services to owners of timeshares in their own timeshare programs  
11 or (ii) resale brokers to the extent that resale advertising services are offered  
12 in connection with resale brokerage services and no fee for the advertising  
13 service is collected in advance.
- 14           (32) Reservation system. – The method, arrangement, procedure, rules, and  
15 regulations by which an owner reserves the use and occupancy of a timeshare  
16 unit for one or more timeshare periods.
- 17           (33) Reservation system operator. – The person who has the responsibility for  
18 operating any reservation system for the timeshare program. Unless the  
19 timeshare declaration provides otherwise, the operator of the reservation  
20 system is the managing entity of a timeshare program. The reservation system  
21 operator may be a third-party entity that has contracted with the developer or  
22 managing entity to provide the reservation system for the timeshare program,  
23 provided that the third party shall be deemed a managing entity as to the  
24 operation of the reservation system for purposes of this Article.
- 25           ~~(9)~~(34) "Time share" means a right to occupy a unit or any of several units during five  
26 or more separated time periods over a period of at least five years, including  
27 renewal options, whether or not coupled with a freehold estate or an estate for  
28 years in a time share project or a specified portion of a time share project.  
29 "Time share" shall also include a vacation license, prepaid hotel reservation,  
30 club membership, limited partnership, vacation bond, or a plan or system  
31 where the right to use a time share unit or units for periods of time is awarded  
32 or apportioned on the basis of points, vouchers, split, divided, or floating use,  
33 even if on a competitive basis with other purchasers;Timeshare. – A timeshare  
34 estate or timeshare use.
- 35           (35) Timeshare declaration. – One or more documents, by whatever name  
36 denominated, establishing, creating, or governing the operation of a timeshare  
37 program.
- 38           (36) Timeshare estate. – An arrangement under which the owner acquired a right  
39 to occupy a timeshare unit together with ownership of a real property interest.
- 40           ~~(9a)~~(37) "Time share instrument" means an Timeshare instrument. – An instrument  
41 transferring a ~~time share~~ timeshare or any interest, legal or beneficial, in a ~~time~~  
42 ~~share~~ timeshare to a purchaser, including a contract, installment contract,  
43 lease, deed, or other ~~instrument~~;instrument.
- 44           (38) Timeshare owners' association. – An association made up of all owners of  
45 timeshares in a timeshare program, including developers.
- 46           (39) Timeshare period. – The period or periods of time when an owner is afforded  
47 the opportunity to use a timeshare unit under the terms of the timeshare  
48 program.
- 49           ~~(10)~~(40) "Time share program" means any arrangement for time shares whereby real  
50 property has been made subject to a ~~time share~~;Timeshare program. – Any  
51 arrangement, plan, program, scheme, or similar device, other than an

1 exchange program, whether by membership, agreement, tenancy in common,  
 2 sale, lease, deed, rental agreement, license, or right-to-use agreement or by  
 3 any other means whereby an owner received the right to use timeshare units  
 4 for a period of time less than a full year during any given year, but not  
 5 necessarily for consecutive years.

6 ~~(11)~~(41) "Time share project" means any real property that is subject to a time share  
 7 program;Timeshare project. – A specific geographic site where all or a portion  
 8 of the timeshare units of a timeshare program are located. If permitted under  
 9 applicable law, separate phases operated as a single development located at a  
 10 specific geographic site under common management may be deemed a single  
 11 timeshare project by the developer.

12 (42) Timeshare property. – The property included in or subject to a timeshare  
 13 program, including timeshares in an underlying timeshare program, one or  
 14 more timeshare units, any amenities, any other property, and appurtenant  
 15 property or rights.

16 ~~(11a)~~(43) "Time share registrar" means a Timeshare registrar. – A natural person who  
 17 is designated by the developer to record or cause time share timeshare  
 18 instruments and lien releases to be recorded and to fulfill the other duties  
 19 imposed by this Article;Article.

20 ~~(12)~~(44) "Time share salesperson" means a Timeshare salesperson. – A person who  
 21 sells or offers to sell on behalf of a developer a time share timeshare to a  
 22 purchaser;and purchaser.

23 (45) Timeshare transfer services. – Any good or service offered in this State, or  
 24 provided to a consumer timeshare reseller resident in this State, or offered  
 25 anywhere in connection with a timeshare program containing timeshare units  
 26 or a timeshare property located in this State that (i) transfers ownership of a  
 27 consumer resale timeshare, (ii) assists with, or promises to assist with, the  
 28 transfer of ownership of a consumer resale timeshare, or (iii) assists or  
 29 promises to assist a consumer timeshare reseller with any relinquishment or  
 30 other disposition of the consumer timeshare reseller's timeshare, including a  
 31 reconveyance or other transfer to a developer or managing entity, which may  
 32 also be referred to as timeshare exit, timeshare cancellation, timeshare relief,  
 33 or any similar phrase. The term does not include resale advertising services.

34 (46) Timeshare transfer services agreement. – A contract or other agreement  
 35 between a transfer service provider and a consumer timeshare reseller in  
 36 which the transfer service provider agrees to provide such services.

37 (47) Transfer service provider. – Any person, including any agent, representative,  
 38 subsidiary, successor, or employee of that person or entity, unless otherwise  
 39 exempt, who offers or uses telemarketing, direct mail, email, or any other  
 40 means of communication in connection with the offering of timeshare transfer  
 41 services.

42 ~~(13)~~(48) "Time share unit" or "unit" means the Timeshare unit or unit. – The real  
 43 property or real property improvement in a project which is divided into time  
 44 shares timeshares and designated for separate occupancy and use.

45 (49) Timeshare use. – An arrangement under which the owner received a right to  
 46 occupy a timeshare unit but did not receive ownership of a real property  
 47 interest.

48 **"§ 93A-42. Time shares Timeshare estates deemed real estate.estate; timeshare uses.**

49 (a) A time share which in whole or in part burdens or pertains to real property in this  
 50 State is deemed to be an interest in real estate, and shall be governed by the law of this State  
 51 relating to real estate.A timeshare estate is deemed to be an interest in real estate and shall be



1 governed by the laws of this State relating to real estate. A timeshare estate includes a right to  
2 use a timeshare unit coupled with a freehold estate or an estate for years with a future interest in  
3 property, an ownership interest in a condominium unit, or a direct or indirect beneficial interest  
4 in a trust if the timeshare instrument contains a provision declaring that such interests are real  
5 property interests and provided that the trust does not contain any timeshares created in personal  
6 property.

7 ~~(b) A purchaser~~ An owner of a ~~time share which burdens or pertains to real property~~  
8 ~~timeshare~~ located in the State ~~may may~~, in accordance with ~~G.S. 47-18~~ G.S. 47-18, register the  
9 ~~time share~~ timeshare instrument by which the ~~purchaser~~ owner acquired the interest and upon  
10 such registration shall be entitled to the protection provided by Chapter 47 of the General Statutes  
11 for the recordation of other real property instruments. A ~~time share~~ timeshare instrument  
12 transferring or encumbering a ~~time share~~ timeshare estate shall not be rejected for recordation  
13 because of the nature or duration of that estate, provided all other requirements necessary to make  
14 an instrument recordable are complied with. An instrument concerning a ~~time share which~~  
15 ~~burdens or pertains to no real property located in this State~~ timeshare use shall not be recorded  
16 in the office of the register of deeds in any county in this State.

17 ~~(e) The developer shall record or cause to be recorded a time share instrument:~~

- 18 ~~(1) Not less than six days nor more than 45 days following the execution of the~~  
19 ~~contract of sale by the purchaser; or~~  
20 ~~(2) Not later than 180 days following the execution of the contract of sale by the~~  
21 ~~purchaser, provided that all payments made by the purchaser shall be placed~~  
22 ~~by the developer with an independent escrow agent upon the expiration of the~~  
23 ~~10 day escrow period provided by G.S. 93A-45(c).~~

24 (c1) Unless the timeshare instrument provides otherwise, the developer shall close on the  
25 sale of a timeshare estate and record or cause to be recorded a timeshare instrument for timeshare  
26 estates located in this State no later than 180 days following the execution of the contract of sale  
27 by the purchaser, provided that all payments made by the purchaser shall be placed by the  
28 developer with an independent escrow agent upon the expiration of the escrow period in  
29 accordance with G.S. 93A-45.

30 ~~(d) The independent escrow agent provided by G.S. 93A-42(c)(2) shall deposit and~~  
31 ~~maintain the purchaser's payments in an insured trust or escrow account in a federally insured~~  
32 ~~depository institution or a trust institution authorized to do business in this State. The trust or~~  
33 ~~escrow account may be interest bearing and the interest earned shall belong to the developer, if~~  
34 ~~agreed upon in writing by the purchaser; provided, however, if the time share instrument is not~~  
35 ~~recorded within the time periods specified in this section, then the interest earned shall belong to~~  
36 ~~the purchaser. The independent escrow agent shall return all payments to the purchaser at the~~  
37 ~~expiration of 180 days following the execution of the contract of sale by the purchaser, unless~~  
38 ~~prior to that time the time share instrument has been recorded. However, if prior to the expiration~~  
39 ~~of 180 days following the execution of the contract of sale, the developer and the purchaser~~  
40 ~~provide their written consent to the independent escrow agent, the developer's obligation to~~  
41 ~~record the time share instrument and the escrow period may be extended for an additional period~~  
42 ~~of 120 days. Upon recordation of the time share instrument, the independent escrow agent shall~~  
43 ~~pay the purchaser's funds to the developer. Upon request by the Commission, the independent~~  
44 ~~escrow agent shall promptly make available to the Commission inspection of records of money~~  
45 ~~held by the independent escrow agent.~~

46 (e) In no event shall the developer be required to close and record a ~~time share~~ timeshare  
47 instrument if the purchaser is in default of the purchaser's ~~obligations~~ obligations under the  
48 contract of sale.

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

1       (g) A timeshare use is not an interest in real property and shall be governed by the laws  
2 of this State relating to personal property. For each transfer of the legal title to a timeshare use  
3 by a developer, the developer shall deliver an instrument evidencing such transfer to the  
4 purchaser at closing. Unless the timeshare instrument provides otherwise, the developer shall  
5 close on the sale of a timeshare use no later than 180 days following the execution of the contract  
6 of sale by the purchaser, provided that all payments made by the purchaser shall be placed by the  
7 developer with an independent escrow agent upon the expiration of the escrow period provided  
8 by G.S. 93A-45(c). In no event shall the developer be required to close on the sale of a timeshare  
9 use if the purchaser is in default of the purchaser's obligations under the contract of sale.

10       (h) A developer may not sell or close on the sale of any timeshare that would cause the  
11 total number of timeshares available for use or sold in the timeshare program to exceed the  
12 one-to-one use right ratio.

13 **"§ 93A-42.1. Construction and validity of declarations adopted prior to the ~~Time Share~~**  
14 **Timeshare Act.**

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

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

20       (c) Except as otherwise provided in the ~~time share~~ timeshare declaration, the board of  
21 directors of a ~~time share~~ timeshare project may, by an affirmative vote of two-thirds of the board,  
22 amend a provision within the ~~time share~~ timeshare declaration, provided that the provision to be  
23 changed meets all of the following criteria:

24           (1) The provision was adopted as part of the original ~~time share~~ timeshare  
25 declaration recorded prior to July 1, 1984.

26           (2) The provision either converts or provides a mechanism to convert ownership  
27 of ~~time share~~ timeshare units to tenancy in common.

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

32       (e) This section shall not otherwise impair the ability of the individual ~~time share~~  
33 timeshare owner's right under the ~~time share~~ timeshare declaration, bylaws, or the laws of this  
34 State to vote to terminate the ~~time share~~ timeshare project or to amend the declaration to provide  
35 for the termination of the ~~time share~~ timeshare project and interests.

36 **"§ 93A-43. Partition.**

37       When a ~~time share~~ timeshare is owned by two or more persons as tenants in common or as  
38 joint tenants, either may seek a partition by sale of that interest under Chapter 46A of the General  
39 Statutes, but no ~~purchaser-owner~~ of a ~~time share~~ timeshare shall maintain a proceeding for  
40 partition, whether by actual partition or by partition sale, of the ~~unit~~ timeshare unit, timeshare  
41 project, or timeshare program in which the ~~time share~~ timeshare is held.

42 **"§ 93A-44. ~~Public Contract of sale; public offering statement.~~**

43 ~~Each developer shall fully and conspicuously disclose in a public offering statement:~~

44           (1) ~~The total financial obligation of the purchaser, which shall include the initial~~  
45 ~~purchase price and any additional charges to which the purchaser may be~~  
46 ~~subject;~~

47           (2) ~~Any person who has or may have the right to alter, amend or add to charges~~  
48 ~~to which the purchaser may be subject and the terms and conditions under~~  
49 ~~which such charges may be imposed;~~

50           (3) ~~The nature and duration of each agreement between the developer and the~~  
51 ~~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.)~~

(a) The contract of sale between a developer and a purchaser for the sale and purchase of a timeshare must include the following:

- (1) The name and address of the developer.
- (2) The name and address of the timeshare program being offered.
- (3) An identification or legal description of the timeshare being sold, including whether any interest in real property or personal property is being conveyed and the number of years constituting the term of the timeshare program or the timeshare if less than the term of the timeshare program.
- (4) If the purchaser acquires a timeshare in a specific timeshare project, the name and location of the timeshare project to which the specific timeshare relates.
- (5) A statement that the purchaser should refer to the timeshare public offering statement for more information required to be provided to the purchaser.
- (6) The initial purchase price and all additional charges to which the purchaser may be subject in connection with the purchase of the timeshare, such as financing, or which will be collected from the purchaser on or before closing, such as the current year's annual assessment or any initial or special fee together with a description of the purpose of such initial or special fee.
- (7) A statement disclosing the amount of the periodic assessments currently assessed against or collected from owners who own similar types of timeshares in that timeshare program.
- (8) The name and address of the independent escrow agent required by G.S. 93A-45(d).
- (9) The purchaser's address for the purposes of delivery of any notices.
- (10) The date the purchaser signs the contract of sale.
- (11) The following statement in conspicuous type:  
"Any resale of this timeshare must be accompanied by certain disclosures in accordance with the North Carolina Timeshare Act."
- (12) A statement in conspicuous type immediately prior to the purchaser's signature block in substantially the following form:  
"You may cancel this contract of sale without any penalty or obligation before midnight five days after the date you sign this contract of sale or received the required public offering statement and all documents required to be delivered to you, whichever is later. If you decide to cancel this contract of sale, you must notify the developer in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to the developer at [insert address]. Any attempt to obtain a waiver of your cancellation right is void and of no effect. While you may execute all closing documents in advance, the closing on your purchase before expiration of your five-day cancellation period is prohibited."

