UNIFORM LAW COMMISSIONERS' MODEL REAL ESTATE TIME-SHARE ACT

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and by it

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IN ALL THE STATES

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on Uniform State Laws
645 North Michigan Avenue Chicago, Illinois 60611

UNIFORM LAW COMMISSIONERS'
MODEL REAL ESTATE TIME-SHARE ACT

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UNIFORM LAW COMMISSIONERS'
MODEL REAL ESTATE TIME-SHARE ACT

Prefatory Note

When the Special Committee on the Uniform Condominium Act (UCA) reported that Act for final approval by the National Conference of Commissioners on Uniform State Laws in August 1977, it also reported without recommendation a preliminary draft of a proposed Uniform Time-Share Ownership Act. Many condominiums, as well as other types of real property, were being devoted to this new kind of ownership or use of property known as timesharing. The Uniform Real Estate Time-Share Act (URETSA) completed two years later, borrowed from and was drafted to be consistent with UCA and other related Uniform Acts. However, URETSA was drafted so that it might be enacted by a jurisdiction whether or not the jurisdiction has enacted any or all of the related Uniform Acts.

Real estate time-sharing is a concept unknown to the common law until relatively recent years, and it thus far has generated little litigation. State legislation and regulation of real estate time-sharing has been sparse, somewhat exploratory and very limited in nature. First generation statutes were adopted in Utah in 1975, and in Colorado and New Hampshire in 1977. Florida, to a substantial extent, and a few other states, to a lesser extent, have adopted administrative regulations with respect to real estate time-sharing.

URETSA was drafted to address the subjects covered in these initial statutes, as well as to anticipate future problems which will arise as time-share ownership becomes more prevalent.

Uniform legislation appeared desirable for many reasons. Uniformity is important to the multi-state purchasers and national lenders who find it difficult to assess the appropriateness of varying real estate documents and financing arrangements in the several states. Uniformity is particularly important with regard to time-share ownership because most real estate time-sharing involves recreational or resort property, and consequently more multi-state relationships exist than with other types of real estate. Moreover, multi-state exchange programs for time-share owners have been introduced and are being rapidly expanded. Consequently, uniformity appeared especially desirable in view of the fact that a higher proportion of purchasers in time-share properties is likely to be from outside the state in which the property is located than in any other type of real estate sales. The desirability of uniformity will become even more important as time-sharing, in all of its various forms, continues to become more widespread and as exchange networks become more and more popular. Following the approval of the Act in 1979 as a Uniform Act, the Commissioners, in 1980, reconsidered their action and concluded, for practical reasons, that it should be promulgated at this time as a Model Act.

Article I of the Act contains definitions and general provisions applicable throughout the Act. The Article includes such matters as status and taxation of time-share estates as distinguished from time-share licenses (sometimes known as "right to use"), unconscionable agreements or terms of contract, and other general matters.

Article II provides for the creation, termination and other incidents of time shares, including information which must be contained or provided for in the governing ("time-share") instrument, allocation of common ("time-share") expenses, and any voting rights and partition. The Article also contains provisions with respect to secured lenders and transfer of licenses.

Article III deals with management of time-share units. If the time-shares in a property exceed a specified number, management of the time-share project must be the responsibility of either an association, which must be a profit or non-profit corporation (or an unincorporated association), or a manager. The Article provides broad ranging powers to the association and covers such matters as tort and contract liability, insurance, assessments for expenses and liens for assessments. Inasmuch as the time-share owners are likely to be numerous and widely dispersed geographically, Article III contains unique provisions dealing with "initiative, referendum and recall."

Article IV deals with consumer protection for purchasers of time shares. The Article is very similar to Article IV of UCA and addresses a number of specific abuses that have been experienced in the condominium industry. The Article requires substantial disclosure by developers which must be made available to consumers before transfer of a time share. The Article also requires that, in the event of a resale of a time share by a time-share owner other than a developer, the seller must provide the purchaser with a resale certificate containing important consumer information.

Article V is an optional article that establishes an administrative agency to supervise developer activities. The Article is so drafted that it may be included as part of the Act in those states where an agency is thought desirable, and deleted from the Act in states that desire to have the Act enforced by private action. In the event a state determines to delete Article V from the Act, other provisions of the Act, indicated in the text by brackets, should also be deleted. There is an additional Prefatory Comment to Article V.

UNIFORM LAW COMMISSIONERS' MODEL REAL ESTATE TIME-SHARE ACT

Be it enacted .....

ARTICLE I

GENERAL PROVISIONS

§ 1-101. [Short Title] This Act may be cited as the Uniform Law Commissioners' Model Real Estate Time-Share Act [See historical note preceding Commissioners' Prefatory Note, supra].

Comment

This Act deals only with time-share estate and licenses in real property. Time-sharing of personal property is not within the purview of the Act.

§ 1-102. [Definitions] In any time-share instrument, unless specifically provided otherwise or the context otherwise requires, and in this Act:

(1) "Affiliate of a developer" means any person who controls, is controlled by, or is under common control with a developer. A person "controls" a developer if the person (i) is a general partner, officer, director, or employer of the developer, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the developer, (iii) controls in any manner the election of a majority of the directors of the developer, or (iv) has contributed more than 20 percent of the capital of the developer. A person "is controlled by" a developer if the developer (i) is a general partner, officer, director, or

employer of the person, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the person, (iii) controls in any manner the election of a majority of the directors of the person, or (iv) has contributed more than 20 percent of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

(2) "Association" means the association organized under Section 3-101(a).

(3) "Conversion building" means a building that at any time before the disposition of any time share was occupied wholly or partially by persons other than purchasers and persons who occupied with the consent of purchasers.

(4) "Developer" means any person who (i) offers to dispose of or disposes of his interest in a time share not previously disposed of [, or] (ii) succeeds under Section 3-104 to any special developer right [, or (iii) applies for registration of the time share under Article V of this Act].

(5) "Dispose" or "disposition" means a voluntary transfer of any legal or equitable interest in a time share, but does not include the transfer or release of a security interest.

(6) "Manager" means any person, other than all time-share owners or the association, designated in or employed pursuant to the time-share instrument or project instrument to manage the time-share units.

(7) "Managing entity" means the manager or, if there is no manager, the association.

(8) "Offering" means any advertisement, inducement, solicitation, or attempt to encourage any person to acquire a time share, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a time share in a unit not located in this State, is not an offering

if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the unit or units are located.

(9) "Person" means a natural person, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity. [In the case of a land trust, however, "person" means the beneficiary of the trust rather than the trust or the trustee.]

(10) "Project" means real property, subject to a project instrument, containing more than one unit. A project may include units that are not time-share units.

(11) "Project instrument" means one or more recordable documents, by whatever name denominated, applying to the whole of a project and containing restrictions or covenants regulating the use, occupancy, or disposition of units in a project, including any amendments to the document but excluding any law, ordinance, or governmental regulation.

(12) "Purchaser" means any person, other than a developer, who by means of a voluntary transfer acquires a legal or equitable interest in a time share other than as security for an obligation.

(13) "Time share" means a time-share estate or a time-share license.

(14) "Time-share estate" means a right to occupy a unit or any of several units during [5] or more separated time periods over a period of at least [5] years, including renewal options, coupled with a freehold estate or an estate for years in a time-share property or a specified portion thereof.

(15) "Time-share expenses" means expenditures, fees, charges, or liabilities (i) incurred with respect to the time shares by or on behalf of all time-share owners in one time-share property, and (ii) imposed on the time-share units by the entity governing a project of which the

time-share property is a part, together with any allocations to reserves, but excluding purchase money payable for time shares.

(16) "Time-share instrument" means one or more documents, by whatever name denominated, creating or regulating time shares.

(17) "Time-share liability" means the liability for time-share expenses allocated to each time share pursuant to Section 2-102(a)(4).

(18) "Time-share license" means a right to occupy a unit or any of several units during [5] or more separated time periods over a period of at least [5] years, including renewal options, not coupled with a freehold estate or an estate for years.

(19) "Time-share owner" means a person who is an owner or co-owner of a time share other than as security for an obligation.

(20) "Time-share property" means one or more time-share units subject to the same time-share instrument, together with any other real estate or rights therein appurtenant to those units.

(21) "Time-share unit" means a unit in which time shares exist.

(22) "Unit" means real property, or a portion thereof, designated for separate use.

Comment

1. The definition of "affiliate of a developer" in subsection (1), derived from Section 1-103(1) of the Uniform Condominium Act, is similar to the definitions in 12 U.S.C. § 1730(a), which prescribes the authority of the Federal Savings and Loan Insurance Corporation to regulate the activities of savings and loan holding companies, and in 15 U.S.C. § 78(c)(18), which defines persons deemed to be associated with a broker or dealer for purposes of the federal securities laws.

The objective standards of the definition permit a ready determination of the existence of affiliate status to be made.

Unlike 12 U.S.C. § 1730(a)(2)B, no power is vested in an agency subjectively to determine the existence of "control" necessary to establish affiliate status.

2. A "project," as defined in subsection (10), may consist entirely of time-share units, or of units that are not time-share units, or of a mixture of time-share units and other units.

3. Examples of "project instruments," as defined in subsection (11), include the Declaration (or Master Deed) and Bylaws (or Code of Regulations) for a condominium and the Declaration of Covenants, Conditions, and Restrictions for a planned community or planned unit development.

In a project containing time-share units, the project instrument may serve as a time-share instrument and at least some of the time-share instruments would meet the definition of "project instrument." In a project consisting exclusively of time-share units, the project instruments would meet the definition of "time-share instruments" in subsection (16).

4. As an example of a "time-share estate," as defined in subsection (14), a deed might convey exclusive ownership of Blackacre for the entire month of May and the first 15 days of September during every calendar year forever, commencing in May, 1980. Another example of a time-share estate would be the estate created by a deed conveying exclusive ownership of Blackacre for the entire month of May and the first 15 days of September during the calendar years 1980 through 1984. Conveyance of a freehold estate or an estate for years in Whiteacre together with a right to occupy Blackacre during the indicated time periods would also satisfy the definition of a time-share estate, even if the transferee were denied the right to occupy Whiteacre.

