

PART I.

~~GENERAL.~~

DEFINITIONS

~~18 VAC 135-40-10. Purpose.~~

~~This chapter governs the exercise of powers granted to and the performance of duties imposed upon the Virginia Real Estate Board by the Virginia Real Estate Time-Share Act, § 55-360 et seq. of the Code of Virginia.~~

18 VAC 135-40-20. Definitions and explanation of terms.

The definitions provided in § 55-362 of the Code of Virginia, as they may be supplemented herein, shall apply to ~~these time-share regulations~~ this chapter. Each reference in these regulations to a “developer,” “purchaser,” and “time-share owner” or to the plural of those terms shall be deemed to refer, as appropriate, to the masculine and the feminine, to the singular and the plural and to natural persons and organizations.

~~18 VAC 135-40-30. Time-share advisory committee.~~

~~A time-share advisory committee, appointed by the board, may advise the board in the exercise of its powers and the performance of its duties and under the Virginia Real Estate Time-Share Act.~~

~~**18 VAC 135-40-40. Property registration administrator.**~~

~~A property registration administrator, employed and designated as such by the Director of the Department of Professional and Occupational Regulation, shall function as a subordinate of the board within the meaning of § 9-6.14.4.G of the Code of Virginia for the purpose of carrying out the routine daily operations of the board with respect to time-share regulations; including, without limitation, the entry of any orders provided for in these time-share regulations, the issuance of public reports and the administration of oaths and affirmations in connection with investigations or other proceedings. The property registration administrator shall act as secretary of the time-share advisory committee.~~

PART II.

~~APPLICATION FOR REGISTRATION.~~

18 VAC 135-40-50. Application for registration.

~~Application for registration of time-share units projects and programs shall be filed at the offices of the board with the board on an application form furnished by the board and The application shall contain all of the documents and information required by § 55-391.1 of the Code of Virginia. Each application for registration shall be submitted on the standard application form which is furnished by the board.~~

18 VAC 135-40-60. Form of the application; submission of documents.

The board may establish specific guidelines which establish the form for preparation of the application for registration. These guidelines ~~shall~~ may set forth reasonable requirements for paper size, binding and organization which assure uniformity in the manner disclosures are made to prospective purchasers.

~~18 VAC 135-40-70. Procedure upon receipt of application for registration.~~

~~A. Upon receipt of an application for registration, the board shall issue a "notice of filing" and shall review the application and supporting documents to determine whether the prerequisites for registration set out in § 55-391.1 of the Code of Virginia have been met. In making such a determination, the board may rely upon reliable information concerning the developer of the project or the project coming to the board's attention. However, this does not excuse the developer's obligation to complete the registration application accurately and truthfully.~~

~~B. If the board determines that any prerequisite for registration has not been met, the board shall so notify the developer.~~

~~Upon receipt of an application for registration not in proper form, the board shall return the application to the developer with a statement specifying the deficiencies in its form; provided, however, that, if the board has reason to believe that the application may readily be put into proper form, it may retain the application and notify the developer of the steps that must be taken to put the application in proper form.~~

~~C. At such time as the board affirmatively determines that the prerequisites for registration have been met, the board shall so notify the developer.~~

18 VAC 135-40-80. Filing fees.

1. The filing fee for an original application for registration of a time-share project shall be \$1,500.

2. The filing fee for an amendment to the application for registration adding a phase or phases to the time-share project shall be \$250.

3. The filing fee for the annual report filed by the developer shall be \$500.

4. The filing fee for an original application for registration of an exchange company shall be \$1,000. The filing fee for the annual report of an exchange company shall be \$250.

- ~~5. Unless identified above, no other filing fee shall be assessed.~~

5. There shall be no fee for filing an amended public offering statement with the board.

PART III.

REGISTRATION.

~~18 VAC 135-40-90. Prerequisites for registration.~~

~~The following provisions are prerequisites for registration and are supplementary to the provisions of § 55-391.1 of the Code of Virginia:~~

~~1. The developer shall own or have the right to acquire an estate in the land constituting or to constitute the time-share project which is of at least as great a degree and duration as the estate to be conveyed in the time-shares.~~

~~2. The time-share instrument must be in a form which complies with the requirements of the Act and sufficient to bring a time-share program or project into existence upon recordation of the instrument.~~

~~3. The developer shall have filed with the board evidence of its ability to complete all proposed improvements which are committed at that time to the time-share project. Such evidence shall consist of the bond or letter of credit as required by § 55-386 of the Code of Virginia. If such bond or letter of credit is voided subsequent to registration, effectiveness of registration shall cease immediately.~~

~~4. The current and planned marketing activities of the developer shall comply with §§ 18.2-216 and 55-374.1 of the Code of Virginia, and with 18 VAC 125-40-130 and 18 VAC 135-40-140 of this chapter.~~

~~5. The developer shall have filed with the board (i) a proposed public offering statement which complies with § 55-374 of the Code of Virginia and 18 VAC 135-40-130 through 18 VAC 135-40-320 of this chapter and, if applicable 18 VAC 135-40-340 through 18 VAC 135-40-400 of this chapter; or, (ii) a substitute public offering statement which complies with 18 VAC 135-40-130 of this chapter.~~

~~6. The developer shall file a narrative description of the promotional plan for the time-share development with the application for registration.~~

PART IV III.

MARKETING.

18 VAC 135-40-100. Preregistration offers prohibited.

A. No developer or individual or entity acting on behalf of the developer shall offer or dispose of a time-share prior to its registration.

B. No preregistration time-share marketing activity shall be deemed an offer unless, by its express terms, it induces, solicits or encourages a prospective purchaser to execute a contract of sale for a time-share or perform some other act which would create or purport to create a legal or equitable interest in a time-share other than a security interest in or a nonbinding reservation of the time-share.

18 VAC 135-40-110. Time-share marketing standards.

A. No promise, assertion, representation or statement of fact or opinion in connection with a time-share marketing activity shall be made which is false, inaccurate or misleading by reason of inclusion of an untrue statement of a material fact or omission of a statement of a material fact relative to the actual or intended characteristics, circumstances or features of the time-share project or a time-share.

~~B. There shall be no indication that an improvement will be built or placed in the time-share project unless the developer has sufficient financial assets and a bona fide intention to complete the improvement as represented.~~

€ B. No promise, assertion, representation or statement of fact or opinion made in connection with a time-share marketing activity and relating to a time-share project not registered shall, by its express terms, induce, solicit or encourage a contract for sale or performing some other act which would create or purport to create a legal or equitable interest in the time-share other than a security interest in [or] a nonbinding reservation of the time-share, when to do so would circumvent the provisions of ~~this~~ the Virginia Real Estate Time-Share Act.

~~18 VAC 135-40-120. Offering literature.~~

~~A. "Offering literature" is any written promise, assertion, representation or statement of fact or opinion made in connection with a time-share marketing activity mailed or delivered directly to a prospective purchaser and which originates in this Commonwealth.~~

~~B. Offering literature mailed or delivered prior to the effectiveness of the registration of the time-share project which is the subject of the offering literature shall bear a conspicuous legend containing the substance of the following language:~~

~~[Identity of the time-share project] has not been effectively registered with the Virginia~~

~~Real Estate Board. A time-share may be reserved by a non-binding reservation agreement, but no contract of sale may be entered prior to the effectiveness of the developer's registration. Any deposit given at the time of the reservation is refundable at the purchaser's option until the period during which any right of cancellation expired and must be placed in an escrow account with a financial institution having trust powers within the Commonwealth of Virginia, whose accounts are insured by a governmental agency or instrumentality.~~

PART ~~IV~~-V.

PUBLIC OFFERING STATEMENT.