1       (b) Prior to the execution of a contract of sale by a purchaser, each developer shall provide  
2 the purchaser with a public offering statement and shall obtain from the purchaser a written  
3 acknowledgement of receipt of the public offering statement and any documents required to be  
4 delivered to the purchaser. In addition to any other information that the developer discloses, the  
5 public offering statement must contain the following:

6           (1) A cover page stating only the name of the timeshare program and in  
7 conspicuous type, substantially the following statement:

8 "This public offering statement contains important matters to be considered in  
9 acquiring a timeshare. The statements contained in this public offering  
10 statement are only summary in nature. Purchaser should refer to all references,  
11 accompanying exhibits, contract documents, finance documents, and sales  
12 materials. Purchaser should not rely upon oral representations as being  
13 correct. The developer is prohibited from making any representations other  
14 than those contained in the contract of sale and this public offering statement."

15           (2) The name and principal address of the developer.

16           (3) A general description of the timeshare program, including the nature and types  
17 of timeshares in the timeshare program and if it is a multisite timeshare  
18 program.

19           (4) A description of the duration of the timeshare program and if timeshares with  
20 a shorter duration are included.

21           (5) A description of the method by which, and the terms and conditions  
22 governing, an owner's reservation, use, and occupancy of the timeshare units,  
23 including the following:

24           a. The name and principal address of the entity that owns the reservation  
25 system and the entity responsible for operating the reservation system,  
26 their relationship to the developer, and the duration of any agreement  
27 for operating the reservation system.

28           b. A summary of the material rules governing access to and use of the  
29 reservation system, including (i) a description of the limitations and  
30 restrictions on the owners applied in the operation of the timeshare  
31 program, (ii) if such limitations, restrictions, or priorities are not  
32 uniformly applied, a description of the manner in which they are  
33 applied, (iii) an explanation of any priority reservation features that  
34 affect an owner's ability to make reservations for the use of a given  
35 timeshare unit on a first-come, first-served basis, (iv) whether the  
36 owner must be in good standing with respect to payment of all sums  
37 due the managing entity in order to reserve, use, or occupy a timeshare  
38 unit, and (v) the terms and conditions for making, deferring, or  
39 cancelling reservations, including any fees or charges and, if  
40 applicable, a statement that such fees or charges are subject to change  
41 without owner approval including any transaction fees.

42           c. Any periodic adjustment or amendment to the reservation system that  
43 may be conducted in order to respond to owner use patterns and  
44 changes in owner use demand for the timeshare units, timeshare  
45 projects, or timeshare periods. If ownership or use of the timeshare  
46 program is based on a point system, a statement indicating the  
47 circumstances by which the point values may change, the extent of  
48 such changes, and the person or entity responsible for the changes.

49           d. Whether and under what circumstances an owner may lose the right to  
50 reserve, use, or occupy a timeshare unit without being provided with a  
51 substitute reservation, use, or occupancy.

- 1           e.     The disposition of timeshares or time periods that are not reserved by  
2           owners prior to the start of the timeshare period or prior to the start of  
3           any established point in time and who has the right to reserve and  
4           benefit from such unreserved timeshares or timeshare periods.
- 5           f.     If the operator of the reservation system has the right to reserve,  
6           deposit, or rent the timeshare periods or timeshare units for the purpose  
7           of facilitating the use or future use of the timeshare periods or  
8           timeshare units or other benefits made available through the timeshare  
9           program by owners, a statement in conspicuous type, in substantially  
10          the following form, shall be included:  
11          "The managing entity shall have the right to forecast anticipated  
12          reservation and use of the timeshare period or timeshare units and is  
13          authorized to reasonably reserve, deposit, or rent the timeshare period  
14          or timeshare units for the purpose of facilitating the use or future use  
15          of the accommodations or other benefits made available through the  
16          timeshare program by the owners."
- 17          g.     Any use or transaction fees or charges to be paid by owners for the  
18          reservation, use, or occupancy of any timeshare units or amenities and,  
19          if applicable, a statement that the fees or charges are subject to change  
20          without owner approval.
- 21          h.     The rules governing the making, cancelling, or transferring of  
22          reservations.
- 23        (6)    For each timeshare project, the following information:
- 24           a.     A description of the existing timeshare units and future timeshare units  
25           committed to be constructed or obtained, including the location of the  
26           timeshare project or timeshare projects in the timeshare program, and  
27           the number of bedrooms, number of bathrooms, sleeping capacity, and  
28           whether the timeshare unit contains a full kitchen for each timeshare  
29           project.
- 30           b.     A description of any existing amenities and future amenities  
31           committed to be constructed or obtained, and whether such amenities  
32           are included as part of the ownership of a timeshare or made separately  
33           available and on what basis.
- 34           c.     The estimated date that future timeshare units or amenities will be  
35           available as committed, and a description of financial arrangements  
36           for the completion or acquisition of future timeshare units or amenities  
37           as committed.
- 38           d.     A description of the method and timing for performing maintenance  
39           of the timeshare units.
- 40        (7)    A statement indicating that, on an annual basis, the one-to-one use night to  
41           use right ratio will be maintained through the duration of the timeshare  
42           program, except temporarily pursuant to G.S. 93A-61(g), or temporarily as a  
43           result of a casualty or eminent domain action.
- 44        (8)    For multisite timeshare programs, a description of (i) any reserved rights to  
45           make additions, substitutions, or deletions of timeshare units, amenities, or  
46           timeshare projects, (ii) who has the authority to make such additions,  
47           substitutions, or deletions and whether owners have the right to consent, and  
48           (iii) the basis upon which such timeshare units, amenities, or timeshare  
49           projects may be added to, substituted for, or deleted from the timeshare  
50           program.
- 51        (9)    With respect to the managing entity, the following information, if applicable:

- 1           a.     The name and principal address of the managing entity of the  
2           timeshare program.
- 3           b.     Whether the managing entity for any timeshare project is different than  
4           the managing entity of the multisite timeshare program.
- 5           c.     If there is a timeshare owners' association at a timeshare project or for  
6           a multisite timeshare program, whether owners are members of the  
7           timeshare owners' association, together with a general description of  
8           their rights and responsibilities with respect to the timeshare owners'  
9           association.
- 10          d.     If there is a management firm, the term of the management agreement.
- 11       (10) A description of the method for calculating and apportioning assessments  
12       among owners, including the developer, together with a description of the  
13       consequences to the owner if assessments are not timely paid. The description  
14       shall also include whether reserves for the timeshare units and amenities have  
15       been established, and if not, or if any reserves are not fully funded, a statement  
16       to that effect in conspicuous type.
- 17       (11) If the developer intends to guarantee the level of assessments for the timeshare  
18       program, a statement disclosing that the developer may be excused from the  
19       payment of the developer's share of the assessments which would have been  
20       assessed against developer-owned timeshares during the guarantee period;  
21       provided, however, that during the guarantee period, the developer guarantees  
22       to each owner that the assessments imposed upon the owners will not increase  
23       over a stated dollar amount as set forth in the adopted, good-faith budget and  
24       that the developer is obligated to pay all common expenses incurred during  
25       the guarantee period in excess of the total revenues of the timeshare program.
- 26       (12) A statement that the timeshare to be acquired by the purchaser and the  
27       timeshare property, on or before closing, (i) will be free and clear of any  
28       interest in or lien or encumbrance against the timeshare and the timeshare  
29       property by the developer or any interestholders or (ii) are the subject of a  
30       recorded subordination and notice to creditors instrument pursuant to  
31       G.S. 93A-57.
- 32       (13) A description of any civil or criminal suit or adjudication or disciplinary  
33       actions material to the timeshare program of which the developer has  
34       knowledge, including any bankruptcy of the developer that is pending or that  
35       has occurred within the past five years.
- 36       (14) A description of the insurance insuring the timeshare property for damage and  
37       destruction and insuring owners and, if applicable, the timeshare owners'  
38       association.
- 39       (15) A description of the requirements for, or restraint on, the transfer or rental of  
40       a timeshare, including any right of first refusal or the imposition of any fees  
41       or charges.
- 42       (16) A statement disclosing that any funds paid to the developer in connection with  
43       the purchase of a timeshare shall be held by an independent escrow agent in  
44       accordance with G.S. 93A-45(d) or that the developer has provided financial  
45       assurances in an amount equal to or in excess of the funds that would  
46       otherwise be held by the independent escrow agent, and that if the purchaser  
47       elects to exercise the right of cancellation or the developer defaults under the  
48       contract of sale, any funds paid to the developer shall be returned to the  
49       purchaser, as set forth in G.S. 93A-45(c).
- 50       (17) If the developer or managing entity provides purchasers with the opportunity  
51       to become a member of an exchange program in connection with the purchase

- 1           of the timeshare, the name and address of the exchange company and the  
2           material terms of the opportunity.
- 3           (18) Any person who has or may have the right to alter, amend, or add to fees and  
4           charges to which the owner may be subject and the terms and conditions under  
5           which those fees and charges may be imposed.
- 6           (19) In conspicuous type, a statement in substantially the following form:  
7           "The purchase of a timeshare should be based upon its value as a vacation  
8           experience or for spending leisure time, and not considered for purposes of  
9           acquiring an appreciating investment or with an expectation that the timeshare  
10           may be rented or resold."
- 11           (20) A statement that under North Carolina law a timeshare instrument conveying  
12           a timeshare estate located in this State must be recorded in the register of deeds  
13           office at closing.
- 14           (21) Any other information which the Commission may by rule require. The  
15           Commission is also authorized to prescribe by rule the form of the public  
16           offering statement that must be furnished by the developer to each purchaser.
- 17           (c) Prior to the execution of a contract of sale by a purchaser, the following documents,  
18           including any amendments, shall also be provided to the purchaser either attached as an exhibit  
19           to the public offering statement or provided as a separate supplement with the public offering  
20           statement:
- 21                   (1) The timeshare declaration.
- 22                   (2) The timeshare owners' association articles of incorporation and bylaws, if  
23                   applicable.
- 24                   (3) Any timeshare unit or timeshare project rules and regulations.
- 25                   (4) Timeshare program reservation system rules and regulations.
- 26                   (5) An estimate of the current year's operating budget for the timeshare program.
- 27                   (6) For multisite timeshare programs where a timeshare is provided in a particular  
28                   timeshare unit or timeshare project, the applicable documents governing the  
29                   timeshare unit or timeshare project set forth in subdivisions (1) through (5) of  
30                   this subsection must also be separately provided as part of the public offering  
31                   statement.
- 32           (d) Contemporaneously with the execution of a contract of sale by a purchaser, a copy of  
33           the contract of sale signed by the purchaser, receipt for the public offering statement signed by  
34           the purchaser, any financing documents signed by the purchaser, and any other document signed  
35           by the purchaser at the time of execution of the contract of sale.
- 36           (e) A purchaser can elect to execute the contract of sale and any other document required  
37           to be executed by the purchaser by the developer by electronic means and can elect to receive  
38           delivery of the public offering statement and any documents required to be delivered to the  
39           purchaser by electronic means, so long as the developer gives the purchaser the option of  
40           executing or receiving the documents in paper format or by electronic means.
- 41           (f) If a purchaser elects to receive documents electronically at the time of execution of a  
42           contract of sale, a developer shall provide the purchaser a separate paper or email copy of their  
43           cancellation rights in conspicuous type as described in G.S. 93A-44(a)(12).
- 44           **"§ 93A-45. Purchaser's right to cancel; escrow; violation.**
- 45           (a) ~~A developer shall, before transfer of a time share and no later than the date of any~~  
46           ~~contract of sale, provide a prospective purchaser with a copy of a public offering statement~~  
47           ~~containing the information required by G.S. 93A 44. The contract of sale is voidable by the~~  
48           ~~purchaser for five days after the execution of the contract. The contract shall conspicuously~~  
49           ~~disclose the purchaser's right to cancel under this subsection and how that right may be exercised.~~  
50           ~~The purchaser may not waive this right of cancellation. Any oral or written declaration or~~  
51           ~~instrument that purports to waive this right of cancellation is void.~~A purchaser has the right to

1 cancel the contract of sale until midnight of the fifth day after the execution of the contract of  
2 sale or the receipt of the public offering statement pursuant to G.S. 93A-44 and all other  
3 documents required to be provided to the purchaser pursuant to G.S. 93A-44, whichever is later.  
4 The purchaser may not waive this right of cancellation. Any oral or written declaration or  
5 instrument that purports to waive this right of cancellation is void. No closing may occur until  
6 the cancellation period of the purchaser has expired.

7 ~~(b) A purchaser may elect to cancel within the time period set out in subsection (a) by~~  
8 ~~hand delivering or by mailing notice to the developer or the time share salesperson. Cancellation~~  
9 ~~under this section is without penalty and upon receipt of the notice all payments made prior to~~  
10 ~~cancellation must be refunded immediately. Any notice of cancellation shall be considered given~~  
11 ~~on the date postmarked if mailed, or when transmitted from the place of origin if delivered by~~  
12 ~~electronic means, so long as the notice is actually received by the developer or independent~~  
13 ~~escrow agent. If given by means of a writing transmitted other than by mail, the notice of~~  
14 ~~cancellation shall be considered given at the time of delivery at the place for receipt of notice~~  
15 ~~provided by the developer.~~

16 ~~(c) Any payments received by a time share developer or time share salesperson in~~  
17 ~~connection with the sale of the time share shall be immediately deposited by the developer or~~  
18 ~~salesperson in a trust or escrow account in a federally insured depository institution or a trust~~  
19 ~~institution authorized to do business in this State and shall remain in such account for 10 days or~~  
20 ~~cancellation by the purchaser, whichever occurs first. Payments held in such trust or escrow~~  
21 ~~accounts shall be deemed to belong to the purchaser and not the developer. In lieu of such escrow~~  
22 ~~requirements, the Commission shall have the authority to accept, in its discretion, alternative~~  
23 ~~financial assurances adequate to protect the purchaser's interest during the contract cancellation~~  
24 ~~period, including but not limited to a surety bond, corporate bond, cash deposit or irrevocable~~  
25 ~~letter of credit in an amount equal to the escrow requirements. Cancellation under this section is~~  
26 ~~without penalty, and the refund of all monies received by the developer or timeshare salesperson~~  
27 ~~shall be made within 20 days of demand therefor by the purchaser or within five days after receipt~~  
28 ~~of cleared funds from the purchaser, whichever is later.~~

29 ~~(d) If a developer fails to provide a purchaser to whom a time share is transferred with~~  
30 ~~the statement as required by subsection (a), the purchaser, in addition to any rights to damages~~  
31 ~~or other relief, is entitled to receive from the developer an amount equal to ten percent (10%) of~~  
32 ~~the sales price of the time share not to exceed three thousand dollars (\$3,000). A receipt signed~~  
33 ~~by the purchaser stating that the purchaser has received the statement required by subsection (a)~~  
34 ~~is prima facie evidence of delivery of the statement. Prior to a purchaser's execution of a contract~~  
35 ~~of sale, the developer shall establish an escrow account with an independent escrow agent for the~~  
36 ~~purpose of protecting the funds of purchasers required to be escrowed by this subsection. Any~~  
37 ~~funds received prior to closing by a developer or timeshare salesperson in connection with the~~  
38 ~~sale of the timeshare shall be immediately deposited by the developer or salesperson in a trust or~~  
39 ~~escrow account in a federally insured depository institution or a trust institution authorized to do~~  
40 ~~business in this State and shall only be disbursed in accordance with subsection (f) of this section.~~  
41 ~~Payments held in such trust or escrow accounts shall be deemed to belong to the purchaser and~~  
42 ~~not the developer. In lieu of escrow requirements, the Commission shall have the authority to~~  
43 ~~accept, in its discretion, alternative financial assurances adequate to protect the purchaser's~~  
44 ~~interest during the contract of sale cancellation period, including, but not limited to, a surety~~  
45 ~~bond, corporate bond, cash deposit or irrevocable letter of credit in an amount equal to the escrow~~  
46 ~~requirements or a financial assurance posted in another jurisdiction.~~

47 ~~(e) A developer shall not be entitled to the release of any escrowed funds until the~~  
48 ~~developer has provided the independent escrow agent with (i) an affidavit stating that the~~  
49 ~~purchaser has defaulted under the contract of sale and the developer is entitled to the escrowed~~  
50 ~~funds pursuant to the terms of the contract of sale or (ii) an affidavit that the developer has~~  
51 ~~performed all of its obligations under the purchase contract, including completion of construction~~



1 of all promised timeshare units and amenities or the posting of an alternate financial assurance  
2 acceptable to the Commission securing the completion of construction, and the developer and  
3 purchaser have closed on the contract of sale, together with evidence satisfactory to the  
4 independent escrow agent that the timeshare and the timeshare property is either free and clear  
5 of interests in or liens or encumbrances against the timeshare and timeshare property of any  
6 interestholder or the developer has met the requirements of G.S. 93A-57(a).