If the time-share unit (Blackacre in the above examples) is a condominium unit, this definition is not intended to suggest that the owner of the time-share estate will have exclusive occupancy of the common elements, but only of the unit itself, despite the fact that a fractional or percentage undivided interest in the common elements is assigned to the unit. The owner of the time-share estate would enjoy, during his time periods, a right of occupancy of the common elements to the exclusion of all other owners of time-share estates in the same condominium unit, but not to the exclusion of the owners of other condominium units. This Comment applies to time-share licenses as well as to time-share estates.

Some forms of time-share estates have been created in the United States without the benefit of special statutory sanction. For example, "interval ownership" involves the conveyance of different estates for years covering different occupancy periods to all time-share owners in a time-share unit, coupled with percentage undivided interests in the remainder over in fee simple. Since each estate for years carries with it a right to occupy the time-share unit during separated periods of time, the estate for years involved in interval ownership satisfies the definition of a time-share estate if the number of occupancy period is [5] or more and they are spread over a term of at least [5] years. Another form of time-sharing, commonly known as "time sharing ownership" (TSO), involves conveyance of a percentage undivided interest in fee simple to each time-share owner coupled with a right to occupy the time-share unit during specified periods of time. TSO likewise satisfies the definition of a time-share estate.

5. A deed or contract granting a time-share estate or a time-share license is a "time-share instrument" within the meaning of subsection (16). See also the second paragraph of Comment 3

above.

6. As an example of a "time-share license," as defined in subsection (18), an exclusive right or permission (not coupled with a freehold estate or an estate for years) might be given to occupy Blackacre during the entire month of May and the first 15 days of September for 40 years beginning in May, 1980, and ending in September, 2019. As a more complicated example of a time-share license, such a right might be given to occupy, during the time periods just mentioned, any one of several specified units to which the licensor may add at will any as yet unspecified units that he has reserved the right to add later to the pool of units available for selection. The actual selection might be made by the licensor, or there might be a method whereby the licensees' expressed preferences are given at least some weight, with conflicts in these preferences resolved by drawing lots, or in favor of the first licensee to express a preference, or by some other method.

It is possible to devise an even more complicated example of a time-share license by specifying the length of the time periods, but reserving to the licensor the right to determine (perhaps within certain specified limits) the dates when each period shall begin and end. For example, the licensee might be given the right to occupy Blackacre for 15 consecutive days beginning between September 1 and October 30 of each year, with the right reserved to the licensor to specify each year the precise date in September upon which the fifteen-day period will begin.

The type of time share designated in this Act as a "time-share license" can be and has been created in many states in reliance on common law principles without the benefit of the express statutory sanction which this Act provides. This type of time share has often been called "vacation license" or a "(time-share) club membership."

See also the second paragraph of Comment 4 above.

7. A "time-share property," as defined in subsection (20), may include all of a project, several projects, some of the units in a project, or some or all of the units located in several projects. For example, if one time-share instrument creates or regulates time shares in units located in two or more condominiums, planned communities, or planned unit developments, all of the units to which the time-share instrument applies constitute one time-share property.

8. A "unit," as defined in subsection (22), may be a dwelling or other building, or a portion of a building such as an apartment. Unimproved real property (e.g., a campsite), and real property improved by structures not ordinarily understood to be "buildings" (e.g., mobile home sites equipped with hookups for utility services), meet the definition of "unit" if designated for use by no more than one family or group of individuals at a time.

Although all "projects" contain "units", not all units are part of projects, e.g., a dwelling designated for use by no more than one family at a time is a "unit" but is not part of a "project" if that dwelling is not subject to any project instrument (i.e., if there is no recordable document which applies to that unit and to at least one other unit and which otherwise meets the definition of "project instrument").

§ 1-103. [Status and Taxation of Time-Share Estates]

(a) Except as expressly modified by this Act and notwithstanding any contrary rule of common law, a grant of an estate in a unit conferring the right of possession during a potentially infinite number of separated time periods creates an estate in fee simple having the character and incidents of such an estate at common law, and a grant of an estate in a unit conferring the right of possession during [5] or more separated time periods over a finite number of years equal to [5] or more, including renewal options, creates an estate for years having the character and incidents of such an estate at common law.

(b) Each time-share estate constitutes for all purposes a separate estate in real property. Each time-share estate [other than a time-share estate for years] must [not] be separately assessed and taxed. [Notices of assessments and bills for taxes must be furnished to the managing entity, if any, or otherwise to each time-share owner, but the managing entity is not liable for the taxes as a result thereof.]

(c) A document transferring or encumbering a time-share estate may not be rejected for recordation because of the nature or duration of that estate.

Comment

1. Except to the extent expressly indicated by the language of this section and the comments below, this Act does not change the fact that, depending on the law of a given State, a time-share estate which includes an estate for years may be regarded as real property, as personal property, or as real property for some purposes and personal property for other purposes. Hence, that estate might pass to the heirs at law of an intestate decedent in one State, but to the next of kin under the law of another State.

2. There is some authority for the proposition that at common law only one fee simple estate could exist with respect to any one parcel of real property. This Act contemplates, however, that two or more time-share estates constituting separate fee simple estates may be created in a single unit. One purpose of subsection (a) is to assure that each such estate is recognized by the courts as a separate fee simple estate, with all the usual incidents thereto, regardless of the effect common law doctrines would have had on the attempted creation of such

an estate. Under this Act, no merger would occur even if two consecutive time-share estates were acquired by the same person. In the absence of this Act, the effect of common law doctrines might have resulted in a ruling of invalidity or of merger.

3. Without subsection (a), it is possible that a time-share estate including an estate for years would have been regarded at common law as a series of estates for years (instead of a single estate for years), each such estate being coterminous with the number of days (or other time periods) during which the estate is continuously possessory. One purpose of subsection (a) is to assure that a time-share estate for years is recognized by the courts as a single estate for years, with all the usual common law incidents thereto.

4. Subsection (b) makes each time share other than a time-share license a separate estate or interest for all purposes other than assessment and taxation. Whether or not time-share estates are also separate estates for purposes of assessment and taxation, and whether or not a distinction is made in this regard between fee simple time-share estates and time-share estates for years, depends on what choices a State makes with respect to the bracketed language in the second sentence of subsection (b). Whatever decision a State makes with respect to the first bracketed phrase in that sentence, if it is decided to remove the brackets from around the word "not" (thereby leaving that word in that sentence), the last sentence of subsection (b) should be left in (with the brackets around it deleted).

5. A State may wish to alter the first bracketed clause in subsection (b) to differentiate between time-share estates for years depending on the length of time between the date the estate becomes possessory and the date it ceases to be possessory, or depending upon the aggregate amount of time during which it is possessory.

6. Subsection (c) assures that a document transferring or encumbering a time-share estate that includes an estate for years is recordable regardless of the length of time between the date it becomes possessory and the date it ceases to be possessory, and regardless of the aggregate amount of time during which it is possessory. It is assumed that documents transferring or encumbering other types of time-share estates sanctioned by this Act (*viz.*, fee simple time-share estates) are recordable under the language of existing recording acts in all American jurisdictions.

§ 1-104. [Variation by Agreement] Except as expressly provided in this Act, provisions of this Act may not be varied by agreement, and rights conferred by this Act may not be waived. A developer may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of this Act or of the time-share instrument.

Comment

The following sections permit variations:

Section 1-102. [*Definitions.*] All definitions used in the time-share instrument may be varied, but not in interpretation of the Act.

Section 1-111. [*Applicability.*] Pre-Act time-share instruments may be amended to conform to the Act.

Section 2-102. [*Time-Share Instrument.*] A developer may add any information he desires to the required content of the time-share instrument.

Section 2-103. [*Allocation of Time-Share Liability and Voting.*] A developer may allocate the time-share expense liability and voting in any way desired, subject to certain limitations.

Section 2-104. [*Partition.*] The time-share instrument may allow an action for partition of a time-share unit.

Section 2-105. [*Termination of Time-Shares.*] The time-share instrument may allow for termination of time-share licenses. The time-share instrument may specify a majority larger than 80 percent to terminate as well as the interest of each time-share owner upon termination.

Section 2-106. [*Use for Sales Purposes.*] The developer may maintain sales offices, management offices and model units only if the time-share instrument so provides. Unless the time-share instrument provides otherwise, the developer may maintain advertising on the time-share property.

Section 2-107. [*Rights of Secured Lenders.*] The time-share instrument may require that a specified number or percentage of the secured lenders approve specified actions of the unit owners, time-share owners, developer or managing entity.

Section 3-101. [*Managing Entity.*] If the number of time-shares in a time-share property is more than [12] the developer may utilize either an association or a manager to manage the time-share property.

Section 3-102. [*Powers of Managing Entity.*] The time-share instrument may limit the right of the association and manager to exercise any of the listed powers, except in a manner which discriminates in favor of a developer.

Section 3-103. [*Powers and Duties in Absence of a Managing Entity.*] The time-share instrument may limit the powers of the time-share owners if there is no managing entity and the number of time shares in the time-share property is [12] or fewer. The time-share instrument may provide that the time-share owners may exercise those powers by less than unanimous action.

Section 3-106. [*Upkeep of Units.*] Except to the extent otherwise provided by the time-share instrument, the managing entity is responsible for maintenance, repair and replacement of the time-share unit. The time-share instrument may provide, subject to other provisions of law, that a time-share owner may later or change the appearance of a time-share unit without the consent of the managing entity.

Section 3-108. [*Insurance.*] The time-share instrument may specify a minimum amount of liability insurance to be obtained by the managing entity, may vary these provisions in the case of a time-share property in which none of the time-share units may be used as dwellings or for recreational purposes, and may require additional insurance.

Section 3-109. [*Surplus Funds.*] Unless otherwise provided in the time-share instrument, surplus funds are credited to time-share owners in proportion to time-share expense liability.

Section 3-110. [*Assessments for Time-Share Expenses.*] Unless otherwise provided in the time-share instrument, the developer must pay all expenses of the time-share property until time-share expense assessments are made against the time-share owners, interest on past-due assessments must not exceed [18] percent per year, and any time-share expense benefiting fewer than all of the time-share owners must be assessed exclusively against the time-share owners benefited.