~~18 VAC 135-40-130. Scope of public offering statement.~~

~~The provisions of this section outlining the contents of the public offering statement supplement the requirements of § 55-374 of the Code of Virginia. A public offering statement shall make disclosures relative to a single offering and to the entire time-share program in which the time-shares being offered are located. No more than one version of a public offering statement shall be used at any given time with respect to a particular time-share program.~~

18 VAC 135-40-140. Preparation and distribution of public offering statement.

A. The public offering statement shall be clear and legible with pages numbered sequentially. ~~[Only a blank cover or a cover bearing identifying information may be used. Except as elsewhere provided, no portion of the public offering statement may be underscored, italicized or printed in larger, heavier or different color type than the remainder of the public offering statement.]~~ The first page[(s)] of the public offering statement shall conform to the specimen appended as Appendix A to this chapter and made a part hereof.

B. The developer may include as part of the public offering statement a receipt page printed in such a way that the developer may obtain verification that a prospective purchaser has

received the public offering statement. The receipt page shall include the effective date of the public offering statement as well as a place for the date of delivery and signature lines for the prospective purchaser. The authorized receipt page in proper form, duly executed, shall be evidence that the public offering statement was delivered.

C. The developer shall distribute a current public offering statement to any prospective purchaser before such purchaser executes a contract to purchase a time-share.

18 VAC 135-40-150. Nature of information to be included.

A. The provisions of ~~§ 55-374.1~~ § 55-374 of the Code of Virginia and this chapter shall be strictly construed to promote full and accurate disclosure in the public offering statement ~~[and, thereby, to protect the interests of purchasers.]~~[of the characteristics of and material circumstances affecting the time-share project and the characteristics of the time-share(s) being offered.]

B. The requirements for disclosure are not exclusive. In addition to expressly required information, the developer shall disclose all other available information which may reasonably be expected to affect the decision of the ordinarily prudent purchaser to accept or reject the offer of a time-share. The developer shall disclose any additional information necessary to make the required information not misleading. No information shall be presented in such a fashion as to

obscure the facts, to encourage a misinterpretation of the facts or otherwise to mislead a purchaser.

C. No information shall be incorporated by reference to an extrinsic source which is not readily available or already known to an ordinary purchaser. Whenever required information is not known or not reasonably available, such fact shall be stated in the public offering statement with a brief explanation. Whenever special circumstances exist which would render required disclosure inaccurate or misleading, the required disclosure shall be modified to accomplish the purpose of the requirement or the disclosure shall be omitted, provided that such modification or omission promotes full and accurate disclosure.

~~D. Disclosure shall be made of pertinent facts, events, conditions or other states of affairs which the developer has reason to believe will occur or exist in the future or which the developer intends to cause to occur or to exist in the future. Disclosure relating to future facts, events, or conditions shall be limited by the provisions of subsection F hereof.~~

~~D E.~~ The public offering statement shall be as brief as is consistent with full and accurate disclosure. In no event shall the public offering statement be made so lengthy or detailed as to discourage close examination. Duplication and unnecessary legal language is discouraged.

~~E F.~~ Expressions of opinion in the public offering statement shall be deemed inconsistent with full and accurate disclosure unless there is ~~ample~~ an existing foundation in fact for the opinion ~~expressed therein~~; provided, however, that this sentence shall not affect in any way the

developer's duty to set forth a projected budget for the time-share estate program's operation.

~~E.G.~~ Except for brief excerpts ~~therefrom~~, the public offering statement shall not incorporate verbatim portions of the time-share instrument or other documents. The developer is encouraged in the public offering statement to direct the purchaser's attention ~~The purchaser's attention may be directed~~ to pertinent portions of the [time-share] instrument or documents attached to the public offering statement where required disclosures can be found, and if incorporated by reference, shall be deemed to be a part of the public offering statement, which ~~are too lengthy to incorporate verbatim.~~

~~G.H.~~ Maps, photographs and drawings may be used in the public offering statement, provided that such ~~utilization use~~ promotes full and accurate disclosure: of the required characteristics[-][of and material circumstances affecting the time-share project and the characteristics of the time-share(s) being offered.]

18 VAC 135-40-160. Readability.

The public offering statement shall be clear and understandable. The public offering statement may be written in narrative, question and answer, or other form selected by the developer so long as all information required by the [Virginia] Real Estate Time-Share Act and this chapter is included in a clear and understandable manner. Use of defined terms in the [Virginia] Real Estate Time-Share Act in writing the Public Offering Statement is encouraged. Determination as to compliance with the standards of this paragraph are within the exclusive

discretion of the board.

~~18 VAC 135-40-170. Summary of important considerations.~~

~~A. Immediately following the first page and before the table of contents, the public offering statement shall include a summary of important considerations consisting of particularly noteworthy items of disclosure. Certain summary statements are required by subsections D and E hereof. Other summary statements may be proposed by the developer or included by order of the board for the purpose of reinforcing the disclosure of significant information not otherwise included in the summary of important considerations. No summary statement shall be included for the major purpose of enhancing the sales appeal of the time-shares.~~

~~B. The summary shall be titled as such and shall be introduced by the following statement: "Following are important matters to be considered in acquiring a time-share. They are highlights or summaries only. The narrative sections, should be examined to obtain detailed information." Each summary statement shall include a reference to pertinent portions, if any, of the public offering statement for details respecting the information summarized. Each summary statement, exclusive of any reference to any portions of the public offering statement, shall be limited to no more than three sentences except that the board may, by order, permit or require additional sentences.~~

~~C. Whenever the board finds that the significance to purchasers of certain information~~

~~requires that it be disclosed more conspicuously than by regular presentation in the summary of important considerations, it may provide, by order, that a summary statement of the information shall be underscored, italicized or printed in a larger or heavier type than the remainder of the public offering statement.~~

~~D. In the case of a TIME-SHARE ESTATE PROGRAM, summary statements shall be made of the substance of the following facts and circumstances. Specific information shall be substituted for the general information indicated by brackets. Appropriate modifications shall be made to reflect facts and circumstances varying from those indicated herein:~~

- ~~1. Purchasers have a nonwaivable right to cancel the purchase contract, for seven calendar days after execution of the purchase such contract, or receipt of a current public offering statement, whichever is later. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded within 45 days after receipt of the notice of cancellation. If the purchaser elects to cancel this contract, the purchaser shall do so by hand-delivering the cancellation notice or mailing it by certified United States mail, return receipt requested, to the developer or to his agent for service of process, [name and address of agent for service of process].~~

- ~~2. The time-share estate program will be governed by a time-share estate owners' association, formed under the [Virginia Non-Stock Corporation Act or law of the situs state as appropriate]. A time-share owner may have voting rights~~

~~as outlined in the Articles of Incorporation of the association or bylaws thereof and such owner will be bound by all decisions of the association including those with which he disagrees.~~

~~3. Decisions affecting the business and affairs of the time-share estate owners' association shall be made by an executive committee of its governing body, generally its board of directors, or in most instances, an executive committee thereof.~~

~~4. The expenses of operating the time-share estate owners' association will be paid on the basis of a [periodic] budget. Each time-share estate owner will pay a [periodic] amount and may be required to pay special assessments. A time-share estate owner cannot reduce the amount of his financial obligation by refraining from use of his time-share or the project's facilities.~~

~~5. If a time-share estate owner fails to pay, a financial when due, the time-share estate owners' association, may levy a lien against his time-share. Certain other penalties may be applied.~~

~~6. The developer may make payments on unsold time-shares in addition to [or in lieu of] time-share estate occupancy expenses.~~

7. ~~The developer, its principals, officers, directors, partners, or trustees have [not] undergone [a debtor's relief proceeding].~~

8. ~~The developer will retain control of the time-share estate owners' association until at least the end of the "Developer Control Period." See §55-369.~~

9. ~~A managing agent may perform routine operations of the time-share estate owners' association. The managing agent is [affiliated with] the [developer, a director or an officer of the time-share estate owners' association].~~