7 (f) An independent escrow agent shall maintain the accounts called for in this section  
8 only in such a manner as to be under the direct supervision and control of the independent escrow  
9 agent. The independent escrow agent shall have a fiduciary duty to each purchaser to maintain  
10 the escrow accounts in accordance with good accounting practices and to release the purchaser's  
11 funds or other property from escrow only in accordance with this section. The independent  
12 escrow agent shall retain all affidavits received pursuant to this section for a period of five years.  
13 Should the independent escrow agent receive conflicting demands for funds or other property  
14 held in escrow that remain unresolved for more than 30 days, the independent escrow agent shall  
15 notify the Commission of the dispute and either promptly submit the matter to arbitration or, by  
16 interpleader or otherwise, seek an adjudication of the matter by court.

17 (g) If a developer fails to provide an owner to whom a timeshare is transferred with the  
18 cancellation notice as required by G.S. 93A-44(a)(12), the owner, in addition to any rights to  
19 damages or other relief, is entitled to void the transfer and receive from the developer all funds  
20 paid for the timeshare together with an amount equal to ten percent (10%) of the sales price of  
21 the timeshare not to exceed three thousand dollars (\$3,000). A receipt signed by the owner stating  
22 that the owner has received the required notice is prima facie evidence of delivery of the  
23 statement.

24 (h) A timeshare declaration or other instrument establishing or governing a timeshare  
25 program or an underlying timeshare property regime is not an encumbrance for purposes of this  
26 Chapter and does not create a requirement for a subordination and notice to creditors instrument  
27 for purposes of this section from any person.

#### 28 **"§ 93A-46. Prizes.**

29 An advertisement of a ~~time share~~ timeshare which includes the offer of a prize or other  
30 inducement shall fully comply with the provisions of Chapter 75 of the General Statutes.

#### 31 **"§ 93A-47. ~~Time shares~~ Timeshare proxies.**

32 No proxy, power of attorney or similar device given by the ~~purchaser-owner~~ of a ~~time share~~  
33 timeshare regarding ~~the management of the time share program or its facilities voting in a~~  
34 timeshare owners' association shall exceed one year in duration, but the same may be renewed  
35 from year to year.

#### 36 **"§ 93A-48. Exchange programs.**

37 (a) If a purchaser is offered the opportunity to subscribe to any exchange program, the  
38 developer shall, except as provided in subsection ~~(b),~~ (b) of this section, deliver to the purchaser,  
39 prior to the execution of (i) any contract between the purchaser and the exchange company, and  
40 (ii) the ~~sales contract,~~ contract for sale, at least the following information regarding the exchange  
41 program:

- 42 (1) The name and address of the exchange ~~company;~~ company.
- 43 (2) The names of all officers, directors, and shareholders owning five percent  
44 (5%) or more of the outstanding stock of the exchange ~~company;~~ company.
- 45 (3) Whether the exchange company or any of its officers or directors has any legal  
46 or beneficial interest in any developer or managing agent for any ~~time share~~  
47 timeshare project participating in the exchange program and, if so, the name  
48 and location of the ~~time share timeshare~~ project and the nature of the  
49 ~~interest;~~ interest.

- 1 (4) Unless the exchange company is also the developer a statement that the  
2 purchaser's contract with the exchange company is a contract separate and  
3 distinct from the ~~sales contract;contract for sale.~~  
4 (5) Whether the purchaser's participation in the exchange program is dependent  
5 upon the continued affiliation of the ~~time share-timeshare~~ project with the  
6 exchange ~~program;program.~~  
7 (6) Whether the purchaser's membership or participation, or both, in the exchange  
8 program is voluntary or ~~mandatory;mandatory.~~  
9 (7) A complete and accurate description of the terms and conditions of the  
10 purchaser's contractual relationship with the exchange company and the  
11 procedure by which changes thereto may be ~~made;made.~~  
12 (8) A complete and accurate description of the procedure to qualify for and  
13 effectuate ~~exchanges;exchanges.~~  
14 (9) A complete and accurate description of all limitations, restrictions, or  
15 priorities employed in the operation of the exchange program, including, but  
16 not limited to, limitations on exchanges based on seasonality, unit size, or  
17 levels of occupancy, expressed in ~~boldfaced-conspicuous~~ type, and, in the  
18 event that such limitations, restrictions, or priorities are not uniformly applied  
19 by the exchange program, a clear description of the manner in which they are  
20 ~~applied;applied.~~  
21 (10) Whether exchanges are arranged on a space available basis and whether any  
22 guarantees of fulfillment of specific requests for exchanges are made by the  
23 exchange ~~program;program.~~  
24 (11) Whether and under what circumstances an owner, in dealing with the  
25 exchange company, may lose the use and occupancy of the owner's ~~time share~~  
26 ~~timeshare~~ in any properly applied for exchange without being provided with  
27 substitute accommodations by the exchange ~~company;company.~~  
28 (12) The expenses, fees or range of fees for participation by owners in the exchange  
29 program, a statement whether any such fees may be altered by the exchange  
30 company, and the circumstances under which alterations may be ~~made;made.~~  
31 (13) The name and address of the site of each ~~time share-timeshare~~ project or other  
32 property which is participating in the exchange ~~program;program.~~  
33 (14) The number of units in each ~~timeshare~~ project or other property participating  
34 in the exchange program which are available for occupancy and which qualify  
35 for participation in the exchange program, expressed within the following  
36 numerical groupings, 1-5, 6-10, 11-20, 21-50 and 51, and ~~over;over.~~  
37 (15) The number of owners with respect to each ~~time share-timeshare~~ project or  
38 other property which are eligible to participate in the exchange program  
39 expressed within the following numerical groupings, 1-100, 101-249,  
40 250-499, 500-999, and 1,000 and over, and a statement of the criteria used to  
41 determine those owners who are currently eligible to participate in the  
42 exchange ~~program;program.~~  
43 (16) The disposition made by the exchange company of ~~time shares-timeshares~~  
44 deposited with the exchange program by owners eligible to participate in the  
45 exchange program and not used by the exchange company in effecting  
46 ~~exchanges;exchanges.~~  
47 (17) The following information which, except as provided in subsection (b) ~~below,~~  
48 ~~of this section,~~ shall be independently audited by a certified public accountant  
49 in accordance with the standards of the Accounting Standards Board of the  
50 American Institute of Certified Public Accountants and reported for each year  
51 no later than July 1, of the succeeding year:

- 1 a. The number of owners enrolled in the exchange program and such  
2 numbers shall disclose the relationship between the exchange  
3 company and owners as being either fee paying or gratuitous in  
4 ~~nature;~~nature.
- 5 b. The number of ~~time share~~-timeshare projects or other properties  
6 eligible to participate in the exchange program categorized by those  
7 having a contractual relationship between the developer or the  
8 association and the exchange company and those having solely a  
9 contractual relationship between the exchange company and owners  
10 ~~directly;~~directly.
- 11 c. The percentage of confirmed exchanges, which shall be the number of  
12 exchanges confirmed by the exchange company divided by the number  
13 of exchanges properly applied for, together with a complete and  
14 accurate statement of the criteria used to determine whether an  
15 exchange requested was properly applied ~~for;~~for.
- 16 d. The number of ~~time shares~~-timeshares or other intervals for which the  
17 exchange company has an outstanding obligation to provide an  
18 exchange to an owner who relinquished a ~~time share~~-timeshare or  
19 interval during the year in exchange for a ~~time share~~-timeshare or  
20 interval in any future ~~year;~~and year.
- 21 e. The number of exchanges confirmed by the exchange company during  
22 the ~~year;~~and year.
- 23 (18) A statement in ~~boldface~~-conspicuous type to the effect that the percentage  
24 described in sub-subdivision c. of subdivision (17) of this subsection is a  
25 summary of the exchange requests entered with the exchange company in the  
26 period reported and that the percentage does not indicate a purchaser's/owner's  
27 probabilities of being confirmed to any specific choice or range of choices,  
28 since availability at individual locations may vary.

29 The purchaser shall certify in writing to the receipt of the information required by this  
30 subsection and any other information which the Commission may by rule require.

31 (b) The information required by subdivisions ~~(a)(2), (2),~~ (3), (13), (14), (15), and (17) of  
32 subsection (a) of this section shall be accurate as of December 31 of the year preceding the year  
33 in which the information is delivered, except for information delivered within the first 180 days  
34 of any calendar year which shall be accurate as of December 31 of the year two years preceding  
35 the year in which the information is delivered to the purchaser. The remaining information  
36 required by subsection (a) of this section shall be accurate as of a date which is no more than 30  
37 days prior to the date on which the information is delivered to the purchaser.

38 (c) In the event an exchange company offers an exchange program directly to the  
39 purchaser or owner, the exchange company shall deliver to each purchaser or owner, concurrently  
40 with the offering and prior to the execution of any contract between the purchaser or owner and  
41 the exchange company the information set forth in subsection (a) ~~above~~-of this section. The  
42 requirements of this ~~paragraph~~-subsection shall not apply to any renewal of a contract between  
43 an owner and an exchange company.

44 (d) All promotional brochures, pamphlets, advertisements, or other materials  
45 disseminated by the exchange company to purchasers in this State which contain the percentage  
46 of confirmed exchanges described in ~~(a)(17)c.~~ sub-subdivision c. of subdivision (17) of  
47 subsection (a) of this section must include the statement set forth in ~~(a)(18).~~ subdivision (18) of  
48 subsection (a) of this section.

49 **"§ 93A-49. Service of process on exchange company.**

1 Any exchange company offering an exchange program to a purchaser shall be deemed to  
2 have made an irrevocable appointment of the Commission to receive service of lawful process  
3 in any proceeding against the exchange company arising under this Article.

4 **"§ 93A-50. Securities laws apply.**

5 The North Carolina Securities Act, Chapter 78A, shall also apply, in addition to the laws  
6 relating to real estate, to ~~time shares-timeshares~~ deemed to be investment contracts or to other  
7 securities offered with or incident to a ~~time share-timeshare~~; provided, however, in the event of  
8 ~~such the~~ applicability of the North Carolina Securities Act, any offer or sale of ~~time shares~~  
9 ~~timeshares~~ registered under this Article shall not be subject to the provisions of G.S. 78A-24 and  
10 any real estate broker registered under Article 1 of this Chapter shall not be subject to the  
11 provisions of G.S. 78A-36.

12 **"§ 93A-51. Rule-making authority.**

13 The Commission shall have the authority to adopt rules and regulations that are not  
14 inconsistent with the provisions of this Article and the General Statutes of North Carolina. The  
15 Commission may prescribe forms and procedures for submitting information to the Commission.

16 **"§ 93A-52. Application for registration of ~~time share project-timeshare program~~; ~~denial~~  
17 ~~of registration; renewal; reinstatement; and termination of developer's interest.~~**

18 (a) Prior to the offering in this State of any ~~time share-timeshare~~ located in this State, the  
19 developer of the ~~time share project-timeshare program~~ shall make written application to the  
20 Commission for the registration of the ~~project-program~~.

21 (a1) The application shall be accompanied by a fee in an amount fixed by the Commission  
22 but not to exceed one thousand five hundred dollars (\$1,500), and shall include (i) a description  
23 of the ~~project-program~~, (ii) copies of proposed ~~time share instruments including public offering~~  
24 ~~statements, sale contracts, deeds, and other documents referred to therein~~, ~~timeshare declaration,~~  
25 ~~timeshare program governing documents, public offering statement, form timeshare instrument,~~  
26 ~~form contract for sale, if different than the timeshare instrument, and other documents referred~~  
27 ~~to in the public offering statement~~, (iii) information pertaining to any marketing or managing  
28 entity to be employed by the developer for the sale of ~~time shares-timeshares~~ in a ~~time share~~  
29 ~~project or the management of the project-timeshare program~~, (iv) information regarding any  
30 exchange program available to the ~~purchaser-owner~~, (v) an irrevocable appointment of the  
31 Commission to receive service of any lawful process in any proceeding against the developer or  
32 the developer's ~~time share-timeshare~~ salespersons arising under this ~~Article, Article~~, and (vi) such  
33 other information as the Commission may by rule require.