Section 3-111. [*Lien for Assessments.*] Unless otherwise provided in the time-share instrument, fines, late charges and other fees are treated as assessments for lien purposes.

Section 3-115. [*Direct Initiative by Owners.*] The documents governing a project, as well as other law, may provide different procedures for amending the documents or approving or disapproving any proposed expenditure.

Section 3-116. [*Referendum of Owners.*] The project instruments may specify other matters to be determined by referendum.

Section 3-117. [*Recall of Manager by Owners.]* The manager may also be terminated in any manner permitted by law or by the project instruments.

Section 4-113. [*Exclusion or Modification of Implied Warranties of Quality.*] Implied warranties of quality may be excluded or modified by agreement.

Section 4-114. [*Statute of Limitation for Warranties.*] The 4 year limitation may be modified by agreement of the parties.

§ 1-105. [Unconscionable Agreement or Term of Contract]

(a) The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the

remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result.

(b) Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the court, in order to aid the court in making the determination, shall afford the parties a reasonable opportunity to present evidence as to:

(1) the commercial setting of the negotiations;

(2) whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his interests by reason of physical or mental infirmity, illiteracy, or inability to understand the language of the agreement or similar factors;

(3) the effect and purpose of the contract or clause; and

(4) if a sale, any gross disparity, at the time of contracting, between the amount charged for the time share and the value of the time share measured by the price at which similar time shares were readily obtainable, but a disparity between the contract price and the value of the time share measured by the price at which a similar time share was readily obtainable in similar transactions does not, of itself, render the contract unconscionable.

Comment

This section, derived from Section 1-112 of the Uniform Condominium Act, is based on Section 2-302 of the Uniform Commercial Code and Section 1-311 of the Uniform Land Transactions Act.

§ 1-106. [Obligation of Good Faith] Every contract or duty governed by this Act imposes an obligation of good faith in its performance or enforcement.

Comment

This section, identical to Section 1-113 of the Uniform Condominium Act, sets forth a basic principle running throughout this Act: in time-share transactions, good faith is required in the performance and enforcement of all agreements and duties. Good faith, as used in this Act, means observance of two standards, "honesty in fact" and observance of reasonable standards of fair dealing. While the term "honesty in fact" is not defined, the term is derived from and used in the same manner as in Section 1-201 of the Uniform Simplification of Land Transfers Act and in Sections 2-103(i)(b) and 7-404 of the Uniform Commercial Code.

§ 1-107. [Remedies to be Liberally Administered]

(a) The remedies provided by this Act shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this Act or by other rule of law.

(b) Any right or obligation declared by this Act is enforceable by judicial proceeding.

§ 1-108. [Supplemental General Principles of Law Applicable]

The principles of law and equity, including the law of corporations [and unincorporated associations], the law of real property and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this Act, except to the extent inconsistent with this Act.

§ 1-109. [Conflicts with Other Statutes] In the event of any conflict between this Act and [cite all state statutes governing condominiums, co-operatives, planned communities, planned unit developments, and other projects], the provisions of this Act prevail, but this Act does not invalidate or otherwise affect rights or obligations vested under those statutes before the effective date of this Act, or the manner of their exercise or enforcement.

Comment

1. The right, if any, to create time shares in a property, such as a condominium unit, under prior law is dependent upon the prior law of the State. This Act does not purport to determine or define prior law.

2. If after the enactment of this Act, a state adopts any statute governing condominiums, co-operatives, planned communities, planned unit developments or any other types of projects, those statutes should contain a provision stating that the provisions of this Act will prevail in the event of any conflicts.

§ 1-110. [Construction Against Implicit Repeal] This Act being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

§ 1-111. [Applicability]

(a) This Act applies to all time shares created in units within this State after the effective date of this Act [and the provisions of [insert reference to all present statutes expressly applicable to the creation or sale of time shares] do not apply to time shares created after the effective date of this Act]. Sections 1-103 (Status and Taxation of Time-Share Estates), 1-108 (Supplemental General Principles of Law Applicable), 1-110 (Construction Against Implicit Repeal), 1-105 (Unconscionable Agreement or Term of Contract), 1-106 (Obligation of Good Faith), 1-107 (Remedies to be Liberally Administered), 2-104 (Partition), 3-102(a)(1) through (9) and (14) through (16) and (b) (Powers of Managing Entity), 3-107 (Tort and Contract Liability), 3-108 (Insurance), 3-109 (Surplus Funds), 3-110 (Assessments for Time-Share Expenses), 3-111 (Lien for Assessments), 3-112 (Financial Records), 3-113 (Association as Trustee), 4-107 (Resales of Time Shares), 4-108 (Deposits), 4-109 (Liens), 4-111 (Express Warranties of Quality), 4-114 (Statute of Limitations for Warranties), 4-115 (Effect of Violations on Rights of Action; Attorneys' Fees), and Section 1-102 (Definitions) to the extent necessary in construing any of

those sections, apply to all time shares created in units in this State before the effective date of this Act, but only with respect to events and circumstances occurring after its effective date. They do not affect the validity of, or rights or obligations created by, pre-existing provisions of any time-share instrument, document transferring an estate or interest in real property, or contract.

(b) The time-share instrument of any time-share property created before the effective date of this Act may be amended to accomplish any result permitted by this Act if the amendment is adopted in conformity with applicable law and with the procedures and requirements specified by the instrument. If the amendment grants to any person any rights, powers, or privileges permitted by this Act, all correlative obligations, liabilities, and restrictions in this Act also apply to that person.

(c) This Act does not apply to time shares in units located outside this State, but the public offering statement provisions (Sections 4-103 through 4-106) apply to all dispositions thereof signed in this State by any party unless exempt under Section 4-101(b) [and the agency regulation provisions under Article V apply to any offering thereof in this State].

§ 1-112. [Severability] If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable.

ARTICLE II

CREATION, TERMINATION AND INCIDENTS OF TIME SHARES

§ 2-101. [Time Shares in Projects] If all of the documents constituting the project instrument are recorded after the effective date of this Act, time shares may not be created in any unit in a project unless expressly permitted by the project instrument. No amendment to a project instrument which is recorded after the effective date of this Act may permit the creation of time shares unless the owners of at least [80] percent of the units, or any larger majority required by the project instrument or by law, consent to the amendment.

Comment

1. This is the only section of this Act prohibiting the creation of time shares. Hence, if a state adopts this Act, time shares may be created in any unit unless prohibited (expressly or impliedly) by this section, by some other state or local law or ordinance, or by a privately imposed restrictive covenant. This section does not deal with the creation of time shares created in projects that are subject to project instruments which were recorded before the effective date of this Act. This section has no application to units that are not parts of projects.

2. The number 80 was inserted in brackets, recognizing that many project instruments may specify a smaller majority for most types of amendments. The introduction of time-sharing may represent such a fundamental change in the character of a project, however, that it is appropriate to require a very large majority to amend the project instruments to permit time-sharing.

3. If existing state law requires certain disclosures to purchasers in certain kinds of projects, the state law should be amended to require disclosure of how project instruments could be amended to permit the creation of time shares.

§ 2-102. [Time-Share Instrument]

(a) Except as provided in subsection (b), more than [12] time shares may be created in a single time-share property only by a time-share instrument containing or providing for the following matters:

(1) a legally sufficient description of the time-share property and the name or other identification of the project, if any, within which it is situated;

(2) the name of the county or counties in which the time-share property is situated;

(3) identification of time periods by letter, name, number, or combination thereof;

(4) the time-share expense liability and any voting rights assigned to each time share;

(5) if additional units may become part of the time-share property, the method of doing so and the formula for allocation and reallocation of the time-share expense liabilities and any votes;

(6) the method of designating the insurance trustee required under Section 3-108;

(7) allocation of time for maintenance of the time-share units;

(8) provisions for management by a managing entity or by the time-share owners;

(9) if all of the time shares are time-share licenses, the rights a licensee will have, if his license is terminated, with respect to any of the property his license affects, or a statement that he will not have any rights; and

(10) any requirements for amendments of the time-share instrument.

(b) If a time-share license applies to units in more than one time-share

property, the time-share instrument creating the license need not contain or provide for the matters specified in paragraphs (1) through (7) of subsection (a).

Comment

Twelve or fewer time shares may be created in a single time-share property by any instrument that confers a right to occupy the property in one of the ways described in Section 1-102(14) and (18) defining time-share estate and time-share license.

§ 2-103. [Allocation of Time-Share Expense Liability and Voting Rights]

(a) The time-share instrument must state the amount of or formula used to determine any time-share expense liability allocated to each time share.

(b) If the time-share instrument provides for voting, it must allocate votes to each time-share unit and to each time-share estate and may allocate votes to any time-share license. It may not allocate any votes to any other property or to any person who is not a time-share owner. The number of votes allocated to each time share must be equal for all time shares or proportionate to each time share's value as estimated by the developer, time-share expense liability, or unit size. The time-share instrument may specify some matters as to which the votes must be equal and others as to which they must be proportionate.

(c) Except as otherwise provided pursuant to Section 2-102(a)(5), the votes and time-share expense liability allocated to a time share may not be altered without the unanimous consent of all time-share owners entitled to vote and voting at a meeting in which at least [80] percent, or in an initiative or referendum in which at least [80] percent, of the votes allocated to time shares are cast.

(d) Except for minor variations due to rounding, the sum of the time-share expense liabilities assigned to all time shares must equal one if stated as fractions or 100 percent if stated

as percentages. In the event of discrepancy between the time-share liability or votes allocated to a time share and the result derived from the application of the formulas, the allocated time-share expense liability or vote prevails.

§ 2-104. [Partition] No action for partition of a time-share unit may be maintained except as permitted by the time-share instrument or by Section 2-105(d).

Comment

1. A tenancy in common may be created in time-share estates. Most if not all jurisdictions have statutes permitting any tenant in common to compel, through judicial action, either a physical division of the commonly owned real estate, or its sale followed by a division of the proceeds. This section assures that the owners of time-share estates are not entitled to the rights conferred by those statutes, and are instead governed by this Act and the provisions of time-share instruments made in accordance with this Act.