10. ~~The developer may rent time-shares. The right of a time-share estate owner to rent his time-share is [not] subject to restrictions.~~

11. ~~The right of the time-share estate owner to resell his time-share is [not] subject to restrictions.~~

12. ~~The time-shares are [not] restricted to residential use.~~

13. ~~The time-share estate owner may not alter the structure or exterior of the time-share unit in which his time-share is located.~~

14. ~~The time-share estate owners' association or the developer will obtain certain insurance benefiting the time-share owner, but the time-share estate owner~~

~~should obtain additional insurance on his own.~~

~~15. The time-share estate owner will pay real estate taxes on his time-share.~~

~~16. The time-share estate owner will be required to pay the real estate taxes applicable to his time-share; failure to pay such taxes may result in the loss of the time-share unit.~~

~~17. Failure on the part of the time-share estate owners' association to pay the real estate taxes on the time-share project or cause to be paid the underlying liens on the project could result in foreclosure thereon by the appropriate creditor.~~

~~18. Marketing and sale of time-shares shall comply with the Virginia Fair Housing Law (36-96.1 et seq. of the Code of Virginia).~~

~~19. A time-share purchaser is required to make certain disclosures to purchasers in the resale of his time-share.~~

~~E. In the case of a TIME-SHARE USE PROGRAM, summary statements shall be made of the substance of the following facts and circumstances. Specific information shall be substituted for the general information indicated by brackets. Appropriate modifications shall be made to reflect facts and circumstances varying from those indicated herein:~~

- ~~1. Purchasers have a nonwaivable right to cancel the purchase contract for seven calendar days after execution of the purchase contract or receipt of a current public offering statement, whichever is later. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded within 45 days after receipt of the notice of cancellation. If the purchaser elects to cancel this contract, the purchaser shall do so by hand-delivering the cancellation notice or mailing it by certified United States mail, return receipt requested, to the developer or to his agent for service of process, [name and address of agent for service of process].~~
- ~~2. The time-share use program will be governed by the developer.~~
- ~~3. Decisions affecting the time-share use project will be made by the developer.~~
- ~~4. A time-share use owner cannot reduce the amount of his financial obligations by refraining from use of his time-share or the projects' facilities.~~
- ~~5. If a time-share use owner fails to pay a financial obligation when due, the developer may impose certain sanctions or penalties, including the forfeiture of the time-share.~~

6. — ~~The developer, its principals, officers, directors, partners, or trustees have [not] undergone [a debtor's relief proceeding].~~

7. — ~~A managing agent may perform routine operations for the operation, maintenance and upkeep of the time-share project, as determined by the developer. The managing agent is [affiliated with] the [developer, or a director or officer thereof].~~

8. — ~~The developer may rent on a transient basis, [sold] unsold time-shares. The right of a time-share use owner to rent his time-share is [not] subject to restrictions.~~

9. — ~~The right of a time-share use owner to resell his time-share is [not] subject to restrictions.~~

10. — ~~The time-shares are [not] restricted to residential use.~~

11. — ~~The time-share use owner may not alter the structure or exterior of the unit in which his time-share is located.~~

12. — ~~The developer will obtain certain insurance benefiting the time-share use owner, but the time-share use owner should obtain additional insurance on his own.~~

~~13. The time-share use owner may be required to pay applicable taxes imposed on the project similar in scope and design to taxes applicable to hotels, motels or other transient type accommodations.~~

~~14. Marketing and sale of time-shares shall comply with Virginia Fair Housing Law (§ 36-96.1 et seq. of the Code of Virginia).~~

~~15. A time-share purchaser is required to make certain disclosures to purchasers in the resale of his time-share.~~

~~**18 VAC 135-40-180. Narrative sections.**~~

~~The information to be presented in the public offering statement shall be broken down into sections in order to facilitate reading and comprehension. Certain sections are required by 18 VAC 135-40-190 through 18 VAC 135-40-310 of this chapter. Supplementary sections may be included whenever necessary to incorporate information which cannot properly be placed within one of the required sections. Supplementary section captions which indicate the nature of the material presented thereunder shall be utilized. The sections may be set out in any order which lends itself to the organized presentation of information. Section captions may be underscored, italicized or printed in larger or heavier type than the remainder of the public offering statement. A table of contents shall be utilized.~~

~~18 VAC 135-40-190. Time-share concept.~~

~~The Public Offering Statement shall contain a section captioned "The Time-Share Concept." The section shall consist of a discussion of the time-share form of ownership and shall include a detailed explanation of the type of time-share arrangement employed in the project.~~

~~18 VAC 135-40-200. Creation of the time-share program.~~

~~The public offering statement shall contain a section captioned "The Creation of the Time-Share Program." The section shall explain the manner in which the time-share program was created and shall briefly describe the time-share instrument, its function and the procedure for its amendment. The section shall provide the recording information for the time-share instrument. The section shall indicate where the time-share instrument or copies thereof may be found. The section shall state that the purchaser will receive copies of the recorded time-share instrument prior to or simultaneously with settlement.~~

~~18 VAC 135-40-210. Description of the time-share program.~~

~~The public offering statement shall contain a section captioned "Description of the Time-~~

~~Share Program." The section shall consist of a general description of the time-share program, the units, amenities and type of time-shares then being made available to purchasers. The section shall include, without limitation, statements indicating:~~

- ~~1. The land area of the time-share project;~~
- ~~2. The number of units in the project;~~
- ~~3. The number of units in the project to be organized on a time-share basis;~~
- ~~4. An identification of units that are subject to time-sharing and the type of time-shares being offered;~~
- ~~5. The duration of the time-shares;~~
- ~~6. The different types of units available;~~
- ~~7. Provisions, if any, that have been made for public utilities in the time-share project, including water, electricity, telephone, and sewerage facilities;~~
- ~~8. Restrictions, if any, as to what changes a time-share owner may make to his unit in which his time-share is located;~~
- ~~9. Whether or not the units are restricted solely to residential use;~~
- ~~10. The availability of vehicular parking spaces including the number of spaces available per unit and restrictions on or charges for the use of spaces; and~~
- ~~11. If the time-share project is subject to development rights, a brief description of those development rights including the land area and the maximum number of units that may be added and the maximum number of time-shares which may be created in those units.~~

~~18 VAC 135-40-220. Developer.~~

~~A. The public offering statement shall contain a section captioned "The Developer." The section shall provide the name and principal address of the developer and shall contain a brief history of the developer with emphasis on its experience in time-share development.~~

~~B. The following information shall be stated with regard to every director, partner or trustee of the developer: (i) name and address, and (ii) principal occupation. The name and address of each person owning or controlling an interest of 20% or more in the time-share project shall also be indicated.~~

~~C. If applicable, this section shall disclose the particulars of any indictment, conviction, judgment, decree or order of any court or administrative agency against the developer for violation of a federal, state, local or foreign country law or regulation in connection with activities relating to time-share sales, land sales, land investments, security sales, construction or sale of homes or improvements or any similar or related activity.~~

~~D. This section shall also include a description of any unsatisfied judgements against the developer, the status of any pending suits involving the sale or management of real estate to which the developer or any general partner, executive officer, director, or majority stockholder thereof, is a defending party, and the status of any pending suites of significance to the time-share project.~~

~~E. The section shall include the name and address of the developer's agent for service of~~

~~process who is authorized to accept notice of cancellation pursuant to § 55-376 of the Code of Virginia.~~

~~**18 VAC 135-40-230. Terms of offering.**~~

~~A. The public offering statement shall contain a section captioned "Terms of Offering". The section shall discuss the expenses to be borne by a purchaser in acquiring a time-share and present information as provided in subsections B through G of this section.~~

~~B. The section shall indicate the offering prices for time-shares or a price range for time-shares if either is established. The information required by this subsection will illustrate the relationship between time-share price and the season of the year during which the purchaser owns or has the right to use his time-share.~~