34 (a2) Upon receipt of a properly completed application and fee and upon a determination  
35 by the Commission that the sale ~~and management~~ of the ~~time shares-timeshares~~ in the ~~time share~~  
36 ~~project-timeshare program~~ will be directed and conducted by persons of good moral character,  
37 the Commission shall issue to the developer a certificate of registration authorizing the developer  
38 to offer ~~time shares-timeshares~~ in the ~~project-program~~ for sale. The Commission ~~shall shall~~,  
39 within ~~45-30~~ days after receipt of an incomplete application, notify the developer by mail that the  
40 Commission has found specified deficiencies, and shall, within ~~45-60~~ days after the receipt of a  
41 properly completed application, either issue the certificate of registration or notify the developer  
42 by mail ~~or by electronic means~~ of any specific objections to the registration of the ~~project-The~~  
43 ~~program~~. ~~Once issued, the certificate shall be prominently displayed in the office of the developer~~  
44 ~~on the site of the project available for inspection upon request of the Commission, and a copy of~~  
45 ~~the certificate shall be available for inspection by written request from any purchaser or owner.~~

46 (a3) The developer shall promptly report to the Commission any and all material changes  
47 in the information required to be submitted for the purpose of the registration. The developer  
48 shall also immediately furnish the Commission complete information regarding any change in  
49 its interest in a registered ~~time share project~~. ~~In the event timeshare program, other than the~~  
50 ~~transfer of timeshares to purchasers in the ordinary course of its business. If a developer disposes~~  
51 ~~of, or otherwise terminates its interest in a time share project-timeshare program, the developer~~

1 shall cease all marketing and sales of timeshares, certify to the Commission in writing that its  
2 interest in the ~~time share project~~ timeshare program is ~~terminated~~ terminated, and shall return to  
3 the Commission for cancellation the certificate of registration.

4 (b) ~~In the event~~ If the Commission finds that there is substantial reason to deny the  
5 application for registration as a ~~time share project,~~ timeshare program, the Commission shall  
6 notify the ~~applicant~~ developer that such application has been denied and shall afford the ~~applicant~~  
7 developer an opportunity for a hearing before the Commission to show cause why the application  
8 should not be denied. In all proceedings to deny a certificate of registration, the provisions of  
9 Chapter 150B of the General Statutes shall be applicable.

10 (c) The acceptance by the Commission of an application for registration shall not  
11 constitute the approval of its contents or waive the authority of the Commission to take  
12 disciplinary action as provided by this Article.

13 (d) All certificates of registration granted and issued by the Commission under the  
14 provisions of this Article shall expire on the 30th day of June following issuance thereof, and  
15 shall become invalid after ~~such that~~ date unless reinstated. ~~Renewal of such~~ A certificate ~~may be~~  
16 ~~effected at any time during the month of June preceding the date of expiration of such registration~~  
17 ~~upon proper application to the Commission and by the payment of a renewal fee may be renewed~~  
18 45 days prior to the expiration date by filing an application with and paying to the Commission  
19 the timeshare registration renewal fee fixed by the Commission but not to exceed one thousand  
20 five hundred dollars (\$1,500) for each time share project. The developer shall, when making  
21 application for renewal, also provide a copy of the report required in G.S. 93A-48. timeshare  
22 program. Each certificate reinstated after the expiration date thereof shall be subject to a fee of  
23 fifty dollars (\$50.00) in addition to the required renewal fee. ~~In the event a time share~~ If a  
24 developer fails to reinstate the registration within 12 months after the expiration date thereof, the  
25 Commission may, in its discretion, consider the ~~time share project~~ timeshare program as not  
26 having been previously registered, and thereby subject to the provisions of this Article relating  
27 to the issuance of an original certificate. Duplicate certificates may be issued by the Commission  
28 upon payment of a fee of ~~one dollar (\$1.00)~~ five dollars (\$5.00) by the registrant developer.  
29 Except as prescribed by Commission rules, all fees paid pursuant to this Article shall be  
30 nonrefundable.

31 **"§ 93A-53. Register of applicants; roster of registrants; ~~registered projects;~~ financial report**  
32 **to Secretary of State.**

33 (a) The Executive Director of the Commission shall keep a register of all applicants for  
34 certificates of registration, showing for each the date of application, name, business address, and  
35 whether the certificate was granted or refused.

36 (b) The Executive Director of the Commission shall also keep a current roster showing  
37 the name and address of all ~~time share projects~~ timeshare programs registered with the  
38 Commission. The roster shall be kept on file in the office of the Commission and be open to  
39 public inspection.

40 (c) The Commission shall include a copy of the roster of ~~time share projects~~ timeshare  
41 programs current on the preceding June 30 and a statement of the income received by the  
42 Commission in connection with the registration of ~~time share projects~~ timeshare programs during  
43 the fiscal year ending on June 30 with the report required by G.S. 93B-2.

44 **"§ 93A-54. Disciplinary action by Commission.**

45 (a) The Commission has power to take disciplinary ~~action.~~ action for violation of the  
46 provisions of this Article in the offering or sale of a timeshare program to a purchaser. Upon its  
47 own motion, or on the ~~verified~~ complaint of any person, the Commission may investigate the  
48 actions of any ~~time share salesperson, developer, or project broker of a time share project~~  
49 ~~registered under this Article, or any other person or entity who shall assume to act in such~~  
50 capacity. regulated party or any other person or entity who shall assume to act in such capacity  
51 of a regulated party. If the Commission finds probable cause that a ~~time share salesperson,~~

1 ~~developer, or project broker~~ timeshare regulated party has violated any of the provisions of this  
2 Article, the Commission may hold a hearing on the allegations of misconduct.

3 (b) The Commission has the power to suspend or revoke at any time a real estate license  
4 issued to a ~~time share~~ timeshare salesperson or ~~project program~~ broker, or a certificate of  
5 registration of a ~~time share~~ project-timeshare program issued to a developer; or to reprimand or  
6 censure ~~such salesperson, developer, or project broker;~~ a regulated party; or to fine ~~such~~  
7 ~~developer~~ a regulated party in the amount of five hundred dollars (\$500.00) for each violation of  
8 this ~~Article;~~ Article; or to impose any other specified penalty permitted under this Article; if, after  
9 a hearing, the Commission adjudges ~~either the salesperson, developer, or project broker~~ regulated  
10 party to be guilty of: of any of the following:

- 11 (1) Making any willful or negligent misrepresentation or any willful or negligent  
12 omission of material fact about any ~~time share~~ timeshare or ~~time share~~  
13 ~~project;~~ timeshare program.
- 14 (2) Making any false promises of a character likely to influence, persuade, or  
15 ~~induce;~~ induce.
- 16 (3) Pursuing a course of misrepresentation or making of false promises through  
17 agents, salespersons, advertising or ~~otherwise;~~ otherwise.
- 18 (4) Failing, within a reasonable time, to account for all money received from  
19 others in a ~~time share~~ timeshare transaction, and failing to remit such monies  
20 as may be required in G.S. 93A-45 of this ~~Article;~~ Article.
- 21 (5) Acting as a ~~time share salesperson or time share developer~~ in a manner as to  
22 endanger the interest of the ~~public;~~ public.
- 23 (6) Paying a commission, salary, or other valuable consideration to any person  
24 for acts or services performed in violation of this ~~Article;~~ Article.
- 25 (7) Any other conduct which constitutes improper, fraudulent, or dishonest  
26 ~~dealing;~~ dealing.
- 27 (8) Performing or undertaking to perform any legal service as set forth in  
28 G.S. 84-2.1, or any other acts not specifically set forth in that ~~section;~~ section.
- 29 (9) Failing to deposit and maintain in a ~~broker's trust or an~~ escrow account as  
30 ~~defined by G.S. 93A-6(g)~~ all money received from others in a ~~time share~~  
31 timeshare transaction as may be required in ~~G.S. 93A-45 of this Article or~~  
32 ~~failing to place with an independent escrow agent the funds of a time share~~  
33 ~~purchaser when required by G.S. 93A-42(e);~~ G.S. 93A-42 or G.S. 93A-45.
- 34 (10) Failing to deliver to a purchaser a public offering statement containing the  
35 information required by G.S. 93A-44 and any other disclosures that the  
36 Commission may by regulation ~~require;~~ require.
- 37 (11) Failing to comply with the provisions of Chapter 75 of the General Statutes in  
38 the advertising or promotion of ~~time shares~~ timeshares for sale, or failing to  
39 assure such compliance by persons engaged on behalf of a  
40 ~~developer;~~ developer.
- 41 (12) Failing to comply with the provisions of G.S. 93A-48 in furnishing complete  
42 and accurate information to purchasers concerning any exchange program  
43 which may be offered to such ~~purchaser;~~ purchaser or owner.
- 44 (13) Making any false or fraudulent representation on an application for  
45 ~~registration;~~ registration.
- 46 (14) Violating any rule or regulation promulgated by the  
47 ~~Commission;~~ Commission.
- 48 (15) Failing to record or cause to be recorded a ~~time share~~ timeshare instrument as  
49 required by ~~G.S. 93A-42(e);~~ G.S. 93A-42(c1) or failing to provide a ~~purchaser~~  
50 an owner the protection against liens required by ~~G.S. 93A-57(a);~~  
51 or G.S. 93A-57(a).

1 (16) Failing as a ~~time share project~~ timeshare program broker to exercise  
2 reasonable and adequate supervision of the conduct of sales at a project or  
3 location by the brokers and salespersons under the ~~time share project~~  
4 timeshare program broker's control.

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

7 ~~(b)~~(d) Following a hearing, the Commission shall also have power to suspend or revoke any  
8 certificate of registration issued under the provisions of this Article or to reprimand or censure  
9 any ~~developer-regulated party~~ when the registrant-regulated party has been convicted or has  
10 entered a plea of guilty or no contest upon which final judgment is entered by a court of  
11 competent jurisdiction in this State, or any other state, of the criminal offenses of ~~or~~ of  
12 embezzlement, obtaining money under false pretense, fraud, forgery, conspiracy to defraud, or  
13 any other offense involving moral turpitude which would reasonably affect the ~~developer's~~  
14 regulated party's performance in the ~~time share~~ timeshare business.

15 ~~(e)~~(e) The Commission may appear in its own name in superior court in actions for  
16 injunctive relief to prevent any person or entity from violating the provisions of this Article or  
17 rules promulgated by the Commission. The superior court shall have the power to grant these  
18 injunctions even if criminal prosecution has been or may be instituted as a result of the violations,  
19 or regardless of whether the regulated party or person ~~or entity~~ has been registered by the  
20 Commission.

21 ~~(d)~~(f) Each developer shall maintain or cause to be maintained complete records of every  
22 ~~time share~~ timeshare transaction ~~including and each independent escrow agent shall maintain or~~  
23 cause to be maintained complete records pertaining to the deposit, maintenance, and withdrawal  
24 of money required to be held in a ~~trust or an~~ escrow account, or as otherwise required by the  
25 Commission, under G.S. 93A-45 of this Article. The Commission may inspect these records  
26 periodically without prior notice and may also inspect these records whenever the Commission  
27 determines that they are pertinent to an investigation of any specific complaint against a  
28 registrant-developer or independent escrow agent.

29 ~~(e)~~(g) When a licensee is accused of any act, omission, or misconduct under this Article  
30 which would subject the licensee to disciplinary action, the licensee may, with the consent and  
31 approval of the Commission, surrender the licensee's license and all the rights and privileges  
32 pertaining to it for a period of time to be established by the Commission. A licensee who  
33 surrenders a license shall not be eligible for, or submit any application for, licensure as a real  
34 estate broker or registration of a ~~time share project~~ timeshare program during the period of license  
35 surrender. For the purposes of this section, the term licensee shall include a ~~time share~~ developer.

36 **"§ 93A-55. Private enforcement.**

37 The provisions of the Article shall not be construed to limit in any manner the right of a  
38 ~~purchaser-purchaser, owner,~~ or other person injured by a violation of this Article to bring a private  
39 action.

40 **"§ 93A-56. Penalty for violation of Article.**

41 Except as ~~provided in G.S. 93A-40(b) and G.S. 93A-58,~~ specifically provided elsewhere in  
42 this Article, any person violating the provisions of this Article shall be guilty of a Class 1  
43 misdemeanor.

44 **"§ 93A-57. Release of liens-liens or subordination and notice to creditors instrument.**

45 (a) Prior to any ~~recordation of the instrument transferring a time share, closing,~~ the  
46 developer shall record ~~and furnish notice to the purchaser of a release or subordination of all liens~~  
47 or encumbrances affecting ~~that time share, the purchaser's timeshare or shall provide a surety~~  
48 bond or insurance against the lien from a company acceptable to the Commission as provided for  
49 liens on real estate in this State, or such underlying lien document shall contain a provision  
50 wherein the lienholder subordinates its rights to that of a time share purchaser who fully complies

1 ~~with all of the provisions and terms of the contract of sale.~~ the timeshare property or comply with  
 2 one of the following:

3 (1) If there are any interestholders in the timeshare or timeshare property, the  
 4 developer and any interestholders must execute and record a subordination  
 5 and notice to creditors instrument in the jurisdiction in which the timeshare or  
 6 timeshare program is situated. The subordination and notice to creditors  
 7 instrument shall contain the following:

8 a. Language sufficient to provide subsequent creditors of the developer  
 9 and interestholder with notice of the existence of the timeshare  
 10 program and of the rights of owners in order to protect the interests of  
 11 the owners from any claims of subsequent creditors.

12 b. A statement that the instrument shall be effective as between the owner  
 13 and the developer and interestholder despite any bankruptcy  
 14 proceedings involving the developer.

15 c. A statement that so long as an owner remains in good standing with  
 16 respect to the owner's obligations under the timeshare declaration, then  
 17 the interestholder will honor all rights of the owner as reflected in the  
 18 timeshare declaration.

19 (2) If there are any interestholders in the timeshare or the timeshare property, the  
 20 developer must make alternative arrangements that are adequate to protect the  
 21 rights of the owners of the timeshares and timeshare property, provided that  
 22 any alternative arrangement is approved by the Commission.

23 (b) ~~Unless a time share-timeshare owner or a time share-timeshare owner who is his the~~  
 24 ~~owner's predecessor in title agree otherwise with the lienor, if a lien other than a mortgage or~~  
 25 ~~deed of trust becomes effective against more than one time share-timeshare in a time share~~  
 26 ~~project, timeshare program, any time share-timeshare owner is entitled to a release of his time~~  
 27 ~~share-the owner's timeshare from a lien upon payment of the amount of the lien attributable to~~  
 28 ~~his time share-the owner's timeshare. The amount of the payment must be proportionate to the~~  
 29 ~~ratio that the time share-owner's liability bears to the liabilities of all time share-owners whose~~  
 30 ~~interests are subject to the lien. Upon receipt of payment, the lien holder shall promptly deliver~~  
 31 ~~to the time share-owner a release of the lien covering that time share-timeshare. After payment,~~  
 32 ~~the managing agent may not assess or have a lien against that time share-timeshare for any portion~~  
 33 ~~of the expenses incurred in connection with that lien.~~

34 **"§ 93A-58. Registrar required; criminal penalties; ~~project-program~~ broker.**

35 (a) ~~Every developer of a registered project shall, by affidavit filed with the Commission,~~  
 36 ~~designate a natural person to serve as time share-timeshare registrar for its registered projects-~~  
 37 ~~timeshare program. The timeshare registrar shall be responsible for the recordation of time share~~  
 38 ~~timeshare instruments and the release of liens required by G.S.93A-42(e)-G.S. 93A-42(c1) and~~  
 39 ~~G.S. 93A-57(a). A developer may, from time to time, change the designated time share-timeshare~~  
 40 ~~registrar by proper filing with the Commission and by otherwise complying with this subsection.~~  
 41 ~~No sales or offers to sell shall be made until the registrar is designated for a time share~~  
 42 ~~project-timeshare program.~~

43 (b) The timeshare registrar has the duty to ensure that the provisions of this Article are  
 44 complied with in a time share-project-timeshare program for which the person is the timeshare  
 45 registrar. No timeshare registrar shall record a time share-timeshare instrument except as provided  
 46 by this Article.