2. This section does not prohibit partition of time share owned by two or more persons as tenants in common, joint tenants, or any other form of cotenancy contemplated by the partition laws of a state.

§ 2-105. [Termination of Time Shares]

(a) This section applies to time-share licenses only to the extent expressly provided by the time-share instrument.

(b) All time shares in a time-share property may be terminated only by agreement of the time-share owners having at least 80 percent of the time shares, or such larger majority as the time-share instrument may specify.

(c) An agreement to terminate all time shares in a time-share property must be evidenced by the execution of a termination agreement, or ratifications thereof, in the same manner as a deed by the requisite number of time-share owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. A termination

agreement and all ratifications thereof must be recorded in every [county] in which a portion of the time-share property is situated, and is effective only upon recordation.

(d) Unless the termination agreement sets forth the material terms of a contract or proposed contract under which an estate or interest in each time-share unit equal to the sum of the time shares therein is to be sold and designates a trustee to effect the sale, title to an estate or interest in each time-share unit equal to the sum of the time shares therein vests upon termination in the time-share owners thereof in proportion to their respective interests as provided in subsection (h), and liens on the time shares shift accordingly to encumber those interests. Any co-owner of that estate or interest in a unit may thereafter maintain an action for partition or for allotment or sale in lieu of partition pursuant to the laws of this State.

(e) If the termination agreement sets forth the material terms of a contract or proposed contract under which an estate or interest in each time-share unit equal to the sum of the time shares therein is to be sold and designates a trustee to effect the sale, title to that estate or interest vests upon termination in the trustee for the benefit of the time-share owners, to be transferred pursuant to the contract. Proceeds of the sale must be distributed to time-share owners and lien holders as their interests may appear, in proportion to the respective interests of the time-share owners as provided in subsection (h).

(f) Except as otherwise specified in the termination agreement, so long as the former time-share owners or their trustee holds title to the estate or interest equal to the sum of the time shares, each former time-share owner and his successors in interest have the same rights with respect to occupancy in the former time-share unit that he would have had if termination had not occurred, together with the same liabilities and other obligations imposed by this Act or the time-share instrument.

(g) After termination of all time shares in a time-share property and adequate provision for the payment of the claims of the creditors for time-share expenses, distribution must be made, in proportion to their respective interests as provided in subsection (h), to the former time-share owners and their successors in interest of (i) the proceeds of any sale pursuant to this section, (ii) the proceeds of any personalty held for the use and benefit of the former time-share owners, and (iii) any other funds held for the use and benefit of the former time-share owners. Following termination, creditors of the association holding liens perfected against the time-share property before the termination may enforce those liens in the same manner as any other lien holder. All other creditors of the association are to be treated as if they had perfected liens on the time-share property immediately before termination.

(h) The time-share instrument may specify the respective fractional or percentage interest in the estate or interest in each unit equal to the sum of the time shares therein that will be owned by each former time-share owner. Otherwise, not more than 180 days prior to the termination, an appraisal must be made of the fair market value of each time share by one or more impartial qualified appraisers selected either by the trustee designated in the termination agreement, or by the managing entity if no trustee was so designated. The appraisal must also state the corresponding fractional or percentage interests calculated in proportion to those values and in accordance with this subsection. A notice stating all of those values and corresponding interests and the return address of the sender must be sent by certified or registered mail, return receipt requested, by the managing entity or by the trustee designated in the termination agreements, to all of the time-share owners. The appraisal governs the magnitude of each interest unless (i) at least 25 percent of the time-share owners deliver, within 60 days after the date the notices were mailed, written disapprovals to the return address of the sender of the notice, or (ii) the final

judgment of a court of competent jurisdiction, entered during or after that period, holds that the appraisal should be set aside. The appraisal and the calculation of interests must be made in accordance with the following:

(1) If the termination agreement sets forth the material terms of a contract or proposed contract for the sale of the estate or interest equal to the sum of the time shares, each time share conferring a right of occupancy during a limited number of time periods must be appraised as if the time until the date specified for the conveyance of the property had already elapsed. Otherwise, each time share of that kind must be appraised as if the time until the date specified pursuant to subsection (c) had already elapsed.

(2) The interest of each time-share owner is the value of the time share he owned divided by the sum of the values of all time shares in the unit or units to which his time share applies.

(i) Foreclosure or enforcement of a lien or encumbrance against all of the time shares in a time-share property does not of itself terminate those time shares.

Comment

1. This section derives in part from Section 2-118 of the Uniform Condominium Act.

2. Unless the time-share instrument requires unanimous consent for termination, the developer, if he has the requisite majority of time shares, is able to terminate all time shares in the time-share property despite the unanimous opposition of other time-share owners.

3. The designated trustee referred to in this section may be any person, including the developer, the managing entity, or a bank or other third party. With respect to the authority and capacity of the designated trustee, see Section 3-113.

4. The effectiveness of the termination agreement may be made subject to contingencies such as consummation of the contract of sale referred to in subsection (d).

5. The following example explains the calculation of each owner's respective interest as contemplated by subsection (h) for the purposes of subsections (d), (e) and (g). In the ordinary

case, it is unlikely that the owners of the requisite majority of time shares would agree to termination unless they could determine in advance approximately how much money each would receive if the project were terminated. Consequently, the example assumes that the appraisal occurs 180 days or less before the date of the proposed termination. It is further assumed that the time-share instrument does not specify the respective fractional or percentage interest each time-share owner will own in the estate or interest equal to the sum of the time shares.

EXAMPLE: Suppose the time-share property consists of 100 time-share units. The time shares are 20-year time-share estates for years, created about 5 years previously. Each such estate gives the time-share owner thereof the right to occupy a particular time-share unit for a certain 2-week period each year. In the case of some of those estates, 5 periods have elapsed and 15 periods remain to be utilized in the future. In the case of others, only 4 periods have elapsed and 16 remain. For a variety of reasons, (including obsolescence, dissatisfaction with the manner in which the time-share property is being operated, etc.), the owners of the requisite majority of time shares may wish to terminate the time shares and convey the remainder of a 20 year estate for years in each unit to a prospective purchaser. An offer to buy such an estate or interest (*i.e.*, the remainder of a 20 year estate for years) for $3,000,000 is made by an investor and thereafter a decision is made (perhaps unilaterally by the managing entity or perhaps by an initiative or referendum) to have an appraisal made with a view to determining the share of the sales proceeds each time-share owner would receive. The appraiser would determine the fair market value of each time share. Presumably, time shares conferring occupancy rights during the more desirable seasons have a greater value than time shares conferring occupancy rights during less desirable seasons, and time shares with 16 unexpired occupancy periods are (all other things being equal) more valuable than time shares with 15 unexpired occupancy periods. Similarly, time shares conferring occupancy rights in larger units presumably have a greater value than time shares conferring occupancy rights in smaller units. Suppose the appraiser determines that the aggregate value of all of the time shares in the time-share property is $4,000,000 and that the value of a particular time share is $800.00. Under the formula stated in subsection (h)(2), the interest of the owner of that time share would be $800.00/$4,000,000 dollars or 0.2%. This means that, if termination is approved, the time-share owner will be entitled to receive $600.00 if the designated trustee obtains $3,000,000 from the buyer, subject, however, to the claims of any person who holds a lien on the time share, the unit, or the entire project or time-share property in which the unit is located.

6. Subsection (h)(1) means that the appraiser must take into consideration the fact that some occupancy periods will elapse between the time of the appraisal and the date when termination is to occur. Thus, in the example given above, a time share with a given fair market value at the time of the appraisal would presumably have a lower fair market value if it entitled its owner to one less occupancy period. Consequently, if one occupancy period to which the owner of a particular time share is entitled is to elapse between the date of the appraisal and the date fixed for termination, the appraiser must set the fair market value of that time share as though the period had already elapsed. This does not mean that the appraiser must predict what the fair market value of time shares will be at a further date; any such prediction would have to be qualified in recognition of the myriad happenstances that could upset the prediction, such as the possibility (to pick an extreme example) of the time-share units being destroyed in a nuclear war. Rather, each time share should be appraised as of the time the appraiser examines the time-

share units, but the appraisal would be made as though the time shares were already closer to expiration by an amount of time equal to the period which must elapse until the date proposed for termination of the time shares.

7. If an initial appraisal made pursuant to subsection (h) is rejected by the owners of the requisite minority of the time shares, further appraisals must be made until one appraisal meets with no such rejection or until the owners of the requisite majority of the time shares fail to agree on termination.

§ 2-106. [Use for Sales Purposes] A developer may maintain sales offices, management offices, and models in the time-share property only if the time-share instrument so provides and specifies the rights of a developer with regard to the number, size, location, and relocation thereof, and he may maintain signs on the property advertising the property. The provisions of this section are subject to the provisions of other state law, local ordinances, and the project instruments.

§ 2-107. [Rights of Secured Lenders] The time-share instrument may require that all or a specified number or percentage of the mortgagees or beneficiaries of deeds of trust encumbering units or time shares approve specified actions of the unit owners, time-share owners, developer, or managing entity as a condition to the effectiveness of those actions, but no requirement for approval may operate to (i) deny or delegate control over the general administrative affairs of any association by the unit owners, time-share owners, or both, or their elected representatives, or (ii) prevent any association from commencing, intervening in, or settling any litigation or proceeding, or receiving and distributing any insurance proceeds pursuant to Section 3-108.

§ 2-108. [Transfer of Time-Share Licenses] The managing entity shall maintain records of the names and addresses of the owners of time-share licenses. If the number of

licenses in the time-share property is more than [12], no transfer of a time-share license is effective against persons without knowledge thereof unless and until entered in those records.

ARTICLE III

MANAGEMENT OF THE TIME-SHARE PROPERTY

§ 3-101. [Managing Entity]

(a) If the number of time shares in a time-share property is more than [12], the developer, before the first transfer of a time share, must create or provide a managing entity to manage the time-share property. The managing entity may be (i) a manager, who may be the developer, or, (ii) an association, which must be a profit or non-profit corporation [or an unincorporated association], the membership of which must at all times consist exclusively of all the time-share owners. If the time-share property is part of a project containing time-share units and other units, the manager may be the entity that governs the project. If the number of time shares in the time-share property is [12] or fewer and there is no managing entity, the time-share owners may form an association meeting the requirements specified above.