~~C. The section shall provide a general description of any financing offered the purchaser by or through the developer. This discussion shall indicate that financing is subject to additional terms and conditions stated in the loan commitment. This section shall also include a statement that the developer's lien holder shall have its lien rights preserved as against a time-share purchaser who claims the time-share instrument is invalid, void or voidable, 30 days after written notice has been given by the developer to the purchaser. The section must further state that should the developer assign his receivables from purchaser, the time-share purchaser has 30 days in which to object to the validity of the time-share instrument or the assignment or be forever barred from raising such objection in any subsequent enforcement of the collection of the~~

~~receivables from purchaser.~~

~~D. The section shall discuss in detail any settlement costs associated with the time-share purchase transaction including, without limitation, any contribution to the initial or working capital of the time-share program, title insurance premiums, recording costs and attorney's fees. A description of the purpose and method of calculating any such contribution shall also be provided.~~

~~E. The section shall discuss any penalties or forfeitures which may be incurred by a time-share purchaser upon the purchaser's default of his purchase agreement.~~

~~F. The section shall discuss the right of the developer to cancel a purchase agreement upon failure of the developer to obtain purchase agreements on a given number or percentage of time-shares being offered or upon failure of the developer to meet conditions precedent to obtaining necessary financing.~~

~~G. The section shall discuss the manner in which deposits are escrowed when a purchase or reservation of a time-share product occurs as required by § 55-375 of the Code of Virginia. The section shall contain the statement required by § 55-374 A 18 of the Code of Virginia.~~

~~18 VAC 135-40-240. Administration of time-share program.~~

~~A. The public offering statement shall contain either a section captioned "Administration of Time-Share Estate Program" or a section captioned "Administration of Time-Share Use~~

~~Program", depending upon the form of time-shares being offered by the developer. The section shall discuss the manner in which the time-share program will be governed and administered.~~

~~B. "Administration of time-share estate program".~~

~~1. The section shall describe the functions and structure of the time-share estate owners' association. The description shall indicate: (i) the existence or provisions for a governing body and officers; (ii) the manner of their election or appointment; (iii) the assignment or delegation of responsibility for performance of the functions of the unit owners' association; and (iv) those items outlined in § 55-368, numbered 2 through 10, of the Code of Virginia.~~

~~2. The section shall describe the allocation of voting power among the time-share estate owners and shall explain how votes will be cast. Any provision in the time-share instrument for regular or special meetings of the estate owners shall be mentioned.~~

~~3. The significant terms of any lease of recreational areas or similar contract or agreement affecting the use, maintenance or access of all or any part of the time-share project, shall be stated. A brief narrative statement of the effect of each of any such agreements shall be included.~~

~~4. Rules and regulations for the use, enjoyment, and occupancy of units, and the authority to promulgate and amend such rules shall be discussed. Included shall be a description of the method, if any, to be employed to assign or reserve occupancy periods for the time-share owners. Methods for providing alternate use periods or monetary compensation to a time-share owner if his contracted-for unit cannot be made available for the periods to which the owner is entitled by schedule or by confirmed reservation shall be~~

~~discussed.~~

~~5. Any standing committees established or to be established to perform functions of the time-share estate owners' association shall be discussed. Such committees include, without limitation, executive committees, architectural control committees and committees having the authority to interpret time-share instruments or rules and regulations.~~

~~6. Any power of the developer or of the time-share estate owners' association to enter units shall be discussed. To the extent each is applicable, the following facts shall be stated: (i) a unit may be entered without notice to the time-share owners; (ii) the developer or representatives of the time-share estate owners' association are empowered to take actions or perform work in a unit without the consent of the time-share owners; and (iii) the time-share owners may be required to bear the costs of actions so taken or work so performed.~~

~~7. The section shall describe any routine janitorial procedures that are to occur between occupancy periods of time-share owners, as well as any maintenance program that is to take place on an annual or semi-annual basis.~~

~~8. The managing agent, if any, shall be identified. If a managing agent is to be employed in the future, the criteria, if any, for selection of the managing agent shall be briefly stated. The section shall indicate any relationship between the managing agent and the developer or a member of the board of directors or an officer of the time-share estate owners' association. The duration of any management agreement shall be stated.~~

~~9. The section shall discuss any retention by the developer of control over the time-share estate owners' association. The association's power to pass special assessments against and raise the annual assessments of the time-share owners upon the termination of the developer control shall also be discussed.~~

~~C. "Administration of time-share use program". The section shall provide the information required by § 55-371 of the Code of Virginia. In addition, the section shall discuss, to the extent relevant, the matters raised by 18 VAC 135-40-240 B 3 through 8 of this chapter.~~

~~D. With respect to the managing entity of time-share projects under either a time-share estate program or time-share use program, if applicable, this section shall disclose:~~

~~1. The particulars of any indictment conviction, judgment, decree or order of any court or administrative agency against the managing entity for violation of a federal state, local or foreign country law or regulation in connection with activities relating to time-share sales, land sales, land investments, security sales, construction or sale of homes or improvements or any similar or related activity; and~~

~~2. The particulars of any unsatisfied judgments against the managing entity, the status of any pending suits involving the sale or management of real estate to which the managing entity is a defending party.~~

~~**18 VAC 135-40-250. Finances.**~~

~~A. The public offering statement shall contain either a section captioned "Finances of Time-Share Estate Ownership," or a section captioned "Finances of Time-Share Use Ownership," depending upon the form of time-share development used in the projects. The section shall discuss the expenses incident to the ownership of a time-share in the manner~~

provided in subsections B through H hereof.

~~B. The section shall describe the nature of the costs and expenses of operating the time-share program and shall distinguish between those to be paid by the developer and those to be paid by the time-share owners. The section shall explain how the responsibilities for payment of operating costs will be apportioned among the time-share owners. In the case of a time-share estate program, this section shall describe and distinguish between developer expenses and time-share estate occupancy expenses as well as the meaning of the "Developer Control Period" as outlined in § 55-369 of the Code of Virginia, and when it commences and ends. Mention shall be made of the developer's right to collect a periodic fee from the time-share estate owner for the payment of the latter expenses; the method of apportionment between time-share estate owners shall be explained.~~

~~C. The section shall contain a statement describing any current or expected fees or charges to be paid by time-share owners for the use and enjoyment of any facilities related to the project. This shall include, without limitation, any fee attributable to the use of recreational facilities mentioned in any time-share document or during the marketing activities.~~

~~D. The section shall contain a statement describing the extent to which financial arrangements, if any, have been provided for completion of any time-share unit offered for sale. The section shall also contain, to the extent the developer has an obligation to complete, a statement and description of all planned improvements to the project whether begun or not yet begun.~~

~~E. The section shall describe any services which the developer provides or expenses it pays which may become at any subsequent time a time-share expense of the time-shares, and the projected time-share expense liability attributable to each of those services or expenses for each time-share.~~

~~F. In a time-share estate program where the developer control period has not yet terminated, the section shall contain the current balance sheet and a projected budget for the association for one year after the date of the first transfer to a purchaser. After that one year period, a current budget shall be included in lieu of the projected budget and current balance sheet mentioned above. All budgets shall be accompanied by a statement indicating the name of the preparer of the budget, and a statement explaining all budgetary assumptions concerning occupancy and inflation. All budgets must include, without limitation: (i) a statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacements; (ii) a statement of any other reserves (iii) the projected common expense liability for all time-share owners; (iv) the projected common expense liability by category of expenditures; and (v) a statement of the amount included in the budget reserved for repairs to and refurbishing of the project and the replacement of the personality situated therein.~~

~~G. The "Finances of Time-Share Use Ownership" section shall, where the developer's net worth is less than \$250,000, include a current audited balance sheet or a statement by such developer that its equity in such program exceeds such amount.~~