47 ~~(b)(c)~~ A time share-timeshare registrar is guilty of a Class I felony if he or she the timeshare  
 48 registrar knowingly or recklessly fails to record or cause to be recorded a time share-timeshare  
 49 instrument as required by this Article. A person responsible as general partner, corporate officer,  
 50 joint venturer-venturer, or sole proprietor of the developer of a time share-timeshare project is



1 guilty of a Class I felony if the person intentionally allows the offering for sale or the sale of ~~time~~  
2 ~~share~~ a timeshare to purchasers without first designating a ~~time share~~ timeshare registrar.

3 ~~(e)(d)~~ The developer shall designate for each ~~project~~ timeshare program and other locations  
4 where ~~time shares~~ timeshares are sold or offered for sale a ~~project~~ program broker. The ~~project~~  
5 program broker shall act as supervising broker for all ~~time share~~ timeshare salespersons at the  
6 ~~project~~ timeshare program or other location and shall directly, personally, and actively supervise  
7 all such persons at the ~~project~~ timeshare program or other ~~location~~ locations in a manner to  
8 reasonably ensure that the sale of ~~time shares~~ timeshares will be conducted in accordance with  
9 the provisions of this Chapter.

10 (e) Any developer or independent escrow agent who intentionally fails to comply with  
11 the provisions of this Article concerning the establishment of an escrow account, deposits of  
12 funds into escrow, and withdrawal therefrom is guilty of a Class E felony. The failure to establish  
13 an escrow account or to place funds therein as required in this section is prima facie evidence of  
14 an intentional and purposeful violation of this subsection.

15 **"§ 93A-59. Preservation of ~~time share~~ purchaser's an owner's claims and defenses.**

16 (a) For one year following the execution of an instrument of indebtedness for the  
17 purchase of a ~~time share~~, timeshare use, the ~~purchaser of a time share~~ owner may assert against  
18 the ~~seller, developer, assignee of the seller, developer, or other holder of the instrument of~~  
19 indebtedness, any claims or defenses available against the ~~developer or the original seller, and~~  
20 ~~the purchaser~~ developer, and the owner may not waive the right to assert these claims or defenses  
21 in connection with a ~~time share~~ timeshare purchase. Any recovery by the ~~purchaser~~ owner on a  
22 claim asserted against an assignee of the ~~seller~~ developer or other holder of the instrument of  
23 indebtedness shall not exceed the amount paid by the ~~purchaser~~ developer under the instrument.  
24 A holder shall be the person or entity with the rights of a holder as set forth in G.S. 25-3-301.

25 (b) Every instrument of indebtedness for the purchase of a ~~time share~~ timeshare shall set  
26 forth in conspicuous type the following provision in a ~~clear and conspicuous~~  
27 ~~manner~~: substantially the following form:

28 "NOTICE

29  
30  
31 FOR A PERIOD OF ONE YEAR FOLLOWING THE EXECUTION OF THIS  
32 INSTRUMENT OF INDEBTEDNESS, ANY HOLDER OF THIS INSTRUMENT OF  
33 INDEBTEDNESS IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE  
34 ~~PURCHASER-OWNER~~ COULD ASSERT AGAINST THE ~~SELLER-DEVELOPER OF~~  
35 ~~THE TIME SHARE. TIMESHARE.~~ RECOVERY BY THE ~~PURCHASER-OWNER~~  
36 SHALL NOT EXCEED AMOUNTS PAID BY THE ~~PURCHASER-OWNER~~ UNDER  
37 THIS INSTRUMENT."

38 **"§ 93A-60. Substantial compliance.**

39 If a developer or managing entity has, in good faith, attempted to comply with this Article,  
40 and if, in fact, the developer or managing entity has substantially complied with this Article,  
41 nonmaterial errors or omissions are not actionable, such errors or omissions may be violations of  
42 this Article, but do not give rise to any purchaser cancellation rights; provided, however, that the  
43 developer or managing entity has the burden of proof for purposes of this section.

44 **"§ 93A-61. Management.**

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

47 (b) The managing entity may not furnish the name, address, electronic mail address, or  
48 contact information of any owner to any person, including any other owner or authorized agent  
49 of an owner, unless the owner whose name, address, electronic mail address, or contact  
50 information is requested first approves the disclosure in writing. The managing entity shall  
51 maintain among its records and provide to the Commission upon request a complete list of the

1 names and addresses of all owners in the timeshare program. The managing entity shall update  
2 this list at least quarterly. The managing entity may not publish this owners' list or provide a copy  
3 of it to any owner or to any third party other than the Commission. However, the managing entity  
4 shall mail to those owners listed on the owners' list materials provided by any owner, upon the  
5 written request of that owner, if the purpose of the mailing is to advance legitimate business of  
6 the timeshare program, including, but not limited to, a proxy solicitation for any purpose,  
7 including the recall of one or more directors elected by the owners or the discharge of the  
8 management firm. The managing entity shall be responsible for determining the appropriateness  
9 of any requested mailing. The owner who requests the mailing must reimburse the managing  
10 entity in advance for the actual, reasonable costs in performing the mailing. A mailing requested  
11 for the purpose of advancing legitimate business of the timeshare program shall occur within 30  
12 days after receipt of a request from an owner.

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

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

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

36 (f) An officer, director, or agent of a timeshare owners' association shall discharge their  
37 duties in good faith, with the care an ordinarily prudent person in a like position would exercise  
38 under similar circumstances, and in a manner they reasonably believe to be in the interests of the  
39 timeshare owners' association. An officer, director, or agent of a timeshare owners' association  
40 shall be exempt from liability for monetary damages unless the officer, director, or agent  
41 breached or failed to perform their duties and the breach of, or failure to perform, those duties  
42 constitutes a violation of criminal law, constitutes a transaction from which the officer, director,  
43 or agent derived an improper personal benefit, either directly or indirectly, or constitutes  
44 recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner  
45 exhibiting wanton and willful disregard of human rights, safety, or property.

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

49 (1) The managing entity may, but is not required to, exercise the following  
50 powers:

- 1           a.     Conduct board meetings and owner meetings with notice given in any  
2                     practicable manner, including publication, radio, conspicuous posting  
3                     on the timeshare property, electronic means, or any other means the  
4                     board deems reasonable under the circumstances. Notice of board  
5                     decisions may be communicated in the same manner as notice of the  
6                     meetings is given.
- 7           b.     Cancel and reschedule any timeshare owners' association meeting.
- 8           c.     Name as assistant officers persons who are not directors of the board.  
9                     Named assistant officers shall have the same authority as the executive  
10                    officers to whom they are assistants during the state of emergency to  
11                    accommodate the incapacity or unavailability of any officer of the  
12                    timeshare owners' association.
- 13           d.     Relocate the managing entity's principal office or designate alternative  
14                    principal offices or conduct business remotely.
- 15           e.     Enter into agreements with government agencies to assist in  
16                    responding to the emergency.
- 17           f.     Implement an emergency plan for which a state of emergency is  
18                    declared. The emergency plan may include, but is not limited to,  
19                    shutting down all or any portion of timeshare units, amenities, or  
20                    timeshare projects, including shutting off systems or utilities.
- 21           g.     Determine that all or any portion of the timeshare property is  
22                    unavailable for entry or occupancy by owners or any other person to  
23                    protect the health, safety, or welfare of owners or persons or to  
24                    properly respond to the emergency. Should any person enter or occupy  
25                    the timeshare property when the board has declared the timeshare  
26                    property is unavailable for entry or occupancy for those persons, and  
27                    without board approval, the board and the association shall be immune  
28                    from liability or injury to persons or property arising from that failure  
29                    or refusal.
- 30           h.     Require occupancy of timeshare units to be aggregated in certain parts  
31                    of the timeshare property even if other parts of the timeshare property  
32                    are habitable.
- 33           i.     Require the evacuation of all or any portion of the timeshare property  
34                    in the event of a mandatory evacuation order or in order to respond to  
35                    the emergency. Should any person fail or refuse to evacuate the  
36                    timeshare property where the board has required evacuation, the board  
37                    and the association shall be immune from liability or injury to persons  
38                    or property arising from that failure or refusal.
- 39           j.     Make a determination whether all or any portion of the timeshare  
40                    property can be safely inhabited or occupied; provided, however, any  
41                    determination is not conclusive as to any determination of habitability  
42                    pursuant to applicable law or the timeshare declaration.
- 43           k.     Temporarily suspend or modify rules and regulations concerning the  
44                    physical use of all or any portion of the timeshare property.
- 45           l.     Mitigate further damage, including taking action to contract for the  
46                    removal of debris and to prevent or mitigate the spread of fungus or  
47                    disease notwithstanding timeshare declaration provisions regarding  
48                    owner approval of changes to the timeshare units or amenities.
- 49           m.     Regardless of any provision to the contrary and even if such authority  
50                    does not specifically appear in the timeshare declaration, levy special  
51                    assessments without a vote of the owners.

- 1           n.     Without owners' approval, borrow money and pledge association  
2           assets as collateral to fund emergency repairs, to respond to the  
3           emergency, or to carry out the duties of the association when operating  
4           funds are insufficient.
- 5           o.     Temporarily suspend or modify timeshare program reservation system  
6           rules and regulations to manage owner reservations and use rights in  
7           the best interests of the owners as a whole, including cancelling  
8           existing reservations, extending expiring use rights, or suspending or  
9           modifying priority periods and priority reservation rights. A temporary  
10          suspension or modification shall be permitted even if owners must  
11          compete for reservation and use of timeshare periods and timeshare  
12          units on a more than one-to-one use night to use right ratio.
- 13          p.     Toll the expiration of any claim of lien for the duration of the state of  
14          emergency; provided that the tolling is recorded in the public records  
15          and the owner is notified prior to the end of the tolling period.
- 16          q.     Modify or suspend assessment and collection requirements and  
17          activity, including deferring due dates or waiving late charges and  
18          interest, provided that all owners are treated equally as of the date of  
19          modification and suspension, and owners who have previously made  
20          timely payments have their future assessments adjusted in a manner  
21          that fairly compensates them for making timely payments in advance  
22          of the modification or suspension.

23        (2)    The emergency powers authorized and exercised shall be limited to that time  
24        reasonably necessary to protect the health, safety, and welfare of the managing  
25        entity and the owners and reasonably necessary to mitigate further damage  
26        and make emergency repairs, notwithstanding the termination of the state of  
27        emergency. Further, the managing entity may take any actions that are  
28        necessary to implement the exercised powers even if the implementation takes  
29        place after the termination of the state of emergency; provided that the  
30        implementation is necessary and does not go beyond the scope of the  
31        exercised power.

32        (3)    In the exercise of emergency powers, the managing entity may take into  
33        account the economic consequences of the emergency to the owners; however,  
34        the managing entity shall give greater weight to the health, safety, and welfare  
35        of the managing entity and the owners and mitigation of further damage and  
36        adhere to the business judgment rule in balancing economic considerations  
37        with owner opportunity to enjoy the use of the timeshare property.

38        (4)    In the exercise of the emergency powers, the managing entity will be deemed  
39        to have met any duty of care if the managing entity has relied upon advice of  
40        emergency management officials or upon the advice of licensed professionals  
41        with applicable expertise.

42    "**§ 93A-62. Delinquent assessments.**

43        (a)    Delinquent assessments may bear interest at the highest rate permitted by law or at  
44        some lesser rate established by the managing entity. In addition to interest, the managing entity  
45        may charge a reasonable administrative late fee for each delinquent assessment. Any costs of  
46        collection, including reasonable collection agency fees and reasonable attorney's fees, incurred  
47        in the collection of a delinquent assessment shall be paid by the owner and shall be secured by a  
48        lien in favor of the managing entity upon the timeshare with respect to which the delinquent  
49        assessment has been incurred.

50        (b)    The managing entity may deny the use of the timeshare units or facilities, including  
51        the denial of the right to make a reservation or the cancellation of a confirmed reservation for

1 timeshare periods, to any owner who is delinquent in the payment of any assessments made by  
2 the managing entity against the owner for common expenses, in accordance with the following:

- 3 (1) The managing entity must, no less than 30 days after the date the assessment  
4 is due, notify the owner in writing of the total amount of any delinquency  
5 which then exists, including any accrued interest and late charges permitted  
6 to be imposed under the terms of the timeshare program or by law and  
7 including a per diem amount. The notice shall be sent to the owner at the  
8 owner's known address as recorded in the books and records of the timeshare  
9 program.
- 10 (2) The notice shall clearly state that the owner will not be permitted to use the  
11 owner's timeshare, that the owner will not be permitted to make a reservation  
12 in the timeshare program's reservation system, or that any confirmed  
13 reservation may be canceled until the total amount of such delinquency is  
14 satisfied in full or until the owner produces satisfactory evidence that the  
15 delinquency does not exist.
- 16 (3) The notice shall be effective to bar the use of the owner and those claiming  
17 use rights under the owner, including the owner's guests, lessees, and persons  
18 receiving use rights in the timeshare through an exchange program; provided,  
19 however, that (i) a managing entity desiring to deny the use of the timeshare  
20 to persons receiving use rights in the delinquent owner's timeshare through an  
21 exchange program that has an affiliation agreement with the managing entity  
22 shall notify the affiliated exchange company in writing of the denial of use at  
23 the time that the notice was sent to the owner and (ii) any person claiming  
24 through the affiliated exchange program who has received a confirmed  
25 assignment of the delinquent owner's use rights from the affiliated exchange  
26 company prior to the expiration of 48 hours after the receipt by the affiliated  
27 exchange company of the written notice from the managing entity shall be  
28 permitted by the managing entity to use the owner's use rights.
- 29 (4) Any costs reasonably incurred by the managing entity in connection with its  
30 compliance with the requirements of this section may be assessed by the  
31 managing entity against the delinquent owner and collected in the same  
32 manner as if those costs were common expenses of the timeshare program  
33 allocable solely to the delinquent purchaser.
- 34 (5) A managing entity may not enforce the denial of use against any one owner  
35 or group of owners without similarly enforcing it against all owners, including  
36 all developers.