(b) In the absence of a managing entity required by this section, a court upon application of a party in interest, including a time-share owner or a lienholder, may appoint and prescribe the powers of a managing entity.

Comment

This section permits but does not require a managing entity if the number of time shares in a time-share property is [12] or fewer, but the time-share owners may be treated as an association as provided in Section 3-103.

§ 3-102. [Powers of Managing Entity]

(a) Subject to the provisions of subsection (b) and the time-share instrument, the association [, even if unincorporated,] may:

(1) adopt and amend bylaws, rules, and regulations;

(2) adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for time-share expenses from time-share owners;

(3) hire and discharge managing agents and other agents, employees, and independent contractors;

(4) institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or 2 or more time-share owners on matters affecting the time-share property or time shares;

(5) make contracts and incur liabilities;

(6) regulate the use, maintenance, repair, replacement, and modification of the time-share property;

(7) cause additional improvements to be made to the time-share property;

(8) impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the time-share instrument, bylaws, and rules or regulations of the association;

(9) impose reasonable charges for the preparation of resale certificates required by Section 4-107 or statements of unpaid assessments;

(10) exercise any other powers conferred by the time-share instrument or bylaws;

(11) impose and receive any payments, fees, or charges for the use, rental, or operation of the time-share property, and for services provided to time-share owners;

(12) acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property;

(13) assign its right to future income, including the right to receive time-share expense assessments, but only to the extent the time-share instrument expressly so provides;

(14) provide for the indemnification of its directors and officers and maintain directors' and officers' liability insurance;

(15) exercise all other powers that may be exercised in this State by legal entities of the same type as the association; and

(16) exercise any other powers necessary and proper for the governance and operation of the association.

(b) The time-share instrument may not impose limitations on the power of the association to deal with the developer which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

(c) Except as otherwise provided in the time-share instrument, the manager, to the extent permitted by the management contract, may exercise the powers specified in paragraphs (1) through (11) of subsection (a).

(d) If the time-share property is a part of a project, neither this section nor Section 3-103 confers any powers on the managing entity, the developer, or the time-share owners with respect to any portion of the project other than the units within the time-share property.

Comment

The authority to adopt and amend bylaws, rules, and regulations includes authority to repeal them.

§ 3-103. [Powers and Duties in Absence of Managing Entity] The developer has the duties imposed on the managing entity by this Act and the powers listed in Section 3-102(a)(1) through (11) until a managing entity is provided or the developer and his affiliates own no estate or interest in the time-share property. Thereafter, if there is no managing entity and the number of time shares in the time-share property is [12] or fewer, the time-share owners have those powers subject to any provisions of the time-share instrument relating to the manner of the exercise thereof and have the responsibilities and liabilities of an association for the purposes of Sections 3-106 and 3-107. To the extent that the time-share instrument is silent with respect to the manner of exercise of any of those powers, the time-share owners may exercise them only by unanimous action.

§ 3-104. [Transfer of Special Developer Rights]

(a) For the purposes of this section, "special developer right" means a right reserved for the benefit of a developer to add more units to a time-share property (Section 2-102(a)(5); to maintain sales offices, management offices, models, and signs (Section 2-106); or to appoint, control, or serve as the managing entity. No special developer right created or reserved under this Act may be transferred except by an instrument evidencing the transfer recorded in every [county] in which any portion of the time-share property is located. The instrument is not effective unless it is also executed by the transferee.

(b) Upon transfer of a special developer right, the liability of a transferor developer is as follows:

(1) A transferor is not relieved of any obligation or liability arising before the

transfer and remains liable for warranty obligations imposed upon him by this Act. Lack of privity does not deprive any time-share owner of standing to maintain an action to enforce any obligation of the transferor.

(2) If a successor to any special developer right is an affiliate of a developer (Section 1-102(1)), the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the time-share property.

(3) If a transferor retains any special developer right, but transfers other special developer rights to a successor who is not an affiliate of the developer, the transferor is liable for any obligations or liabilities imposed on a developer either by this Act or by the time-share instrument relating to the retained special developer rights and arising after the transfer.

(4) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special developer right by a successor developer who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure of a mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership proceedings, of any time shares owned by a developer in the time-share property, a person acquiring title to all the time shares being foreclosed or sold, but only upon his request, succeeds to all special developer rights, or only to any rights reserved in the time-share instrument pursuant to Section 2-106 and held by that developer to maintain sales offices, management offices, models, and signs. The judgment or instrument conveying title must provide for transfer of only the special developer rights requested.

(d) Upon foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale

under Bankruptcy Code or receivership proceedings, of all time shares in a property owned by a developer:

(1) the right to appoint, control, or serve as the managing entity terminates unless the judgment or instrument conveying title provides for transfer of all special developer rights to a successor developer; and

(2) the developer ceases to have any other special developer rights.

(e) The liabilities and obligations of a person who succeeds to a special developer right are as follows:

(1) A successor to any special developer right who is an affiliate of a developer is subject to all obligations and liabilities imposed on the transferor by this Act or by the time-share instrument.

(2) A successor to any special developer right, other than a successor described in paragraphs (3) or (4), who is not an affiliate of a developer, is subject to all obligations and liabilities imposed by this Act or the time-share instrument.

(i) on a developer, which relate to his exercise or non-exercise of special developer rights; or

(ii) on his transferor other than:

(A) misrepresentation by any previous developer;

(B) warranty obligations on improvements made by any previous developer or made before the property became a time-share property;

(C) breach of any fiduciary obligation by any previous developer or his appointees; or

(D) any liability or obligation imposed on the transferor as a result

of the transferor's acts or omissions after the transfer.

(3) A successor to only a right to maintain sales offices, management offices, models, and signs (Section 2-106), if he is not an affiliate of a developer, may not exercise any other special developer right and is not subject to any liability or obligation as a developer, except the obligation to provide a public offering statement[,] [and] any liability arising as a result thereof [, and obligations under Article V].

(4) A successor to all special developer rights held by his transferor who is not an affiliate of that developer and who has succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to the time shares under subsection (c) may declare his intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special developer rights to any person acquiring title to any time share owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by his transferor to appoint, control, or serve as the managing entity, and any attempted exercise of those rights is void. So long as a successor may not exercise special developer rights under this subsection, he is not subject to any liability or obligation as a developer other than liability for his acts and omissions in appointing, controlling, or serving as the managing entity.

(f) Nothing in this section subjects any successor to a special developer right to any claims against or other obligations of a transferor developer, other than claims and obligations arising under this Act or the time-share instrument.

§ 3-105. [Termination of Contracts and Leases of Developer]

(a) If, before the developer ceases to appoint, control, or serve as the managing entity, there is entered into (i) any management contract, employment contract, or lease of recreational or parking areas or facilities, (ii) any other contract or lease between the managing entity and a developer or an affiliate of a developer, or (iii) any contract or lease that is not bona fide or was unconscionable to the time-share owners at the time entered into under the circumstances then prevailing, the contract may be terminated without penalty by the association or the time-share owners at any time after the developer ceases to appoint, control, or serve as the managing entity, upon not less than [90] days' notice to the other party. This subsection does not apply to any lease the termination of which would terminate the time-share property or reduce its size, unless the real estate subject to that lease was included in the property for the purpose of avoiding the right to terminate a lease under this section.

(b) If there is no association, any time-share owner individually or on behalf of the class of time-share owners may maintain an action for appropriate relief.

§ 3-106. [Upkeep of Units] Except to the extent otherwise provided by the time-share instrument, the managing entity is responsible for maintenance, repair, and replacement of the time-share units and any personal property available for use by time-share owners in conjunction therewith, other than personal property separately owned by a time-share owner. Each time-share owner shall afford access through his time-share unit reasonably necessary for those purposes, but if damage is inflicted on a time-share unit through which access is taken, the managing entity is responsible for its prompt repair. Subject to the provisions of the time-share instrument and other provisions of law, a time-share owner may not alter or change the appearance of a time-share unit without the consent of the managing entity.

§ 3-107. [Tort and Contract Liability]

(a) A time-share owner is personally liable for his own acts and omissions and those of his employees and agents other than the managing entity.

(b) An action may not be maintained against a time-share owner, nor is a time-share owner precluded from maintaining an action, merely because he owns a time share or is an officer, director, or member of the association.

(c) An action in tort alleging a wrong done by a developer, a managing entity selected by the developer or his appointees, or an agent or employee of either, in connection with any portion of the property which the developer or the managing entity has the responsibility to maintain, may not be maintained against the association or any time-share owner other than a developer. Other actions in tort alleging a wrong done by an association or by an agent or employee of the association or an action arising from a contract made by or on behalf of the association may be maintained only against the association. If the tort or breach of contract occurred during any period of developer control, the developer is subject to liability for all unreimbursed losses suffered by the association or time-share owners as a result, including costs and reasonable attorney's fees. The operation of any statute of limitations affecting the right of action of the association or time-share owners under this section is tolled until the period of developer control terminates. A time-share owner is not precluded from maintaining an action contemplated by this subsection because he is a time-share owner or a member or officer of the association.

(d) A judgment for money against an association [if recorded] [if docketed] [if (insert other procedure required under state law to perfect a lien on real property as a result of a judgment)] is a lien against all of the time shares, but no other property of a time-share owner is subject to the claims of creditors of the association.

(e) A judgment against the association must be indexed in the name of the association.

§ 3-108. [Insurance]

(a) Commencing not later than the time a developer offers a time share for sale in a time-share property in which the number of time shares is more than [12], the managing entity shall maintain, to the extent reasonably available and applicable and not otherwise unanimously agreed by the time-share owners or provided by the developer or by a person managing a project of which the time-share property is a part:

(1) property insurance on the time-share property and any personal property available for use by time-share owners in conjunction therewith, other than personal property separately owned by a time-share owner, insuring against all risks of direct physical loss commonly insured against, in a total amount, after application of any deductibles, of not less than 80 percent of the actual cash value of the insured property, exclusive of land excavations, foundations, and other items normally excluded from property policies; and

(2) liability insurance, including medical payments insurance, in an amount determined by the managing entity but not less than any amount specified in the time-share instrument, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the time-share property and time-share units.