~~H. The section shall discuss the effect of failure of a time-share owner to pay when due the assessments, fees or charges levied against his time-share. Such discussion shall indicate provisions for penalties to be applied in the case of overdue assessments including the lien authorized by § 55-370 B of the Code of Virginia, and for the acceleration of unpaid assessments.~~

~~**18 VAC 135-40-260. Restrictions on transfer.**~~

~~The public offering statement shall include a section captioned "Restrictions on transfer". The section shall describe and explain any rights of first refusal, preemptive rights, limitations on leasing or other restraints on free alienability created by the time-share instruments or the rules and regulations which affect the time-share estate owner's or the time-share use owners' right to resell, lease or otherwise transfer an interest in his time-share estate or use.~~

~~**18 VAC 135-40-270. Insurance.**~~

~~The public offering statement shall contain a section captioned "Insurance". The section shall describe the insurance coverage provided for the benefit of time-share owners. Included shall be a discussion of the comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use and enjoyment of units by time-share estate owners or time-share use owners or their guests. It shall be made clear that in the case of a time-share estate project the costs associated with this liability insurance will be borne by the developer during the developer control period, thereafter, the costs will be assumed~~

~~by the time-share estate owners' association; and that in the case of a time-share use project, the costs associated with securing and maintaining such insurance shall be borne by the developer.~~

~~Depending on the time-share organization employed by the developer, comprehensive, general liability insurance required by §§ 55-368(7) or 55-371(7) of the Code of Virginia shall be included in this discussion.~~

~~18 VAC 135-40-280. Encumbrances.~~

~~A. The public offering statement shall contain a section captioned "Encumbrances". The section shall contain a description of any liens, defects, or encumbrances on and adversely affecting the title of the project and the individual time-share estate units, and shall provide the information called for in subsections C through G below.~~

~~B. The section shall describe the extent to which a time-share unit may become subject to a tax or other lien arising out of claims against other owners of the same unit. The section shall discuss the consequences that the filing of federal tax liens would have on the project.~~

~~C. The section shall describe every mortgage, deed of trust, other perfected lien or mechanics' or materialman's lien affecting all or any portion of the time-share project other than those placed on time-share estate units by their purchasers. The description shall identify the lender secured or the lienholder, shall state the nature and original amount of the obligation secured, shall identify the party having primary responsibility for performance of the obligation secured, and shall indicate the practical effect upon unit owners of failure of said party to~~

~~perform the obligation.~~

~~D. Normal easements for utilities, municipal rights-of-way and emergency access shall be described only as such, without reference to ownership, location or other details.~~

~~E. Easements reserved to the developer to facilitate expansion or sales shall be briefly described.~~

~~F. Easements reserved to the developer or to the time-share estate owners' association or its representatives or agents for access to a unit shall be described. In the event that access to a unit may be had without notice to the unit owner, such fact shall be stated.~~

~~G. Easements across the time-share project reserved to the owners or occupants of land located in the vicinity of the project including, without limitation, easements for the use of recreational areas shall be described.~~

~~18 VAC 135-40-290. Exchange program.~~

~~The public offering statement shall contain a section captioned "Exchange Program," if, at the time of purchase of a time-share, the purchaser is permitted or required to become a member of or a participant in an exchange program. This section shall contain the information required by § 55-374 B of the Code of Virginia. In the alternative, the developer may incorporate by reference the exchange company disclosure document if the exchange company has properly~~

~~registered with the board and that document contains all the disclosures required by § 55-374 B of the Code of Virginia.~~

~~**18 VAC 135-40-300. Taxes.**~~

~~A. The public offering statement shall contain a section captioned "Taxes". The section shall describe all existing or proposed taxes to be levied against time-shares individually including, without limitation, real property taxes, transient taxes and other special assessments. Taxes levied against the entire time-share project shall be disclosed pursuant to 18 VAC 135-40-250 of this chapter. The section shall state who will be responsible for payment of taxes.~~

~~B. With respect to local real property taxes and with reference to a time-share estate project, the section shall state the assessed valuations of the time-shares and the tax rate currently in effect. If assessed valuations have not yet been determined, the section shall state a procedure or formula by means of which the taxes may be estimated once assessed value has been determined. The section shall indicate the basis upon which the assessed value will be or was calculated, as set forth in § 55-363 C of the Code of Virginia.~~

~~**18 VAC 135-40-310. Surrounding area.**~~

~~The public offering statement shall contain a section captioned "Surrounding Area". This section shall briefly describe the zoning of the immediate neighborhood of the time-share project. The section may indicate the existence and proximity of community facilities available~~

~~to time-share owners.~~

~~18 VAC 135-40-320. Additional information.~~

~~The public offering statement may include additional information as required by the Real Estate Board to assure full and accurate disclosure.~~

~~18 VAC 135-40-330. Substitute public offering statement.~~

~~A. A substitute public offering statement is a document originally prepared in compliance with the laws of another jurisdiction and modified in accordance with the provisions of this section in order to fulfill the disclosure requirements established for public offering statements by § 55-374 of the Code of Virginia. A substitute public offering statement shall not be employed in the case of a time-share project located in Virginia.~~

~~B. The substitute public offering statement shall be prepared by deleting from the original disclosure document: (i) references to any governmental agency of another jurisdiction to which application has been made or will be made for registration or related action; (ii) references to the action of such governmental agency relative to the time-share project; (iii) statements of the legal effect in another jurisdiction of delivery, failure to deliver, acknowledgement of receipt or related events involving the disclosure document; (iv) the effective date or dates in another jurisdiction of the disclosure document; and (v) all other information which is untrue, inaccurate or misleading with respect to marketing offers or~~

~~disposition of time-share units in Virginia.~~

~~C. The substitute public offering statement shall incorporate all information not otherwise included which is necessary to effect fully and accurately the disclosures required by § 55-374 of the Code of Virginia. The substitute public offering statement shall clearly explain any nomenclature which is different from the definitions provided in § 55-362 of the Code of Virginia or which, for any other reason, may confuse purchasers in Virginia. Any information not required by § 55-374 of the Code of Virginia may be deleted, provided that such deletion does not render the required information misleading.~~

~~D. The first two pages of the substitute public offering statement document shall be prepared to conform as closely as possible to the specimen appended as Appendix A to these regulations and made a part of hereof. The three blanks in the first sentence of the third paragraph of the specimen shall be completed by insertion of the following information: (i) the designation by which the original disclosure document is identified in the jurisdiction pursuant to whose law it was prepared; (ii) the governmental agency of such other jurisdiction with which the original disclosure document is or will be filed; and (iii) the jurisdiction of such filing.~~

~~E. No portion of the substitute public offering statement may be underscored, italicized or printed in larger, heavier or different color type than the remainder of the substitute public offering statement disclosure document, except: (i) as required by subsection D hereof; (ii) as required or permitted in the original disclosure document by the laws of the jurisdiction pursuant to which it was prepared; and (iii) as provided by order of the board in cases in which it finds~~

~~that the significance to purchasers of certain information requires that such information be disclosed more conspicuously than by regular presentation in the substitute public offering~~

~~statement. **PART VI.**~~

CONVERSION PROJECT.