37 (c) In addition to the denial of use pursuant to subsection (b) of this section, the managing  
38 entity may give further notice to the delinquent owner that the managing entity may rent the  
39 delinquent owner's timeshare, or any use rights appurtenant thereto, in accordance with the  
40 following:

- 41 (1) A further notice of intent to rent must be given no less than 30 days after the  
42 date the assessment is due and must be delivered to the purchaser in the  
43 manner required for notices under subsection (b) of this section.
- 44 (2) The notice shall state that unless the owner satisfies the delinquency in full, or  
45 unless the owner produces satisfactory evidence that the delinquency does not  
46 exist, the purchaser will be bound by the terms of any rental contract entered  
47 into by the managing entity with respect to the owner's timeshare or  
48 appurtenant use rights.
- 49 (3) The notice shall state that the owner will remain liable for any difference  
50 between the amount of the delinquency and the net amount produced by the  
51 rental contract and applied against the delinquency, and the managing entity

- 1                   shall not be required to provide any further notice to the owner regarding any  
2                   residual delinquency.
- 3           (4)       The managing entity's efforts to secure a rental shall not commence on a date  
4                   earlier than 10 days after the date of the notice of intent to rent.
- 5           (5)       The managing entity must apply the proceeds of any rental, net of any rental  
6                   commissions, cleaning charges, travel agent commissions, or any other  
7                   commercially reasonable charges reasonably and usually incurred by the  
8                   managing entity in securing rentals to the delinquent owner's account.
- 9           (6)       A managing entity may make a reasonable determination regarding the  
10                   priority of rentals of timeshares and, if the delinquent owner whose timeshare  
11                   is rented cannot be specifically determined due to the structure of the  
12                   timeshare program, the managing entity may allocate any net rental proceeds  
13                   in any reasonable manner.
- 14           (7)       In securing a rental, the managing entity shall not be required to obtain the  
15                   highest nightly rental rate available, nor any particular rental rate, and the  
16                   managing entity shall not be required to rent the entire timeshare or  
17                   appurtenant rights; however, the managing entity must use reasonable efforts  
18                   to secure a rental that is commensurate with other rentals of similar timeshares  
19                   or use rights generally secured at that time.
- 20       (d)       For timeshare estates located in this State, the managing entity shall have a lien on a  
21       timeshare for any assessment levied against that timeshare from the date such assessment  
22       becomes due. The managing entity shall also have a lien on a timeshare estate of any owner for  
23       the cost of any maintenance, repairs, or replacement resulting from an act of the owner or the  
24       owner's guest or lessee that results in damage to the timeshare property. All of the following  
25       apply to a lien imposed under this section:
- 26           (1)       The managing entity, or the holder of the lien, may bring a judicial action in  
27                   its name to foreclose the lien in the nature of an action to foreclose a mortgage  
28                   or deed of trust and may also bring an action to recover a money judgment for  
29                   the unpaid assessments without waiving any claim of lien. As an alternative  
30                   to initiating a judicial action, the managing entity may initiate a nonjudicial  
31                   foreclosure proceeding to foreclose the assessment lien.
- 32           (2)       The lien is effective from the date of and shall relate back to the recording of  
33                   the original timeshare declaration, or, in the case of lien on a timeshare located  
34                   in a phase timeshare program, the last to occur of the recording of the original  
35                   timeshare declaration or amendment creating the timeshare. However, as to  
36                   first mortgages of record, the lien is effective from and after filing of the claim  
37                   of lien in the office of the clerk of superior court in the county where the  
38                   timeshare estate is located.
- 39           (3)       The claim of lien shall state the name of the timeshare program and identify  
40                   the timeshare for which the lien is effective, state the name of the owner, state  
41                   the assessment amount due, and state the due dates. The claim of lien shall be  
42                   signed and acknowledged by an officer or agent of the managing entity or the  
43                   holder.
- 44           (4)       The lien is effective until satisfied or until five years have expired after the  
45                   date the claim of lien is filed unless, within that time, an action to enforce the  
46                   lien is commenced.
- 47           (5)       A claim of lien for assessments may include assessments which are due when  
48                   the claim is recorded and all assessments that subsequently become due and  
49                   are delinquent. Upon full payment, the person making the payment is entitled  
50                   to receive a satisfaction of the lien.

1           (6) A judgment in any action or suit brought to foreclose the claim of lien may  
2           include costs and reasonable attorney's fees for the substantially prevailing  
3           party.

4           (e) A successor in interest, regardless of how the timeshare has been acquired, including  
5           a purchaser at a judicial sale or foreclosure trustee sale, is jointly and severally liable with their  
6           predecessor in interest for all unpaid assessments against the predecessor up to the time of  
7           transfer of the timeshare to a successor, without prejudice to any right a successor in interest may  
8           have to recover from their predecessor in interest any amounts assessed against the predecessor  
9           and paid by the successor; provided, however, a first mortgagee or its successor or assignee who  
10           acquires title to a timeshare as a result of the foreclosure of the mortgage or by deed in lieu of  
11           foreclosure of the mortgage shall be exempt from liability for all unpaid assessments attributable  
12           to the timeshare or chargeable to the previous owner which came due prior to acquisition of title  
13           by the first mortgagee.

14           "§ 93A-63. Reservation systems.

15           (a) The developer shall describe in the timeshare declaration any creation of a reservation  
16           system and shall establish rules and regulations for its operation. In establishing these rules and  
17           regulations, the developer shall take into account the location and anticipated relative use demand  
18           of each timeshare unit and timeshare project component site that is included in the timeshare  
19           program and, the developer shall use its best efforts, in good faith and based upon all reasonably  
20           available evidence under the circumstances, to further the best interests of the owners as a whole  
21           with respect to their opportunity to use and enjoy the timeshare units.

22           (b) The rules and regulations shall also provide for periodic adjustment or amendment of  
23           the reservation system by the reservation system operator from time to time in order to respond  
24           to actual owner use patterns and changes in owner use demand for the timeshare units existing at  
25           that time within the timeshare program. In addition to any other rights granted by the rules and  
26           regulations of the timeshare program, the reservation system operator is authorized to manage  
27           the reservation and use of the timeshare program using those processes, analyses, procedures,  
28           and methods that are in the best interests of the owners as a whole to efficiently manage the  
29           timeshare program.

30           (c) The reservation system operator shall have the right to forecast anticipated reservation  
31           and use of the timeshare units, including the right to take into account current and previous  
32           reservation and use of the timeshare units, information about events that are scheduled to occur,  
33           seasonal use patterns, and other pertinent factors that affect the reservation or use of the timeshare  
34           program.

35           (d) The reservation system operator is authorized to reserve timeshare periods and  
36           timeshare units, in the best interests of the owners as a whole, for the purposes of depositing any  
37           reserved use with an affiliated exchange program or renting any reserved timeshare periods or  
38           timeshare units in order to facilitate the use or future use of the timeshare period or timeshare  
39           units or other benefits made available through the timeshare program to owners.

40           (e) If the reservation system operator is not the timeshare owners' association, the  
41           following provisions shall apply with respect to termination of the reservation system operator's  
42           management agreement or reservation agreement:

43           (1) No later than 90 days after the date of termination, or another date as set forth  
44           in the applicable management agreement or reservation agreement, the  
45           terminated reservation system operator shall transfer to the timeshare owners'  
46           association, or any designated successor reservation system operator, all  
47           relevant data held by the prior reservation system operator and related to any  
48           reservation system and any other records and information as is necessary to  
49           permit the uninterrupted operation and administration of the reservation  
50           system. However, the information required to be transferred does not include

1 private information of the terminated reservation system operator that is not  
2 directly related to operation and management of the timeshare program.

3 (2) All reasonable costs incurred by the terminated reservation system operator in  
4 effecting the transfer of information shall be reimbursed to the terminated  
5 reservation system operator as a common expense of the timeshare program  
6 within 10 days after the completed transfer of the information.

7 (3) Nothing contained in this section shall preclude a reservation system operator  
8 from providing in its agreement with the timeshare owners' association or in  
9 the timeshare declaration that the reservation system operator owns the  
10 reservation system and that the reservation system operator shall continue to  
11 own the reservation system in the event that it is terminated.

12 **"§ 93A-64. Multisite timeshare program additions, substitutions, and deletions.**

13 (a) With respect to addition of timeshare units, amenities, or timeshare projects to the  
14 multisite timeshare program, the timeshare declaration must provide for the following:

15 (1) The basis upon which new timeshare units, amenities, or timeshare projects  
16 may be added, by whom additions may be made, and the fiscal impact of any  
17 additions on the owners, if any.

18 (2) The extent, if any, to which owners will have the right to consent to any  
19 proposed additions.

20 (3) The person authorized to make additions during the term of the multisite  
21 timeshare program must comply with the one-to-one use right to use right  
22 ratio and the requirements of G.S. 93A-65, including the demand balancing  
23 standard, in ascertaining the desirability of the proposed addition and any  
24 impact upon the demand for and availability of existing timeshare units,  
25 amenities, or timeshare projects.

26 (b) With respect to substitution of timeshare units, amenities, or timeshare projects for  
27 existing timeshare units, amenities, or timeshare projects in a multisite timeshare program, the  
28 timeshare declaration must provide for the following:

29 (1) The basis upon which timeshare units, amenities, or timeshare projects may  
30 be substituted for existing timeshare units, amenities, or timeshare projects,  
31 by whom substitutions may be made, and the fiscal impact of any substitutions  
32 on the owners, if any.

33 (2) The replacement timeshare units, amenities, or timeshare projects must  
34 provide owners with an opportunity to enjoy a substantially similar or  
35 improved vacation experience as compared to the experience available at the  
36 replaced timeshare units, amenities, or timeshare projects. In determining  
37 whether the replacement timeshare units, amenities, or timeshare projects will  
38 provide a substantially similar or improved vacation experience, all relevant  
39 factors may be considered, including, but not limited to, some or all of the  
40 following: size, capacity, furnishings, maintenance, location, to include  
41 geographic, topographic, and scenic considerations, demand, and availability  
42 for owner use, and recreational capabilities.

43 (3) If a timeshare owned by the owner in a multisite timeshare program is a  
44 timeshare estate in a specific timeshare unit, no substitution may be made of  
45 that timeshare unit without the approval of that owner and all other owners of  
46 timeshare estates in that timeshare unit.

47 (4) The extent, if any, to which owners will have the right to consent to any  
48 proposed substitutions, including the following:

49 a. If the timeshare declaration provides that the developer, acting  
50 unilaterally, or a managing entity under common ownership or control  
51 with the developer is the person who is authorized to make



- 1 substitutions, the developer or managing entity may not substitute  
2 available timeshare units in the multisite timeshare program in a given  
3 calendar year pursuant to subdivision (6) of this subsection if the  
4 amount of the substituted timeshare units provides more than ten  
5 percent (10%) of the total annual use availability in the multisite  
6 timeshare program calculated in seven-day increments.
- 7 b. If the timeshare declaration provides that the managing entity is the  
8 person authorized to make substitutions, and the managing entity is  
9 not under common ownership or control with the developer, the  
10 managing entity may not substitute available timeshare units in the  
11 multisite timeshare program in a given calendar year pursuant to  
12 subdivision (6) of this subsection if the amount of the substituted  
13 timeshare units provides more than twenty-five percent (25%) of the  
14 total annual use availability in the multisite timeshare program  
15 calculated in seven-day increments.
- 16 c. If the owners have the right to consent to any proposed substitutions,  
17 and the person authorized to make substitutions receives, within 21  
18 days after the date of the notice of substitution required by subdivision  
19 (6) of this subsection, a written objection to the proposed substitution  
20 from at least ten percent (10%) of all owners in the multisite timeshare  
21 program, a meeting of the owners must be conducted by the managing  
22 entity within 30 days after the end of the 21-day period. The proposed  
23 substitution is ratified unless it is rejected by a majority of owners  
24 voting in person or by proxy at the meeting, provided that at least  
25 twenty-five percent (25%) of all owners cast votes.
- 26 d. The person authorized to make substitutions may make unlimited  
27 substitutions in a given year if a proposed substitution is approved in  
28 advance by a majority of owners of the multisite timeshare program  
29 voting in person or by proxy at a meeting called for that purpose,  
30 provided that at least twenty-five percent (25%) of the total number of  
31 owners cast votes.
- 32 (5) The person authorized to make substitutions shall notify all owners of the  
33 multisite timeshare program in writing of the decision to make a substitution.  
34 This notice must (i) be given at least six months in advance of the date that  
35 the proposed substitution will occur, (ii) state the last day after the end of the  
36 six-month period on which reservations will be accepted from owners for use  
37 of the existing timeshare units that will be replaced, and (iii) state that owners  
38 shall have 21 days after the date of the notice of substitution to file a written  
39 objection with the person authorized to make substitutions, if applicable. The  
40 person authorized to make substitutions may remove existing timeshare units  
41 for substitution only after those timeshare units have no pending purchaser  
42 use reservations.
- 43 (6) The person authorized to make substitutions during the term of the multisite  
44 timeshare program must comply with the one-to-one use night to use right  
45 ratio and the requirements of G.S. 93A-65, including the demand balancing  
46 standard, in ascertaining the desirability of the proposed substitution and its  
47 impact upon the demand for and availability of existing timeshare units,  
48 amenities, or timeshare projects.
- 49 (c) With respect to deletion of timeshare units, amenities, or timeshare projects, the  
50 timeshare declaration must provide for the following:
- 51 (1) If the deletion is a deletion as a result of a casualty, the following apply:

- 1           a.     The timeshare declaration must provide for casualty insurance for the  
2           timeshare units or amenities in an amount equal to the replacement  
3           cost of those timeshare units or amenities. The timeshare declaration  
4           must also provide that in the event of a casualty that results in  
5           timeshare units, amenities, or timeshare projects being unavailable for  
6           use by owners, the managing entity shall notify all affected owners of  
7           the unavailability of use within 30 days after the event of casualty.
- 8           b.     The timeshare declaration must also provide for the application of any  
9           insurance proceeds arising from a casualty to either the replacement or  
10           acquisition of additional similar timeshare units or to the removal of  
11           owners from the multisite timeshare program so that owners will not  
12           be competing for available timeshare units or amenities on a greater  
13           than one-to-one use night to use right ratio.
- 14           c.     If the timeshare instrument does not provide for business income  
15           insurance, or if it is unavailable, or if the declaration permits the  
16           developer, the managing entity, or the owners to elect not to  
17           reconstruct after casualty under certain circumstances or to secure  
18           replacement timeshare units in lieu of reconstruction, owners may  
19           temporarily compete for available accommodations on a greater than  
20           one-to-one use night to use right ratio. The decision whether or not to  
21           reconstruct shall be made as promptly as possible under the  
22           circumstances.
- 23           d.     Any replacement of timeshare units, amenities, or timeshare projects  
24           must comply with the one-to-one use night to use right ratio and the  
25           requirements of G.S. 93A-65, including the demand balancing  
26           standard, in ascertaining the desirability of the proposed addition and  
27           its impact upon the demand for and availability of existing timeshare  
28           units, amenities, or timeshare projects.