(b) If the insurance described in subsections (a) and (b) is not reasonably available, the managing entity promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all time-share owners. The managing entity shall make copies of all insurance policies available for inspection by the time-share owners during normal business

hours. The time-share instrument may require the managing entity to carry any other insurance, and the managing entity in any event may carry any other insurance deemed appropriate.

(c) Each insurance policy carried pursuant to subsection (a) must provide that:

(1) each time-share owner is an insured person under the policy whether designated as an insured by name individually or as part of a named group or otherwise, as his interest may appear;

(2) the insurer waives its right to subrogation under the policy against any time-share owner or members of his household;

(3) no act or omission by any time-share owner, unless acting within the scope of his authority on behalf of an association, will void the policy or be a condition to recovery by any other person under the policy; and

(4) if, at the time of a loss under the policy, there is other insurance in the name of a time-share owner covering the same risk covered by the policy, the policy maintained pursuant to subsection (a) is primary insurance not contributing with the other insurance, and other insurance in the name of a time-share owner applies only to loss in excess of the primary coverage.

(d) Unless the insurance required by subsection (a)(1) is provided by a person managing a project of which the time-share property is a part, any loss covered by that insurance must be adjusted with, and the insurance proceeds from that loss are payable to, the insurance trustee (who may be a party in interest) designated in accordance with the time-share instrument. If none has been designated or if the designated trustee fails to serve, the managing entity is the insurance trustee. The insurance trustee shall hold any insurance proceeds in trust for time-share owners and lien holders as their interests may appear and be determined in accordance with

Section 2-105. Subject to the provisions of subsection (g), the proceeds must be disbursed for the repair or restoration of the property, and time-share owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is (i) a surplus of proceeds after the property has been completely repaired or restored, or (ii) a termination pursuant to Section 2-105.

(e) An insurance policy issued pursuant to subsection (a) does not prevent a time-share owner from obtaining insurance for his own benefit.

(f) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to any association and, upon written request, to any time-share owner, mortgagee, or beneficiary under a deed of trust. The insurance may not be cancelled until [30] days after notice of the proposed cancellation has been mailed to any managing entity and each person to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

(g) Any portion of the time-share property damaged or destroyed must be repaired or replaced promptly by the managing entity unless (i) another person repairs or replaces it, (ii) there is a termination (Section 2-105), (iii) repair or replacement would be illegal under any state or local health or safety statute or ordinance, (iv) [80] percent of the time-share owners, including every owner of a time share in a time-share unit that will not be rebuilt, vote not to rebuild, or (v) a decision not to rebuild the damaged property is made by another person empowered to make that decision. The cost of repair or replacement in excess of insurance proceeds and reserves is a time-share expense. If the entire property need not be repaired or replaced, unless the time-share instrument provides otherwise, (i) the insurance proceeds attributable to the damaged area must be used to restore the damaged area to a condition

compatible with the remainder of the property, and (ii) the insurance proceeds attributable to time-share units that are not rebuilt must be distributed as if those units constituted a time-share property in which all time shares had been terminated under Section 2-105.

(h) The provisions of this section may be varied or waived in the case of a time-share property in which none of the time-share units may be used as dwellings or for recreational purposes.

Comment

This section derives from Section 3-112 of the Uniform Condominium Act. There is no requirement for insurance if the number of time shares in the time-share property is [12] or fewer. Section 2-105 governs the distribution of insurance proceeds if all of the time shares are terminated.

§ 3-109. [Surplus Funds] Unless otherwise provided in the time-share instrument, any surplus funds derived from the time-share owners or from property belonging to them or their association and held by a managing entity remaining after payment of or provision for time-share expenses and any prepayment of reserves must be paid to the time-share owners in proportion to their time-share expense liabilities or credited to them to reduce their future time-share expense assessments.

§ 3-110. [Assessments for Time-share Expenses]

(a) Until time-share expense assessments are made against the time-share owners, the developer shall pay all time-share expenses. After any time-share expense assessment has been made against the time-share owners, time-share expense assessments must be made at least annually, based on a budget adopted at least annually by the managing entity.

(b) Except for assessments under subsections (c), (d) and (e), all time-share expenses must be assessed against all the time shares in accordance with the allocation set forth in the time-share instrument pursuant to Section 2-103(a). Any past due assessment or installment thereof bears interest at the rate established by the managing entity or time-share instrument not exceeding [18] percent per year.

(c) To the extent required by the time-share instrument any time-share expense benefiting fewer than all of the time-share owners must be assessed exclusively against the time-share owners benefited.

(d) Assessments to pay a judgment against the association (Section 3-107) may be made only against the time shares in the time-share property at the time the judgment was entered, in proportion to their time-share expense liabilities.

(e) If any time-share expense is caused by the misconduct of any time-share owner, the association may assess that expense exclusively against his time share.

(f) If time-share expense liabilities are reallocated, time-share expense assessments and any installment thereof not yet due must be recalculated in accordance with the reallocated time-share expense liabilities.

§ 3-111. [Lien for Assessments]

(a) A person who has a duty to make assessments for time-share expenses has a lien on a time share for any assessment levied against that time share or fines imposed against its owner from the time the assessment or fine becomes due. The lien may be foreclosed in like manner as a mortgage on real estate [or a power of sale under (insert appropriate state statute)], or, in the case of a time-share license, under the Uniform Commercial Code. Unless the time-share instrument otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to

Section 3-102(8) and (9) are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a time share except (i) liens and encumbrances recorded before the recordation of the time-share instrument, (ii) mortgages and deeds of trust on the time share securing first mortgage holders and recorded before the due date of the assessment or the due date of the first installment payable on the assessment, (iii) liens for real estate taxes and other governmental assessments or charges against the time share, and (iv) liens securing assessments or charges made by a person managing a project of which the time-share property is a part. [To the extent of the time-share expense assessments made under Section 3-110(b) due during the 6 months immediately preceding institution of an action to enforce the lien, the lien is also prior to the mortgages and deeds of trust described in clause (ii).] This subsection does not affect the priority of mechanics' or materialmen's liens. [The lien is not subject to the provisions of (insert appropriate reference to state dower, curtesy, homestead, or other exemption law.)]

(c) The lien is perfected upon [recordation of a claim of lien in the county in which the time-share unit is situated] (insert other procedure under state law to perfect a lien).

(d) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within [3] years after the assessments become payable.

(e) This section does not prohibit actions or suits to recover sums for which subsection (a) creates a lien or preclude resort to any contractual or other remedy permitted by law.

(f) A judgment or decree in any action or suit brought under this section must include costs and reasonable attorney's fees for the prevailing party.

(g) A person who has a duty to make assessments for time-share expenses shall furnish to a time-share owner upon written request a recordable statement setting forth the amount of unpaid assessments currently levied against his time share. The statement must be furnished within [10] business days after receipt of the request and is binding in favor of persons reasonably relying thereon.

Comment

1. Unless the first bracketed sentence of subsection (b) is deleted, it may be necessary to amend other state laws regulating institutional lenders to permit them to make loans secured by time shares. Such an amendment might not be helpful to out-of-state lenders, however.

2. A lien on a time share does not by virtue of this Act take priority over a lien on the time-share unit.

§ 3-112. [Financial Records] A person who has a duty to make time-share expenses assessments shall keep financial records sufficiently detailed to enable him to comply with Section 4-107. All financial and other records must be made reasonably available for examination by any time-share owner or his authorized agent.

§ 3-113. [Authority of Trustee] With respect to a third person dealing with a trustee, under Section 2-105 or 3-108, the existence of trust powers and their proper exercise by the trustee may be assumed without inquiry. A third person is not bound to inquire whether the trustee has power to act as trustee or is properly exercising trust powers, and a third person without actual knowledge that the trustee is exceeding or improperly exercising his powers is fully protected in dealing with the trustee as if he possessed and were properly exercising the powers he purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the trustee in his capacity as trustee.

§ 3-114. [Initiative, Referendum, and Recall: General Provisions]

(a) For the purposes of this section and Sections 3-115, 3-116, and 3-117:

(1) "Owner" means a person who is an owner or co-owner of a time-share estate or, in the case of a unit that is not a time-share unit, a person who is an owner or co-owner of the unit, other than as security for an obligation.

(2) A project is limited to one in which at least 50 percent of the votes are allocated to time shares other than time-share licenses.

(b) The managing entity shall keep reasonably available for inspection and copying by any owner all addresses, known to it or to the developer, of all the owners, with the principal permanent residence address of each indicated, if known. The managing entity shall revise continually the list of addresses in the light of any information it obtains, and the developer shall keep the managing entity advised of any information he has or obtains.

(c) Each ballot prepared pursuant to Sections 3-115, 3-116, and 3-117 must contain:

(1) a statement that the ballot will not be counted unless signed by an owner;

(2) the specification of a date, not less than 30 or more than 180 days after the date the ballot is mailed, by which the ballot must be received by the person to whom it is to be returned, and a statement that the ballot will not be counted unless received by that date;

(3) the name and address of the person to whom the ballot is to be returned; and

(4) no material other than what is required by this Article.

(d) Each ballot mailed pursuant to Sections 3-115, 3-116, and 3-117 must be mailed to the principal permanent residence of the owner to whom it is addressed, if known to the person responsible for mailing it, and that person shall procure and keep reasonably available for inspection for at least one year after the vote is calculated a certificate of mailing for each and

the original or a photocopy of each ballot returned by the date specified pursuant to subsection (c)(2).

(e) If the managing entity, the developer, or anyone on behalf of either of them communicates with any owner, other than as expressly authorized by Section 3-115, 3-116, or 3-117 on the subject matter of any petition or ballot prepared pursuant to any of those sections, the expense of that communication may not be assessed directly or indirectly in whole or in part to any owner other than the developer.