~~18 VAC 135-40-340. Public offering statement for conversion project; general provisions.~~

~~The public offering statement for a conversion project shall conform in all ways to the requirements of 18 VAC 135-40-130 through 18 VAC 135-40-320 of this chapter. In addition, the public offering statement for a conversion project shall: (i) contain special disclosures in the narrative sections captioned "Description of the Time-Share Project," "Terms of Offering," and "Finances of Time-Share (Estate or Use) Ownership" and (ii) incorporate narrative sections captioned "Present Condition of the Time-Share Project" and "Replacement Requirements". Provisions for such additional disclosure are set forth in 18 VAC 135-40-360 through 18 VAC 135-40-400 of this chapter.~~

~~18 VAC 135-40-350. Same; special definitions.~~

~~As used in this section and in 18 VAC 135-40-360 through 18 VAC 135-40-400 of this chapter:~~

~~"Structural component" means a component constituting any portion of the structure of a time-share unit or any other structure located in the time-share project and in which a defect~~

~~would reduce the stability or safety of all or part of the structure below accepted standards or restrict the normal intended use of all or a part of the structure.~~

~~**18 VAC 135-40-360. Description of the time-share project, conversion project.**~~

~~In addition to the information required by 18 VAC 135-40-210 of this chapter, the section captioned "Description of the time-share project" shall indicate that the time-share project is a conversion project. The term "conversion" shall be defined and the particular circumstances which bring the time-share project within the definition shall be stated. The nature and dates of prior occupancy of the property being converted shall be stated.~~

~~**18 VAC 135-40-370. Terms of offering, conversion project.**~~

~~In addition to the information required by 18 VAC 135-40-230 of this chapter, the section captioned "Terms of Offering" shall contain a specific statement of the amount of any initial or special fee due from the purchaser of a time-share on or before settlement of the purchase contract and the basis for such fee. Such fees include, without limitation, a required contribution to: (i) the payment of costs of conversion in any manner other than through payment of the time-share offering price; and (ii) a reserve for capital expenditures.~~

~~**18 VAC 135-40-380. Finances, conversion project.**~~

~~A. In addition to the information required by 18 VAC 135-40-250 of this chapter, the section captioned "Finances of Time-Share [Estate or Use] Ownership" shall contain the~~

information set forth in subsections B and C hereof.

~~B. The actual expenditures made on operation, maintenance, repair or upkeep of each converted building within the last three years shall be set forth in tabular form and included in the proposed budget of the project. The expenditures shall be cumulatively broken down on a per time-share unit basis and on a per time-share basis in proportion to any relative voting rights in the association, if any allocated to the time-shares. If such building has not been occupied for the entire three-year period, then the information shall be set forth for the maximum period the building has been occupied during the three-year period.~~

~~C. The section shall include a description of any provisions made in the budget for reserves for capital expenditures and an explanation of the basis for such reserves. If any part of the capital reserves will or may be obtained other than through either regular or special assessments, such fact shall be stated. If no provision is made in the budget for these reserves, a statement to that effect shall be included. In the case of a time-share estate program, the section shall state the amount of capital reserves which is intended to be accumulated by the time-share estate owners' association during the developer control period together with any provisions in the time-share documents specifying the rate at which reserves are to be accumulated thereafter.~~

~~18 VAC 135-40-390. Present condition of time-share project.~~

~~A. The section captioned "Present Condition of Time-Share Project" shall contain a statement of the approximate dates of original construction or installation of all structural~~

~~components and major utility installations in the time-share project. For the purposes of Part VI of this chapter, such components and installations shall be referred to as the "physical assets." A single construction or installation date may be stated for all of the physical assets: (i) in the time-share projects; (ii) within a distinctly identifiable portion of the time-share projects; or (iii) within a distinctly identifiable category of physical assets. A statement made pursuant to the preceding sentence shall include a separate reference to the construction or installation date of any physical asset within a stated group of physical assets which was constructed or installed significantly earlier than the construction or installation date indicated for the group generally. No statement shall be made that a physical asset or a portion thereof has been repaired, altered, improved or replaced subsequent to its construction or installation unless the approximate date, nature and extent of such repair, alteration, improvement or replacement is also stated.~~

~~B. Subject to the exceptions provided in subsections B, E and F hereof, the section captioned "Present Condition of the Time-Share Project" shall contain a description of the present condition of all physical assets within the time-share project. The description of present condition shall disclose all structural defects and incapacities of major utility installations to perform their intended functions as would be observable, detectable or deducible by means of standard inspection and investigative techniques employed by architects or professional engineers, as the case may be.~~

~~C. The section shall indicate any known dates of inspection by means of which the described present condition was determined; provided, however, that such inspection shall have been conducted not more than one year prior to the date of filing the application for registration.~~

~~The section shall identify the party or parties by whom the present condition was ascertained and shall indicate the relationships of such party or parties to the developer.~~

~~D. A single statement of the present condition of a class of physical assets shall suffice to disclose the present condition of each physical asset within the class, provided, however, that unless subsection E hereof applies, such statement shall include a separate reference to the present condition of any physical asset within the class which is significantly different from the present condition indicated for the class generally.~~

~~E. The description of present condition may include a statement that all structural components in the time-share project or in a distinctly identifiable portion thereof are in sound condition except those for which structural defects are noted.~~

~~F. In a case in which there are numerous physical assets within a class of physical assets and inspection of each such physical asset is impracticable, the description of present condition of all the physical assets within the class may be based upon an inspection of a number of them selected at random, provided that the number selected is large enough to yield a reasonably reliable sample and the total number of physical assets within the class and the number selected are disclosed.~~

~~18 VAC 135-40-400. Replacement requirements:~~

~~A. Subject to the exception provided in subsection B hereof, the section captioned~~

~~"Replacement requirements" shall state the useful lives of all physical assets in the time-share project. The section shall state that expected useful lives run from the date of inspection by means of which the expected useful lives were determined. Such inspection date shall be stated.~~

~~B. A single statement of the expected useful life of a class of physical assets shall suffice to disclose the expected useful life of each physical asset within the class; provided, however, that such statement shall include a separate reference to the expected useful life of any physical asset within such class which is significantly shorter than the expected useful life indicated for the class generally.~~

~~C. An expected useful life may be qualified. A qualified expected useful life is an expected useful life expressly conditioned upon a given use or level of maintenance or other factor affecting longevity. No use, level of maintenance or other factor affecting longevity shall be stated as a qualification unless such use, level of maintenance or factor is normal or reasonably anticipated for the physical asset involved. If appropriate, an expected useful life may be stated as being indefinite, subject to the stated qualifications that the physical asset involved must be properly used and maintained. An expected useful life may be stated as being within a range of years, provided that the range is not so broad as to render the statement meaningless.~~

~~D. The section shall state the replacement costs of all physical assets in the time-share project including those whose expected useful lives are stated as being indefinite. The replacement costs shall be broken down on a per unit basis or a per time-share basis. A statement of the replacement costs of a representative member of a class of physical assets shall suffice to~~

~~disclose the replacement cost of each physical asset within the class; provided, however, that such statement shall include a separate reference to the replacement cost of any physical asset within the class which is significantly greater than the replacement cost indicated for the representative member of the class.~~

PART ~~VH~~ VI

POST-REGISTRATION PROVISIONS

~~18 VAC 135-40-410. Material change defined.~~

~~As used in 18 VAC 135-40-420 through 18 VAC 135-40-450 of this chapter "material change" shall mean a change in any information or document disclosed in or attached to a public offering statement whose form and content are designated for use pursuant to 18 VAC 135-40-70 C or 18 VAC 135-40-430 B which renders such information or document substantially inaccurate, incomplete or misleading. Any changes occurring in the real estate tax assessment or rate, utility charges, common maintenance fees, association dues, assessments or other similar recurring expense items shall not be deemed a material change; provided, however, such information shall be then current when the public offering statement is prepared and submitted to the board and shall be updated at least on an annual basis.~~

~~The issuance of the updated exchange company's annual report shall not constitute a material change; except, however, upon receipt thereof by the developer, it shall commence distribution of same in lieu of all others in order to satisfy § 55-374(b) of the Code of Virginia.~~

~~Without limiting the generality of the preceding sentence, a material change shall be deemed to occur whenever (i) information or a document required to be disclosed in or attached to a public offering statement but not so disclosed or attached by reason of its previous unavailability or nonexistence becomes available or comes into existence and (ii) a new budget~~