29       (2)     If the deletion is a deletion as a result of an eminent domain proceeding, the  
30       following apply:

- 31           a.     The timeshare declaration must provide for the application of any  
32           proceeds arising from a taking under eminent domain proceedings to  
33           either the replacement or acquisition of additional similar timeshare  
34           units or to the removal of owners so that owners will not be competing  
35           for available timeshare units on a greater than one-to-one use night to  
36           use right requirement ratio.
- 37           b.     Any replacement of timeshare units, amenities, or timeshare projects  
38           must comply with the one-to-one use night to use right ratio and the  
39           requirements of G.S. 93A-65, including the demand balancing  
40           standard, in ascertaining the desirability of the proposed addition and  
41           its impact upon the demand for and availability of existing timeshare  
42           units, amenities, or timeshare projects.

43       (3)     The timeshare declaration may provide that timeshare units, amenities, or  
44       timeshare projects will be deleted upon the expiration of the term of their  
45       availability or as otherwise provided in the timeshare declaration. However,  
46       the timeshare declaration must also provide that if a timeshare unit is deleted  
47       in this manner, a sufficient number of owners will also be deleted, or a  
48       sufficient number of substitute timeshare units will be substituted for the  
49       deleted timeshare units, so as to maintain no greater than a one-to-one use  
50       night to use right ratio.

51     **"§ 93A-65. Resale purchase contracts; prohibition against advance listing fee.**

1       (a) A consumer timeshare reseller, or any agent of a reseller, must use a resale purchase  
2 contract which must contain all of the following:

3           (1) An identification of the timeshare.

4           (2) The name and address of the timeshare program and of the managing entity  
5 of the timeshare program.

6           (3) Immediately prior to the disclosure required by G.S. 93A-64(b) in  
7 conspicuous type a statement in substantially the following form:

8 "The current year's assessment allocable to the timeshare you are purchasing  
9 is [insert amount]. This assessment, which may be increased from time to time  
10 by the managing entity of the timeshare program, is payable in full each year  
11 on or before [insert date]. This assessment [includes/does not include] yearly  
12 real estate taxes, which [are/are not] billed and collected separately. Each  
13 owner is personally liable for the payment of assessments, and failure to  
14 timely pay these assessments may result in restriction or loss of your use or  
15 ownership rights. There are many important documents relating to the  
16 timeshare program which you should review prior to purchasing a timeshare,  
17 including the timeshare declaration, the timeshare owners' association articles  
18 and bylaws, the current year's operating and reserve budgets, and any rules  
19 and regulations affecting the use of timeshare units and amenities."

20           (4) If there are any delinquent assessments or real estate taxes outstanding with  
21 respect to the timeshare, the following statement must be included in the  
22 statement described in subdivision (3) of this subsection:

23 "A delinquency in the amount of [insert amount] for unpaid assessments or  
24 real estate taxes currently exists with respect to the timeshare you are  
25 purchasing, together with a per diem charge of [insert amount] for interest and  
26 late charges."

27           (5) A statement in conspicuous type located immediately prior to the space in the  
28 contract reserved for the signature of the purchaser in the following form:

29 "You may cancel this contract without any penalty or obligation within five  
30 days after the date you sign this contract. If you decide to cancel this contract,  
31 you must notify the seller in writing of your intent to cancel. Your notice of  
32 cancellation shall be effective upon the date sent and shall be sent to the seller  
33 at [insert address]. Any attempt to obtain a waiver of your cancellation right  
34 is void and of no effect. While you may execute all closing documents in  
35 advance, the closing before expiration of your five-day cancellation period is  
36 prohibited."

37           (6) The year in which the purchaser will first be entitled to reserve, use, or occupy  
38 a timeshare unit.

39       (b) If a resale purchase contract is not used or does not comply with the provisions of this  
40 section, the transaction shall be voidable at the option of the purchaser for a period of one year  
41 after the date of transfer.

42       (c) It is unlawful for any resale broker to collect any advance fee for the listing of any  
43 timeshare.

44 **§ 93A-66. Recordkeeping by resale service providers, transfer service provider, and lead**  
45 **dealers.**

46       (a) Resale service providers, lead dealers, and transfer service providers shall maintain  
47 the following records for a period of three years from the date each piece of personal contact  
48 information is obtained:

49           (1) The full name, address, and telephone number of the lead dealer from which  
50 the personal contact information was obtained.

1           (2)   The date, time, and place of the transaction at which the personal contact  
2           information was obtained, along with the amount of consideration paid and a  
3           signed receipt from the lead dealer or copy of a canceled check.

4           (3)   A copy of all pieces of personal contact information obtained.

5           (4)   If personal contact information was directly researched and assembled by the  
6           resale service provider, transfer service provider, or lead dealer, and not  
7           obtained from another lead dealer, a complete written description of the  
8           sources from which personal contact information was obtained, the  
9           methodologies used for researching and assembling it, the items set forth in  
10          subdivisions (1) and (2) of this subsection for the individuals who performed  
11          the work, and the date the work was done.

12          (b)   In any civil or criminal action relating to the wrongful possession or wrongful use of  
13          personal contact information by a resale service provider or lead dealer, any failure by a resale  
14          service provider, transfer service provider, or lead dealer to produce the required records shall  
15          lead to a presumption that the personal contact information was wrongfully obtained.

16          (c)   Any use by a resale service provider, transfer service provider, or lead dealer of  
17          personal contact information that is wrongfully obtained pursuant to this section shall be  
18          considered wrongful use of personal contact information by the resale service provider, transfer  
19          service provider, or lead dealer, as applicable. Any party who establishes that a resale service  
20          provider, transfer service provider, or lead dealer wrongfully obtained or wrongfully used  
21          personal contact information with respect to owners of a timeshare program or members of an  
22          exchange program shall, in addition to any other remedies that may be available in law or equity,  
23          be entitled to recover from the resale service provider, transfer service provider, or lead dealer  
24          an amount equal to one thousand dollars (\$1,000) for each owner or member about whom  
25          personal contact information was wrongfully obtained or used. Upon substantially prevailing, the  
26          plaintiff in an action shall also be entitled to recover reasonable attorneys' fees and costs.

27          **"§ 93A-67. Resale service providers.**

28          (a)   Before engaging in resale advertising services, a resale service provider must provide  
29          to the consumer timeshare reseller in writing (i) a description of any fees or costs related to the  
30          services that the consumer timeshare reseller, or any other person, is required pay to the resale  
31          service provider or to any third party and (ii) a description of when the fees or costs are due.

32          (b)   A resale service provider may not engage in real estate broker activities described in  
33          Article 1 of this Chapter without being the holder of an active license in accordance with Article  
34          1 of this Chapter.

35          (c)   In the course of offering resale advertising services, a resale advertiser may not do  
36          any of the following:

37               (1)   State or imply that the resale advertiser will provide or assist in providing any  
38               type of direct sales or resale brokerage services other than the advertising of  
39               the consumer resale timeshare for sale or rent by the consumer timeshare  
40               reseller.

41               (2)   State or imply to a consumer timeshare reseller, directly or indirectly, that the  
42               resale advertiser has identified a person interested in buying or renting the  
43               timeshare resale interest without providing the name, address, and telephone  
44               number of the represented interested resale purchaser.

45               (3)   State or imply to a consumer timeshare reseller, directly or indirectly, that  
46               sales or rentals have been achieved or generated as a result of its advertising  
47               services unless the resale advertiser, at the time of making that representation,  
48               possesses and is able to provide documentation to substantiate the statement  
49               or implication made to the consumer timeshare reseller. In addition, to the  
50               extent that a resale advertiser states or implies to a consumer timeshare reseller  
51               that the resale advertiser has sold or rented any specific number of timeshares,

1 the resale advertiser must also provide the consumer timeshare reseller the  
2 ratio or percentage of all the timeshares that have resulted in a sale versus the  
3 number of timeshares advertised for sale by the resale advertiser for each of  
4 the previous two calendar years if the statement or implication is about a sale  
5 or sales, or the ratio or percentage of all the timeshares that have actually  
6 resulted in a rental versus the number of timeshares advertised for rental by  
7 the resale advertiser for each of the previous two calendar years if the  
8 statement or implication is about a rental or rentals.

9 (4) State or imply to a consumer timeshare reseller that the timeshare has a  
10 specific resale value.

11 (5) Make or submit any charge to a consumer timeshare reseller's credit card  
12 account, make or cause to be made any electronic transfer of consumer  
13 timeshare reseller funds, or collect any payment from a consumer timeshare  
14 reseller that exceeds an aggregate total amount of seventy-five dollars  
15 (\$75.00) or more in any 12-month period unless the following have occurred:

16 a. The consumer timeshare reseller has been provided a copy of the terms  
17 and conditions of the contract for resale advertising services and the  
18 consumer timeshare reseller has agreed to those terms and conditions  
19 by mail or electronic transmission.

20 b. The resale advertiser has received a written contract complying in all  
21 respects with this section and that has been signed by the consumer  
22 timeshare reseller.

23 (6) Engage in any resale advertising services for compensation or valuable  
24 consideration without first obtaining a written brokerage agreement to provide  
25 resale advertising services signed by the consumer timeshare reseller.  
26 Notwithstanding any other law to the contrary, the contract must be printed in  
27 at least 12-point type and must contain the following information:

28 a. The name, address, telephone number, and internet address, if any, of  
29 the resale advertiser and a mailing address and email address to which  
30 a contract cancellation notice may be delivered at the consumer  
31 timeshare reseller's election.

32 b. A complete description of all resale advertising services to be  
33 provided, including, but not limited to, details regarding the  
34 publications, internet sites, and other media in or on which the  
35 consumer resale timeshare will be advertised; the dates or time  
36 intervals for such advertising or the minimum number of times such  
37 advertising will be run in each specific medium; the itemized cost to  
38 the consumer timeshare reseller of each resale advertising service to  
39 be provided; and a statement of the total cost to the consumer  
40 timeshare reseller of all resale advertising services to be provided.

41 c. A statement printed in conspicuous type immediately preceding the  
42 space in the contract provided for the consumer timeshare reseller's  
43 signature in substantially the following form:

44 "Timeshare Owner's Right of Cancellation

45 [Insert name of resale advertiser] will provide resale advertising  
46 services pursuant to this contract. If the resale advertiser represents  
47 that they have identified a person who is interested in purchasing or  
48 renting your timeshare, then the resale advertiser must provide you  
49 with the name, address, and telephone number of such represented  
50 interested resale purchaser.

You have an unwaivable right to cancel this contract for any reason within five days after the date you sign this contract. If you decide to cancel this contract, you must notify [insert name of resale advertiser] in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to [insert resale advertiser's physical address] or to [insert resale advertiser'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.

You are not obligated to pay [insert name of resale advertiser] any money unless you sign this contract and return it to the retail advertiser.

Important: Before signing this contract, you should carefully review your original purchase document and other timeshare program documents to determine whether the developer has reserved a right of first refusal or other option to purchase your timeshare or to determine whether there are any restrictions or special conditions applicable to the resale or rental of your timeshare."

d. A statement that any resale contract entered into by or on behalf of the consumer timeshare reseller must comply in all respects with G.S. 93A-67, including the provision of a five-day cancellation period for the prospective consumer resale purchaser.

(7) Fail to honor any cancellation notice sent by the consumer timeshare reseller within five days after the date the consumer timeshare reseller signs the contract for resale advertising services.

(8) Fail to provide a full refund of all money paid by a consumer timeshare reseller within 20 days after receipt of notice of cancellation or within five days after receipt of funds from a cleared check, whichever is later.

(d) If a resale service provider uses a contract for resale advertising services that fails to comply with the requirements of this section, the contract shall be voidable at the option of the consumer timeshare reseller for a period of one year after the date it is executed by the consumer timeshare reseller.

(e) Notwithstanding obligations placed upon any other persons by this section, it is the duty of a resale service provider to supervise, manage, and control all aspects of the offering of resale advertising services by any agent or employee of the resale service provider. Any violation of this section that occurs during that offering shall be deemed a violation by the resale service provider as well as by the person actually committing the violation.

(f) Providing resale advertising services with respect to a consumer resale timeshare in a timeshare property located or offered within this State, or in a multisite timeshare program registered or required to be registered to be offered in this State, including acting as an agent or third-party service provider for a resale service provider, constitutes operating, conducting, engaging in, or carrying on a business or business venture in this State.

(g) The use of any unfair or deceptive act or practice by any person in connection with resale advertising services is a violation of this Act.

(h) If a resale service provider also offers timeshare transfer services, the resale service provider must comply with G.S. 93A-68 through G.S. 93A-72.

**"§ 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 consideration, or the expectation of receiving consideration, without first obtaining a written timeshare transfer

- 1 services agreement signed by the consumer timeshare reseller that complies  
2 with this section.
- 3 (2) Fail to provide both the consumer timeshare reseller and the independent  
4 escrow agent required by this section with an executed copy of the timeshare  
5 transfer services agreement.
- 6 (3) Advise, suggest, or assist with advising or suggesting that a consumer  
7 timeshare reseller cease making any payment of assessments, ad valorem real  
8 estate taxes, or any other sums imposed against the consumer resale timeshare,  
9 or any payment of any amounts due to a mortgagee or other lienor under a  
10 mortgage or other lien or encumbrance secured by the consumer resale  
11 timeshare.
- 12 (4) Represent, expressly or by implication, that (i) a consumer timeshare reseller  
13 cannot or should not contact or communicate with the developer, managing  
14 entity, exchange company, mortgagee, or lienor or (ii) the developer,  
15 managing entity, exchange company, mortgagee, or lienor is prohibited from  
16 contacting or communicating with the consumer timeshare reseller.
- 17 (5) Offer, obtain, negotiate, arrange, or assist with offering, obtaining,  
18 negotiating, arranging a timeshare transfer service that disposes of the  
19 consumer resale timeshare through foreclosure of the consumer resale  
20 timeshare for (i) the nonpayment of assessments, ad valorem real estate taxes,  
21 or any other sums imposed against the consumer resale timeshare or (ii)  
22 nonpayment of amounts due to a mortgagee or other lienor under a mortgage  
23 or other lien encumbrance secured by the consumer resale timeshare.
- 24 (6) Charge or accept a fee for obtaining, negotiating, arranging, or assisting with  
25 obtaining, negotiating, or arranging the voluntary relinquishment of a  
26 consumer resale timeshare to a managing entity in lieu of payment of  
27 assessments or ad valorem real estate taxes.
- 28 (b) A consumer timeshare reseller has the right to cancel the timeshare transfer services  
29 agreement until midnight of the fifth day after the execution of the timeshare transfer services  
30 agreement. The consumer timeshare reseller may not waive this right of cancellation. Any oral  
31 or written declaration or instrument that purports to waive this right of cancellation is void.  
32 Cancellation under this section is without penalty, and the refund of all monies received by the  
33 transfer service provider shall be made within 20 days of demand therefor by the consumer  
34 timeshare reseller or within five days after receipt of cleared funds from the consumer timeshare  
35 reseller, whichever is later.
- 36 (c) Each timeshare transfer services agreement shall contain the following:
- 37 (1) A statement that no fee, cost, or other compensation may be received by or  
38 paid to the transfer service provider before the delivery to the consumer  
39 timeshare reseller of written evidence that all promised timeshare transfer  
40 services have been performed, including, but not limited, to any of the  
41 following:
- 42 a. Delivery to both the consumer timeshare reseller and the timeshare  
43 program managing entity of a copy of the recorded timeshare  
44 instrument or other legal document evidencing the transfer of  
45 ownership of or legal title to the consumer resale timeshare to the  
46 transferee, accompanied by the full name, address, and other known  
47 contact information for the transferee.
- 48 b. Delivery to the consumer timeshare reseller of a copy of the legal  
49 document executed by the vendor or obligee evidencing the mutually  
50 agreed upon termination of the timeshare instrument or timeshare loan  
51 obligation relating to the consumer resale timeshare.