(f) The vote allocated to any time share and to any unit other than a time-share unit must be counted as having been cast in accordance with the ballot of any owner of that time share or unit. If the ballots of different owners of the same time share, or of the same unit other than a time-share unit, are not in accord with one another, the vote allocated to that time share or unit must be divided in proportion to the number of owners thereof voting each way and must be counted accordingly. Any ballot that is not signed by an owner or is not received by the date specified pursuant to subsection (c)(2) is void.

(g) The managing entity shall take action reasonably calculated to notify all owners of the resolution of any matters resolved by methods authorized by Section 3-115, 3-116, or 3-117.

(h) An amendment to a project instrument adopted pursuant to Section 3-115 or 3-116 must be recorded forthwith by the managing entity with a statement of the vote and becomes effective upon recordation.

(i) No right or power of an owner under this section or Section 3-115, 3-116, or 3-117 may be waived, limited, or delegated by contract, power of attorney, proxy, or otherwise, in favor of the developer, an affiliate of a developer, a managing entity, or any person designated by any of them.

Comment

1. The purpose of the last four sections of Article III is to permit the owners of the time-share estates and any other owners in a project with a large number of time-share units having time-share estates to exercise a significant measure of self-government. At present, there are no methods provided in most time-share projects whereby the time-share owners can make decisions affecting the project. Instead, the developer or a managing entity selected or controlled by the developer ordinarily retains complete control of the project for an indefinite period by taking a proxy from each purchaser of a time share at the closing or settlement empowering the recipient to cast any votes that the time-share owners would otherwise control.

The self-government techniques created by the next three sections of this Article are three traditional methods of fostering direct democracy: initiative, referendum, and recall. The referendum is to be used for all amendments to project instruments, any other matters expressly designated by the project instruments, and (if the project instruments expressly permit it) certain matters selected from time to time by the managing entity. In contrast to the referendum, it is assumed that recall would rarely be used except in cases where the manager proves to be unusually unresponsive or irresponsible. Initiative would probably be used less frequently than the referendum and more frequently than recall, most often in cases where a significant number of owners desire a change which the managing entity dislikes or believes to be contrary to majority sentiment.

The reason for resorting to these devices is the impracticality of assuring self-government for time-share owners through the usual techniques that are employed in projects occupied by year-round residents. In most such projects, it is possible for the unit owners to become well acquainted with one another and to elect from their own ranks a board of directors to manage the project or at least regulate the professional management. In a time-share project, however, there is a large number of different groups of time share owners, with each group in residence at different times during the year. Members of any one group have little enough opportunity to get to know one another, much less the members of other groups, and a time-share owner would find it very difficult to assume year-round responsibilities as a member of the project's board of directors. Even attendance at a single annual meeting would be impractical for most time-share owners not actually in residence at the time that meeting is held.

In the light of these considerations, it seems especially important to provide some devices that will permit a significant measure of democratic self-government in projects where most of the voting strength is held by time-share owners. On the other hand, if most votes in a particular project are assigned to the owners of units which are <u>not</u> divided into time shares, then it should be possible for more traditional techniques of self-government to succeed, such as those provided by the Uniform Condominium Act [and the Uniform Planned Community Act].

These provisions are based on the conclusion that the owners of mere time-share licenses should not be entitled by law to the benefits of the self-government techniques created by these last four sections of Article III. This conclusion is based on the fact that a time-share license is not an estate or interest in land, but only a personal contractual right. It would be inappropriate to give the owners of time-share licenses by law the extensive powers contemplated by this

Article and thereby permit them to take effective control of the occupied real estate away from the owner of that real estate.

2. With regard to the last sentence of subsection (f), it is recognized that the date specified pursuant to subsection (c)(2) may be a date when no mail is delivered. Such dates cannot always be predicted with certainty. It is the responsibility of each owner who wants his ballot to be counted to take such steps as he deems appropriate to get it into the hands of the appropriate person by the specified date, and even early mailing provides no guarantee.

§ 3-115. [Direct Initiative by Owners]

(a) The owners may amend the project instrument or any unrecorded document governing the project, or approve or disapprove any proposed expenditure, in the manner provided by this section in addition to any manner permitted by other law or by the instrument or document.

(b) Any owner may deliver to the managing entity a petition containing the language of any proposed amendment and signed by owners of at least one time share or other estate or interest in each of a number of units to which at least 331/3 percent of the votes are allocated, or any smaller percentage specified by the document to be amended. The owner delivering the petition may attach to it a letter of not more than 2 pages to be mailed with the ballots. Within 10 days after receiving the petition, the managing entity shall mail to each owner a ballot setting forth the language of the petition and affording an opportunity to indicate a preference between approval and disapproval of the proposal, together with a copy of any letter of not more than 2 pages attached by the owner who delivered the petition. The ballot may also be accompanied by a letter of not more than 2 pages from the managing entity recommending approval or disapproval of the proposal.

(c) On the date specified pursuant to Section 3-114(c)(2), the managing entity shall examine the ballots that have been returned and calculate the vote accordingly. A signature on the petition must be treated for the purpose of Section 3-114(f) as a ballot from the signer

indicating approval of the proposed amendment. A simple majority of the votes counted suffices for the adoption of the proposal unless other law or the document to be amended specifies a larger majority or, in the case of a proposed expenditure, the project instruments specify a larger majority not exceeding 662/3 percent. No document may specify more than a simple majority for any proposal the managing entity could have effected unilaterally. No proposal may be adopted by an initiative in which the ballots favoring the proposal represent less than 10 percent of the votes allocated to all owners.

(d) A proposal adopted pursuant to this section may not be repealed or modified within 3 years except by another initiative pursuant to this section. Thereafter, the managing entity may not repeal or modify the result without the approval of the owners in a referendum. If the project instrument permits the managing entity to initiate a referendum for that purpose, no referendum may be initiated for that purpose more often than once every 3 years.

§ 3-116. [Referendum of Owners]

(a) No amendment to the project instrument may be adopted except pursuant to this section or Section 3-115. The project instrument may specify other matters to be determined by referendum of the owners and may permit the managing entity to select matters to be determined in that manner.

(b) Whenever an amendment to a project instrument proposed by the managing entity, or other matter, is to be determined by referendum, the managing entity shall prepare and, not less than 30 days or more than 180 days before the votes are to be counted, shall mail to each owner a ballot stating each matter to be determined and affording the opportunity to vote "yes" or "no" on each matter. The ballot may be accompanied by a letter from the managing entity recommending a particular decision.

(c) On the date specified pursuant to Section 3-114(c)(2), the managing entity shall examine the ballots and calculate the vote accordingly. A simple majority of the votes counted determines each matter in question unless the project instrument specifies a larger majority, but no matter may be determined by referendum unless the ballots favoring the majority decision represent at least 10 percent of the votes allocated to all owners.

§ 3-117. [Recall of Manager by Owners]

(a) The owners may discharge the manager with or without cause in the manner provided by this section in addition to any manner permitted by other law or by the project instrument.

(b) Any owner may prepare a ballot affording the opportunity to indicate a preference between retaining the present manager and discharging him in favor of a new manager. A copy of the ballot and of any letter that is to be mailed with the ballots must be delivered to the manager. Not less than 10 or more than 30 days thereafter, a ballot and a copy of any letter to be mailed, together with a copy of any written reply received from the manager containing no more pages than the letter, must be mailed to each owner by the owner who prepared the ballot.

(c) On the date specified pursuant to Section 3-114(c)(2), the person who receives the ballots shall examine those that have been returned, tabulate the vote accordingly, and forthwith notify the manager of the result. If at least 662/3 percent of the vote representing at least 331/3 percent of the votes allocated to all owners, favors discharging the manager, the developer also must be notified of the result, the ballots or photocopies thereof must be given forthwith to the manager, and the developer shall forthwith diligently attempt to procure offers for management contracts from prospective managers. Any owner also may attempt to procure such offers. If the developer or any owner obtains such an offer within 60 days after the date the vote was tabulated, he shall forthwith notify the developer and the owner who was responsible for

tabulating the vote. If no offer is obtained from a prospective manager other than the current manager within those 60 days, that period must be extended for successive intervals of 30 days each until such an offer is obtained. At the end of the period, the owner who prepared the ballot, or the developer if that owner so directs in a writing delivered to the developer, shall forthwith prepare and mail to each owner a second ballot stating at least the term and compensation provided by each offer that has been received and affording an opportunity to indicate a preference for any one of the offers or for retaining the current manager. A letter recommending that a particular offer be accepted or that the current manager be retained may accompany the ballot, and if the developer prepared the ballot he shall enclose a copy of any such letter submitted to him by the owner who was responsible for tabulating the vote. The developer has no obligation under this subsection, and nothing need be delivered to him, if he owned no estate or interest in any unit on the date the first ballot was delivered to the manager and neither the developer nor his affiliates or appointees caused the manager to be hired.

(d) On the date specified pursuant to Section 3-114(c)(2), the person who receives the ballots prepared pursuant to subsection (c) shall examine those that have been returned, tabulate the vote accordingly, forthwith notify the manager of the result, and hold the ballots available for inspection by the manager and any proposed manager for at least 30 days. If more votes favor accepting a particular offer than retaining the manager, the manager is discharged 90 days after he is notified of the result, but, if the ballot prepared pursuant to subsection (b) was delivered to the manager before the current term of the manager began, the manager is discharged immediately upon being notified of the result. The person who received the ballots prepared pursuant to subsection (c) shall forthwith accept on behalf of the owners the offer that received

the largest number of votes. The expenses thereunder are thereafter part of the common expenses.

(e) A manager discharged pursuant to this section is not entitled by reason of his discharge to any penalty or other charge payable directly or indirectly in whole or in part by any owner other than the developer.

(f) The reasonable expenses incurred by any owner in obtaining offers and preparing and mailing ballots pursuant to this section, including reasonable attorney's fees, must be promptly collected by the managing entity from all owners as a common expense and paid to that owner if a simple majority of the vote tabulated pursuant to subsection (c) favors the discharge of the manager. Similar expenses incurred by the developer also must be so collected and promptly paid to the developer.

ARTICLE IV

PROTECTION OF PURCHASERS

§ 4-101. [Applicability; Exemptions]

(a) This Article applies to all time shares subject to this Act except as provided in subsection (b).