~~is adopted in a project where time-share estates are sold.~~

18 VAC 135-40-420. Amendment of public offering statement; material change.

A. ~~Prior to or upon~~ Within 20 business days of the occurrence of a material change, as defined by § 55-362 of the Code of Virginia, ~~or as soon thereafter as possible,~~ the developer shall amend the public offering statement to disclose each occurrence constituting the material change. ~~the modified or additional information or to include the modified or additional document, as the case may be. The developer may amend the public offering statement other than in connection with a material change.~~

B. An amendment of the public offering statement, necessitated by the occurrence of a material change, may be accomplished in any intelligible manner and, to the extent that strict compliance with any of the other provisions of these regulations this chapter governing the form of presentation of information in the public offering statement would be unduly burdensome, the developer may deviate therefrom in amending the public offering statement, provided that (i) no such deviation shall be more extensive than is necessary and appropriate under the circumstances, (ii) the requirements of ~~18 VAC 135-40-140 and 18 VAC 135-40-190~~ of this chapter are strictly observed and (iii) the presentation of information in the amended public offering statement is organized so as to facilitate reading and comprehension. Nothing contained herein in this chapter shall authorize a deviation from strict compliance with ~~a provision of this~~ chapter governing the substance of disclosure in the public offering statement. If any information

has ~~been~~ become inaccurate or misleading by reason of the material change, ~~and is not such~~
~~information shall be deleted from the public offering statement in connection with its~~
~~amendment, such fact shall be clearly noted. or amended in such a way to make the information~~
~~accurate and not misleading.~~

~~C. Correction of spelling, grammar, omission, or other similar errors not affecting~~
~~the substance of a public offering statement shall not be deemed either a material change or an~~
~~amendment of the public offering statement for the purposes of this chapter; provided, however,~~
~~the developer shall file with the board a copy of a public offering statement so corrected.~~

18 VAC 135-40-430. Filing of amended public offering statement.

A. The developer shall ~~promptly~~ file with the board a copy of [an] [the] amended public
offering statement [~~generated pursuant to 18 VAC 135-40-420~~]. ~~Unless subsection D hereof~~
~~applies, the developer shall, as a part of such filing, update the application for registration on file~~
~~with the board either by filing a new application or by advising the board of changes in the~~
~~information contained in a previously filed application or file new or substitute documents. In~~
~~the case of a public offering statement (i) amended other than in connection with a material~~
~~change or (ii) presumed current pursuant to 18 VAC 135-40-450 of this chapter the filing shall~~
~~indicate the date of amendment. The filing shall be dated by the developer and its receipt dated~~
~~by the board. The amended public offering statement shall be effective upon its receipt by the~~
~~board.~~

~~B. Unless subsection D hereof applies, the board shall issue a notice of filing within five business days following receipt in proper form of the materials required by subsection A hereof. The board shall review the amended public offering statement and supporting materials to determine whether the amendment complies with 18 VAC 135-40-420 of this chapter. At such time as the board affirmatively determines that the amendment complies with 18 VAC 135-40-420 of this chapter but not later than the 30th day following issuance of the notice of filing, it shall enter an order designating the amended form and content of the public offering statement to be used. Such order shall provide that previous orders designating the form and content of the public offering statement for use are superseded.~~

~~C. If the board determines, pursuant to subsection B hereof, that an amendment to the public offering statement does not comply with 18 VAC 135-40-420 of this chapter it shall immediately, but in no event later than the 20th day following issuance of the notice of filing enter an order declaring the amendment not in compliance with 18 VAC 135-40-420 of this chapter and specifying the particulars of such noncompliance. In the case of a public offering statement amended other than in connection with a material change, the order shall relate back to the date of amendment. If neither of the orders provided for by this subsection C and subsection B hereof are entered within the time allotted, the amendment shall be deemed to comply with 18 VAC 135-40-420 of this chapter. The developer may, at a time, correct and refile an amended public offering statement; provided, however, that if an order of noncompliance has been entered with respect to the amendment, all of the provisions of subsections A and B hereof and this subsection C shall apply to such re-filing.~~

~~D. If the material change which resulted in amendment of the public offering statement was an expansion of the time-share project, the developer shall file an amendment to the application for registration of the additional units, provided, that no such amendment need be filed for units previously registered. Any such amendment to the application for registration shall be subject to all of the provisions of Part II (18 VAC 135-40-50 et seq.) and the board shall observe the procedures of 18 VAC 135-40-430 of this chapter in regard to the application. Documents then on file with the board and not changed in connection with the creation of additional units need not be refiled, provided that the amendment indicates that such documents are unchanged.~~

~~E.B. In each case in which an amendment is filed pursuant to this section and the manner of its amendment is not When an amended document [pursuant to 18 VAC 135-40-420] is filed with the board, and the amendments are not apparent on the face of the document, the developer shall provide an indication of the manner and extent of amendment the document shall be redlined, highlighted or otherwise marked to indicate the changes.~~

~~18 VAC 135-40-440. Current public offering statement.~~

~~A. A public offering statement is current if the board has [designated] it [for use pursuant to] either 18 VAC 135-40-70 C or 18 VAC 135-40-430 B of this chapter. The public offering statement remains current so long as no material change occurs.~~

~~B. A public offering statement ceases to be current upon the occurrence of a material~~

~~change, and subject to the exception provided in 18 VAC 135-40-450 of this chapter does not thereafter become current unless and until (i) it is amended pursuant to 18 VAC 135-40-420 of this chapter and (ii) the board, with respect to such amendment, enters an order pursuant to 18 VAC 135-40-70 C or 18 VAC 135-40-430 B or fails to enter, within the times allotted therefor, any of the orders provided for by 18 VAC 135-40-430 B and C of this chapter.~~

~~C. If the board determines that a public offering statement amended other than in connection with a material change fails to comply with 18 VAC 135-40-420 of this chapter, that public offering statement ceases to be current as of the date of amendment. Such cessation shall be affected retroactively by the board's entry of an order of noncompliance and nothing contained herein shall limit the developer's right to use the public offering statement as current prior to the entry of an order of noncompliance. The public offering statement does not thereafter become current unless and until it is corrected and refiled and the board, with respect to such amendment, enters an order pursuant to 18 VAC 135-40-430 B or fails to enter either of the orders provided for by 18 VAC 135-40-430 B or C of this chapter.~~

~~**18 VAC 135-40-450. Certain amended public offering statements presumed current.**~~

~~A. A public offering statement amended by the developer to disclose any material change which is an aspect or result of the orderly development of the time-share project or the normal functioning of the time-share estate owners' association shall be presumed current immediately upon its amendment, subject, however, to the condition that the board shall subsequently determine that the amendment was made in compliance with 18 VAC 135-40-420~~

~~of this chapter. An amended public offering statement presumed current pursuant to this subsection shall be referred to elsewhere in these regulations as a presumptively current public offering statement.~~

~~B. The developer shall file with the board a copy of a presumptively current public offering statement and all of the provisions of 18 VAC 135-40-430 of this chapter shall apply to such filing except that, in addition, (i) the filing shall be made no later than 20 business days following the occurrence of the material change which necessitated the amendment and (ii) the filing shall indicate the developer's plans, if any, to deliver the presumptively current public offering statement to purchasers pursuant to § 55-376 of the Code of Virginia.~~

~~C. A board order declaring that an amendment which resulted in a presumptively current public offering statement is not in compliance with 18 VAC 135-40-420 of this chapter shall render ineffective the presumption that the public offering statement is current. In that event, the public offering statement shall be deemed to have ceased being current upon the occurrence of the material change which necessitated the amendment. Nothing contained herein shall limit the developer's right to use a presumptively current public offering statement prior to entry of the order of noncompliance. A presumptively current public offering statement also ceases being current upon the developer's failure to file within the time provided in subsection B hereof, but such cessation shall have no retroactive effect. A presumptively current public offering statement which ceases pursuant to this subsection does not thereafter become current unless and until it is filed or refiled with the board pursuant to 18 VAC 135-40-430 of this chapter and the board with respect to such public offering statement, enters an order pursuant to 18 VAC 135-40-430 B or~~