- 1           (2)    The name, address, current phone number, and current email address of the  
2           independent escrow agent required by this section.
- 3           (3)    A specific, detailed description of each timeshare transfer service promised to  
4           be provided, including a statement of the last date by which each promised  
5           service will be fully performed, and including a statement that the transfer  
6           service provider deliver to the consumer timeshare reseller written notice of  
7           the full performance of each timeshare transfer services, together with a copy  
8           of the legal document evidencing the performance of the service.
- 9           (4)    The total cost to the consumer timeshare reseller of the timeshare transfer  
10           service promised to be provided together with an itemized list of all of the fees  
11           and costs that comprise the total cost and description of the related good or  
12           service.
- 13           (5)    The terms or conditions of any refund, cancellation, exchange, or repurchase  
14           policy for a timeshare transfer service, including the circumstances under  
15           which a guaranteed or nonguaranteed, full or partial refund will be granted.
- 16           (6)    A statement in conspicuous type that nonpayment of a timeshare loan  
17           obligation or assessment obligation may lead to a foreclosure action or other  
18           proceeding that could result in the loss of ownership of the timeshare and  
19           negative consequences for the consumer timeshare reseller's credit and tax  
20           liability.
- 21           (7)    A statement in substantially the following form in conspicuous type  
22           immediately preceding the space in the timeshare transfer services agreement  
23           provided for the consumer timeshare reseller's signature:  
24           "[Insert transfer service provider name] has agreed to provide you with  
25           timeshare transfer services under this timeshare transfer services agreement.  
26           After those services have been fully performed, the transfer service provider  
27           is obligated to provide you with written notice of full performance and a copy  
28           of the recorded instrument or other legal document evidencing the transfer or  
29           assignment of your timeshare, the termination of your timeshare contract, or  
30           the release from a timeshare loan or assessment obligation. Any fee or other  
31           compensation paid by you under this agreement before full performance by  
32           [Insert transfer service provider name] must be held in escrow by the escrow  
33           agent specified in this agreement, and the transfer service provider is  
34           prohibited from receiving any such fee or other compensation until all  
35           promised timeshare transfer services have been performed.

#### Timeshare Owner's Right of Cancellation

36  
37  
38  
39           You have an unwaivable right to cancel this agreement for any reason within  
40           five days after the date you sign this agreement. If you decide to cancel this  
41           contract, you must notify [insert name of transfer service provider] in writing  
42           of your intent to cancel. Your notice of cancellation shall be effective upon  
43           the date sent and shall be sent to [insert name and mailing address of transfer  
44           service provider] or to [insert transfer service provider's email address]. Your  
45           refund will be made within 20 days after receipt of notice of cancellation or  
46           within five days after receipt of funds from your cleared check, whichever is  
47           later.

48           IMPORTANT: It is recommended that you contact your developer, managing  
49           entity, mortgagee, or lienor before signing this agreement. Your developer,  
50           management entity, mortgagee, or lienor may be willing to negotiate a



1 payment plan, restructure your debt obligation, or accept the transfer of your  
2 timeshare free of charge."

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

6 (1) Request or receive payment of any fee or other consideration until the  
7 consumer timeshare reseller has executed a written agreement between the  
8 consumer timeshare reseller and the consumer timeshare reseller's managing  
9 entity, mortgagee, or lienor incorporating the offer of assistance or relief the  
10 timeshare transfer service provider obtained from the managing entity,  
11 mortgagee, or lienor.

12 (2) Fail to disclose, on a separate page, in conspicuous type, substantially the  
13 following statement at the time the timeshare transfer service provider  
14 furnishes the consumer timeshare reseller with the written agreement specified  
15 in subsection (c) of this section, the following:

16 "Important Notice

17 This is an offer of assistance we obtained from your [insert name of managing  
18 entity, mortgagee, or lienor]. You may accept or reject the offer. If you reject  
19 the offer, you do not have to pay us. If you accept the offer, you will have to  
20 pay us [insert total amount] for our services."

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

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

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

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

46 (2) To a managing entity to pay any assessments, transfer fees, or other moneys  
47 owed with respect to the consumer resale timeshare or to pay a governmental  
48 agency for the purpose of completing and perfecting the transfer.

49 (h) The independent escrow agent shall retain all timeshare transfer services agreements,  
50 escrow account records, and affidavits received pursuant to this subsection for a period of five  
51 years.

1        (i) A transfer service provider, an agent or third-party service provider for the transfer  
2 services provider, or an independent escrow agent who intentionally fails to comply with the  
3 provisions of this subsection concerning the establishment of an escrow account, deposits of  
4 funds into escrow, withdrawal therefrom, and maintenance of records is guilty of a Class E  
5 felony.

6        (j) The provisions of this section that apply to transfer service providers do not apply to  
7 any of the following:

8            (1) A resale broker who offers timeshare transfer services to a consumer  
9 timeshare reseller, so long as the resale broker complies in all respects with  
10 the provisions of Article 1 of this Chapter.

11            (2) An attorney who is licensed in this State and a member in good standing or a  
12 title insurer or agent licensed in this State in good standing who offers  
13 timeshare transfer services to a consumer timeshare reseller.

14            (3) A mortgagee or servicer or lienor, or agent or contractor of a mortgagee or  
15 servicer or lienor, to the extent that any of them offers timeshare transfer  
16 services to an obligor related to a mortgage, lien, or other encumbrance of a  
17 mortgagee, servicer, or lienor against the obligor's timeshare.

18        (k) This section shall not apply to the transfer of ownership of a consumer resale  
19 timeshare from a consumer timeshare reseller to the developer or managing entity of that  
20 timeshare program unless and only to the extent the transfer includes the assistance of a transfer  
21 service provider.

22        (l) Only an attorney licensed in this State or any person authorized to perform nonjudicial  
23 foreclosures pursuant to this Article may offer services to a consumer timeshare reseller in  
24 connection with an involuntary transfer, or proposed involuntary transfer, of a consumer resale  
25 timeshare.

26        (m) Notwithstanding obligations placed upon any other persons by this section, it is the  
27 duty of a transfer service provider to supervise, manage, and control all aspects of the offering of  
28 timeshare transfer services by any agent or employee of the transfer service provider. Any  
29 violation of this section that occurs during such offering shall be deemed a violation by the  
30 transfer service provider as well as by the person actually committing the violation.

31        (n) Providing timeshare transfer services with respect to a consumer resale timeshare in  
32 a timeshare property located or offered within this State, or in a multisite timeshare program  
33 registered or required to be registered to be offered in this State, including acting as an agent or  
34 third-party service provider for a transfer service provider, constitutes operating, conducting,  
35 engaging in, or carrying on a business or business venture in this State.

36        (o) The use of any unfair or deceptive act or practice by any person in connection with  
37 timeshare transfer services is a violation of this act.

38        (p) An owner, managing entity, or developer may bring an action for injunctive relief and  
39 recover their reasonable attorney fees and costs against a timeshare service provider for a  
40 violation of this section.

41        (q) Upon a consumer timeshare reseller's request, the developer or managing entity shall  
42 provide information regarding relinquishment or other disposition options of the consumer  
43 timeshare reseller's timeshare available to the timeshare reseller through the developer or  
44 managing entity, if available.

45 **"§ 93A-69. Timeshare program extensions.**

46        (a) Unless the timeshare declaration specifically provides a lower percentage, the vote or  
47 written consent, or both, of at least sixty-six percent (66%) of all eligible voting interests present  
48 in person or by proxy at a duly noticed, called, and constituted meeting of the owners may, at  
49 any time, extend the term of the timeshare program. If the term of a timeshare program is  
50 extended pursuant to this section, all rights, privileges, duties, and obligations created under  
51 applicable law or the timeshare declaration continue in full force to the same extent as if the

1 extended termination date of the timeshare program were the original termination date of the  
2 timeshare program.

3 (b) Unless the timeshare declaration specifically provides for a lower quorum, the  
4 quorum for the timeshare owners' association meeting to extend the timeshare program is fifty  
5 percent (50%) of all eligible voting interests in the timeshare program.

6 (c) The owners' association meeting held pursuant to subsection (a) of this section may  
7 be held at any time before the termination of the timeshare program.

8 (d) The managing entity may determine that any voting interest that is delinquent in the  
9 payment of more than two years of assessments is ineligible to vote on any extension of the  
10 timeshare program unless such delinquency is paid in full before the vote.

11 (e) A proxy for a vote to extend a timeshare program pursuant to this section is valid for  
12 up to three years and is revocable unless the proxy states it is irrevocable.

13 (f) If an extension vote or consent pursuant to this section is proposed for a timeshare  
14 project of a multisite timeshare program located in this State, the proposed extension is effective  
15 only if the person authorized to make additions or substitutions of accommodations and facilities  
16 pursuant to the timeshare declaration also approves the extension.

17 **"§ 93A-69.1. Timeshare program terminations.**

18 (a) Unless the timeshare declaration provides otherwise, the vote or written consent, or  
19 both, of sixty percent (60%) of all voting interests in a timeshare program may terminate the term  
20 of the timeshare program at any time. If a timeshare program is terminated pursuant to this  
21 section, the termination has immediate effect pursuant to applicable law and the timeshare  
22 declaration as if the effective date of the termination were the original date of termination.

23 (b) If the timeshare property is managed by a timeshare owners' association that is  
24 separate from any underlying owners' association, the termination of a timeshare program does  
25 not change the corporate status of the timeshare owners' association. The timeshare owners'  
26 association continues to exist only for the purposes of concluding its affairs, prosecuting and  
27 defending actions by or against it, collecting and discharging obligations, disposing of and  
28 conveying its property, collecting and dividing its assets, and otherwise complying with this  
29 subsection.

30 (c) After termination of a timeshare program, the managing entity or the board, if there  
31 is a timeshare owners' association, shall serve as the termination trustee, and in a fiduciary  
32 capacity may bring an action in partition on behalf of the tenants in common in each former  
33 timeshare property or sell the former timeshare property in any manner and to any person who is  
34 approved by a majority of all tenants in common. The termination trustee shall have all other  
35 powers reasonably necessary to effect the partition or sale of the former timeshare property,  
36 including the power to maintain the property during the pendency of any partition action or sale.

37 (d) All reasonable expenses incurred by the termination trustee relating to the  
38 performance of its duties pursuant to this section, including reasonable attorneys' fees and other  
39 professionals, must be paid by the tenants in common of the former timeshare property subject  
40 to partition or sale proportionate to their respective ownership interests.

41 (e) The termination trustee shall adopt reasonable procedures to implement the partition  
42 or sale of the former timeshare property and comply with the requirements of this section.

43 (f) If a timeshare program is terminated in an underlying property regime and the  
44 underlying property regime is not simultaneously terminated, a majority of the tenants in  
45 common in each former timeshare unit present and voting in person or by proxy at a meeting of  
46 tenants in common conducted by the termination trustee, or conducted by the board of the owners'  
47 association of the underlying property regime, if the owners' association managed the former  
48 timeshare property, shall designate a voting representative for the timeshare unit and file a voting  
49 certificate with the owners' association for the underlying regime. The voting representative may  
50 vote on all matters at meetings of the owners' association for the underlying regime, including  
51 termination of the underlying regime.

1 (g) Unless the timeshare declaration provides otherwise, this section applies only to a  
 2 timeshare program that has been in existence for at least 25 years as of the effective date of the  
 3 termination vote or consent.

4 (h) If a termination vote or consent is proposed for a timeshare project of a multisite  
 5 timeshare program located in this State, the proposed termination is effective only if the person  
 6 authorized to make additions or substitutions of accommodations and facilities pursuant to the  
 7 timeshare instrument also approves the termination."

8 **SECTION 2.(a)** G.S. 47C-1-103 reads as rewritten:

9 **"§ 47C-1-103. Definitions.**

10 In the declaration and bylaws, unless specifically provided otherwise or the context otherwise  
 11 requires, and in this chapter:

12 ...

13 (24) "Time share" means a "~~time share~~" "timeshare" as defined in ~~G.S.~~  
 14 ~~93A-41(9)~~; G.S. 93A-41(34).

15 ...."

16 **SECTION 2.(b)** G.S. 53-244.030 reads as rewritten:

17 **"§ 53-244.030. Definitions.**

18 For purposes of the Article, the following definitions apply:

19 ...

20 (21) "Mortgage loan originator" means:

21 ...

22 c. The term does not include:

23 ...

24 3. A person or entity solely involved in extensions of credit or  
 25 sale of ~~time share~~ timeshare instruments relating to ~~time share~~  
 26 timeshare plans, as that term is defined in ~~G.S. 93A-41(9a)~~;  
 27 G.S. 93A-41(37); or

28 ...."

29 **SECTION 2.(c)** G.S. 66-232 reads as rewritten:

30 **"§ 66-232. Definitions.**

31 For purposes of this Article the following definitions apply:

32 ...

33 (9) "Membership camping contract" or "membership camping agreement" means  
 34 any written agreement of more than one year's duration, executed in whole or  
 35 in part within this State, which grants to a purchaser a right or license to use  
 36 the campground of a membership camping operator or any portion thereof.  
 37 Any agreement which constitutes a "~~time share instrument~~" "timeshare  
 38 instrument" as defined in G.S. 93A-41 is excluded from this definition.

39 ...."

40 **SECTION 3.** This act is effective when it becomes law.