~~fails to enter, within the times allotted therefor, any of the orders provided for in 18 VAC 135-40-430 subsections B and C of this chapter.~~

~~**18 VAC 135-40-460. Public offering statement not current; notification of purchasers.**~~

~~As required by § 55-376 C of the Code of Virginia, the developer shall notify every purchaser under contract who has not yet settled and to whom has been delivered a public offering statement which was subsequently determined not to have been current at the time of its delivery. Such notification shall indicate that any contract for disposition of a time-share may be cancelled unless and until the developer complies with the provisions of § 55.374 E of the Code of Virginia. The developer shall file a copy of the notification with the board and provide proof that all purchasers then under contract were given the opportunity to cancel their contracts to purchase a time-share.~~

~~**18 VAC 135-40-470. Annual report by developer.**~~

~~A. Within 30 days prior to each anniversary date of the effective date of registration the developer shall file with the board an annual report in the form required by the board.~~

~~B. The report shall reflect any material change in the information contained in the original application for registration or supplemental registration application and shall be accompanied by the required fee.~~

~~C. If the time-share project is a time-share estate project and the developer control period is still in effect for any portion of the project, the developer shall append to the annual report the time-share owners' association annual report required by § 55-370.1 of the Code of Virginia.~~

~~**18 VAC 135-40-480. Termination of registration.**~~

~~A. At any time, upon petition filed by the developer the board shall enter an order of termination, which order shall become effective upon issuance of the order by the board.~~

~~B. In a time-share estate project, if the annual report or petition of the developer filed with the board indicates that the developer has transferred to the time-share owners' association title to all or any portion of the time-share project and that no further development rights exist therein by the developer, the board shall forthwith issue an order terminating the registration of such portion as a time-share project.~~

~~C. Prior to termination of registration, all bonds filed with the board in compliance with the Real Estate Time-Share Act must be released.~~

~~PART VIII.~~

~~EXCHANGE PROGRAMS.~~

~~18 VAC 135-40-490. Application for registration.~~

~~Application for registration of a time-share exchange shall be filed at the offices of the board. The application shall contain all of the documents and information required by § 55-374.2 of the Code of Virginia. Each application for registration shall be submitted on the standard application form. The application shall be accompanied by the fee established by 18 VAC 135-40-80 D of this chapter.~~

~~18 VAC 135-40-500. Disclosure document.~~

~~The exchange company shall prepare and file with the board a disclosure document which will be distributed to all time-share purchasers who opt to participate in the exchange program. Not more than one version of the disclosure document shall be authorized for use at any given time with respect to a particular exchange program.~~

~~18 VAC 135-40-510. Preparation of the disclosure document; readability.~~

~~The disclosure document shall be clear, understandable and as brief as is consistent with full and accurate disclosure. In no event shall the disclosure document be made so lengthy or~~

~~detailed to discourage close examination. Determination as to compliance with the standards of this section are within the exclusive discretion of the board.~~

~~18 VAC 135-40-520. Nature of information to be included.~~

~~A. The contents of the disclosure document required by § 55-374.2 A of the Code of Virginia shall be strictly construed to promote full and accurate disclosure.~~

~~B. The requirements for disclosure are not exclusive. In addition to expressly required information, the applicant shall disclose all other available information which may reasonably be expected to affect the decision of the ordinarily prudent time-share purchaser to accept or reject membership in the exchange program. The exchange company shall disclose any additional information necessary to make the required information not misleading. No information may be presented in such a fashion as to obscure the facts, to encourage a misrepresentation of the facts or otherwise to mislead a prospective member of the exchange program.~~

~~C. No information shall be incorporated by reference to an extrinsic source which is not readily available to the prospective member. Whenever required information is not known or not reasonably available, such fact shall be stated in the disclosure document with a brief explanation. Whenever special circumstances exist which would render required disclosure inaccurate or misleading, the required disclosure shall be omitted, provided that such modification or omission promotes full and accurate disclosure.~~

~~D. The disclosures required by § 55-374.2 A (1) through (18) of the Code of Virginia may be in any order selected by the applicant and may be in a supplement to a larger brochure published by the exchange company, provided nothing in the larger brochure is in variance to that information contained in such supplement.~~

~~18 VAC 135-40-530. Annual report.~~

~~On or before July 1 of each year, an exchange company whose exchange program has been registered by the board must file an annual report which updates the registration and disclosure document filed with the board. Such report shall be accompanied by the fee established by 18 VAC 135-40-80 D of this chapter.~~

TIME-SHARE REGULATIONS – APPENDIX A

PURCHASER SHOULD READ THIS DOCUMENT FOR HIS OWN PROTECTION

PUBLIC OFFERING STATEMENT

NAME OF TIME-SHARE PROJECT: [_____]
LOCATION OF TIME-SHARE PROJECT: [_____]
NAME OF DEVELOPER: [_____]
EFFECTIVE DATE OF PUBLIC OFFERING STATEMENT: _____
AMENDED: _____
REVISED: _____

This Public Offering Statement presents information regarding Time-Share[~~(s)~~] being offered for sale by the Developer. ~~[The] Virginia [law] [Real Estate Time-Share Act, §§ 55-360 et seq. of the Code of Virginia,]~~ requires that a Public Offering Statement ~~[must]~~ be given to every Purchaser in order to provide full and accurate disclosure of the ~~[significant features of the Time-Share] [characteristics of and material circumstances affecting the Time-Share Project and the characteristics of the Time-Share(s)]~~ being offered. The Public Offering Statement is not intended, however, to be all inclusive. The Purchaser should consult other sources for details not covered by the Public Offering Statement.

The Public Offering Statement summarizes information and documents furnished by the developer to the Virginia Real Estate Board. The Board has carefully reviewed the Public Offering Statement to ensure that it is an accurate summary but does not guarantee its accuracy. In the event of any inconsistency between the Public Offering Statement and the material it is intended to summarize, the ~~[latter will]~~ ~~[material shall]~~ control.

~~Under [§ 55-376 of the] Virginia [law] [Real Estate Time-Share Act,] a Purchaser of a Time-Share [is afforded a period of seven (7) calendar days during which he or she may cancel the contract of sale and obtain a full refund of any sums deposited in connection with the contract. The period begins to run upon receipt of the Public Offering Statement or execution of the purchase Agreement, whichever is later:] [may cancel the Contract until midnight of the seventh calendar day following the execution of such Contract. If the Purchaser elects to cancel the Contract, he can obtain all payments made in connection with the Contract before cancellation.] If the purchaser elects to cancel [the Contract], he [or she] [must deliver notice of cancellation by hand or by United States mail, return receipt requested:] [shall only do so either (i) by hand-delivering the notice to the developer at its principal office or at the project or (ii) by mailing the notice by certified United States mail, return receipt requested, to the developer or its designated agent.]~~

~~[The Purchaser would be well advised to inspect the Time-Share units and all facilities and obtain professional advice. The Purchaser should also make specific inquiries as to the experience of management and of any additional costs for their services.]~~

The following are violations of Virginia law and should be reported to the Virginia Real Estate Board, 3600 West Broad Street, 5th Floor, Richmond, Virginia 23230:

- a misrepresentation made in the Public Offering Statement[;]
- an oral modification of the Public Offering Statement[; or]
- a representation that the Board has passed on the merits of the Time-Share[(s)] being offered or endorses the Time-Share project.

PURCHASER SHOULD READ THIS DOCUMENT FOR HIS OWN PROTECTION