(b) Neither a public offering statement nor the materials required by Section 4-107 (Resale of Time Shares) need be prepared or delivered in the case of:

(1) a gratuitous disposition of a time share;

(2) a disposition pursuant to court order;

(3) a disposition by a government or governmental agency;

(4) a disposition by foreclosure or deed in lieu of foreclosure;

(5) a disposition that may be canceled at any time and for any reason by the purchaser without penalty;

(6) a disposition of a time share in a unit situated wholly outside this State pursuant to a contract executed wholly outside this State, if there has been no offering within this State;

(7) an offering by a developer of time shares in no more than one time-share unit at any one time; or

(8) a disposition of a time-share property or all time shares therein to one purchaser.

§ 4-102. [Liability for Public Offering Statement Requirements]

(a) Except as provided in subsection (b), a developer, prior to the offering of any interest in a unit to the public, shall prepare a public offering statement conforming to the requirements of Sections 4-103, 4-104 and 4-105.

(b) A developer may transfer responsibility for preparation of all or a part of the public offering statement to a successor developer (Section 3-104) or to a person in the business of selling real estate who intends to offer time shares in the time-share property for his own account. In the event of any such transfer, the transferor shall provide the transferee with any information necessary to enable the transferee to fulfill the requirements of subsection (a).

(c) Any developer or other person in the business of selling real estate who offers a time share for his own account to a purchaser shall deliver a public offering statement in the manner prescribed in subsection 4-106(a). The person who prepared all or a part of the public offering statement is liable under Sections 4-106 [and] [,] 4-115 [, 5-105, and 5-106] for any false or

misleading statement set forth therein or for any omission of material fact therefrom with respect to that portion of the public offering statement which he prepared. If a developer did not prepare any part of a public offering statement that he delivers, he is not liable for any false or misleading statement set forth therein or for any omission of material fact therefrom unless he had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission.

(d) If a time-share property is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this State, a single public offering statement conforming to the requirements of Sections 4-103, 4-104 and 4-105 as those requirements relate to all real estate regimes in which the time-share property is located, and to any other requirements imposed under the laws of this State, may be prepared and delivered in lieu of providing 2 or more public offering statements.

§ 4-103. [Public Offering Statement: General Provisions]

(a) A public offering statement must contain or fully and accurately disclose:

(1) the name and principal address of the developer and the location of the time-share property;

(2) a general description of the time-share property and the time-share units, including without limitation the number of units in the time-share property and in any project of which it is a part, and the schedule of commencement and completion of all improvements;

(3) as to all units owned or offered by the developer in the same project:

(i) the types and number of units;

(ii) identification of units that are time-share units;

(iii) the types and durations of the time shares;

(iv) the maximum number of units that may become part of the time-share property; and

(v) a statement of the maximum number of time shares that may be created or that there is no maximum;

(4) copies and a brief narrative description of the significant features of the time-share instrument and any documents referred to therein (other than any plats and plans), copies of any contracts or leases to be signed by purchasers at closing, and a brief narrative description of any contracts or leases that will or may be subject to cancellation by the owners of time-share estates under Section 3-105;

(5) the identity of the managing entity and the manner, if any, whereby the developer may change the managing entity or its control;

(6) a current balance sheet and a projected budget for the association, if there is an association, either within or as an exhibit to the public offering statement, for [one year] after the date of the first transfer to a purchaser, and thereafter the current budget, a statement of who prepared the budget, and a statement of the budgetary assumptions concerning occupancy and inflation factors. The budget 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 replacement;

(ii) a statement of any other reserves;

(iii) the projected time-share expense liability by category of expenditures for the time-share units; and

(iv) the projected time-share expense liability for each time share;

(7) a description of (i) the nature and purposes of all charges, dues, maintenance

fees, and other expenses that may be assessed, (ii) the current amounts assessed, and (iii) the method and formula for changes;

(8) any services which the developer provides or expenses he pays and which he expects 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;

(9) any initial or special fee due from the purchaser at closing, together with a description of the purpose of the fee and the method of its calculation;

(10) a statement of the effect on the time-share owners of liens, defects, or encumbrances on or affecting the title to the time-share units;

(11) a description of any financing offered by the developer;

(12) the terms and significant limitations of any warranties provided by the developer, including statutory warranties and limitations on the enforcement thereof or on damages;

(13) a statement that:

(i) within 7 days after receipt of a public offering statement a purchaser, before transfer, may cancel any contract for purchase of a time share from a developer,

(ii) if a developer fails to provide a public offering statement to a purchaser before transferring a time share, the purchaser is entitled to recover from the developer [10] percent of the sales price of the time share, and

(iii) if a purchaser receives the public offering statement more than 7 days before signing a contract, he cannot cancel the contract for failure timely to receive the public offering statement;

(14) a statement of any unsatisfied judgments against the developer or the managing entity, the status of any pending suits involving the sale or management of real estate to which the developer or an affiliate of the developer or the managing entity is a defending party, and the status of any pending suits of which the developer has actual knowledge, of significance to the time-share units;

(15) a statement that any deposit made in connection with the purchase of a time share will be held in an escrow [or trust] account until expiration of the time for rescission or any later time specified in the contract to purchase the time share, and will be returned to the purchaser if the purchaser cancels the contract pursuant to Section 4-106;

(16) any restraints on transfer of time shares or portions thereof;

(17) a description of the insurance coverage provided for the benefit of time-share owners;

(18) any current or expected fees or charges to be paid by time-share owners for the use of any facilities related to the project;

(19) the extent to which financial arrangements have been provided for completion of all promised improvements pursuant to Section 4-117 (Developer's Obligation to Complete);

(20) the extent to which a time-share unit may become subject to a tax or other lien arising out of claims against other time-share owners of the same time-share unit;

(21) a description of the rights and remedies provided in the time-share instrument of a time-share owner who is prevented from enjoying exclusive occupancy of a time-share unit by others, or a statement that there are none provided in the instrument; and

(22) all unusual and material circumstances, features, and characteristics of the

project.

(b) As used in this subsection, "exchange company" means a person operating a program of the kind described in this subsection. If the time-share owners are to be permitted or required to become members of or to participate in a program for the exchange of occupancy rights among themselves or with the time-share owners of other time-share units or both, the public offering statement or a supplement delivered therewith must contain or fully and accurately disclose:

(1) whether membership or participation in the program by a time-share owner is voluntary or mandatory;

(2) the name and address of the exchange company and whether the exchange company is an affiliate of the developer;

(3) the terms and conditions of the contractual relationship between the time-share owner and the exchange company;

(4) the procedures whereby that contractual relationship can be changed or terminated, and whether it can be terminated or otherwise affected by action or inaction of the developer or the managing entity or by other factors beyond the control of the time-share owner;

(5) the names and addresses of the time-share properties enrolled in the program, the number and duration of the time shares enrolled in the program at each of those properties, the criteria used to determine enrollment, whether and how time-share properties may withdraw or be withdrawn from enrollment, and the number of those withdrawals during a specified calendar year ending not more than 15 months before the date the public offering statement is delivered to the purchaser;

(6) the procedures to qualify for and effectuate exchanges, and the manner in

which exchanges are arranged by the exchange company;

(7) limitations, restrictions, and priorities employed in the operation of the program, whether based on season, type of unit or other factors, and, in addition, if any of those limitations, restrictions, or priorities are not uniformly applied by the exchange company, the manner in which they are applied;

(8) whether and under what circumstances the time-share owner, in dealing with the exchange company, may lose any rights to occupy the unit or other benefits or privileges;

(9) the expenses, or ranges of expenses, to the time-share owners of membership and participation in the program including the additional expenses, if any, of applying for or effectuating exchanges, as of a specified date not more than one year before the public offering statement is delivered to the purchaser, and the person to whom those expenses are payable;

(10) whether and how any of the expenses specified in paragraph (9) may be altered and, if any expense is to be fixed case by case, the manner in which it is to be fixed; and

(11) the percentage of exchanges properly applied for by members or participants in the program and the percentage of exchanges properly applied for by time-share owners of units covered by the public offering statement, which were fulfilled during a specified calendar year ending not more than 15 months before the date the public offering statement is delivered to the purchaser, together with a statement of the criteria used to determine whether an exchange was properly applied for and fulfilled.(c) A developer shall promptly amend (i) the public offering statement to report any material change in the information required by subsection (a) and Section 4-104 and (ii) the public offering statement or any supplement thereto to report any material change known to him in the information required by subsection (b). Insofar as the developer relies in good faith on information provided by others in making the disclosures

required by subsection (b), he is responsible for a misrepresentation only if he has knowledge of its falsity.

Comment

A single public offering statement may be used for both this Act and the Uniform Condominium Act.

§ 4-104. [Same; Conversion Building]

(a) If a conversion building that includes or is to include one or more time-share units is more than [10] years old and the developer or any affiliates of the developer own or control more than 50 percent of all units in the project, the public offering statement must contain, in addition to the information required by Section 4-103:

(1) a statement by the developer, based on a report prepared by an independent [registered] architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the time-share units;

(2) a statement by the developer of the expected useful life of each item reported on in paragraph (1) or a statement that no representations are made in that regard; and

(3) a list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations.

(b) This section applies only to units in which use as a dwelling or for recreational purposes, or both, is permissible.

Comment

This section, which derives from Section 4-106 of the Uniform Condominium Act, only applies to a conversion building more than [10] years old in which the developer or affiliates of the developer own or control more than 50 percent of all units in the project.

§ 4-105. [Same; Time-Share Securities] If a time-share is currently registered with the Securities and Exchange Commission of the United States, a developer satisfies all requirements relating to the preparation of a public offering statement of this Act if he delivers to the purchaser [and files with the Agency] a copy of the public offering statement filed with the Securities and Exchange Commission. [A time share is not a security under the provisions of (insert appropriate state securities regulation statutes).]

§ 4-106. [Purchaser's Right to Cancel]

(a) A person required to deliver a public offering statement pursuant to Section 4-102(c) shall, before transfer of a time share and no later than the date of any contract of sale, provide a prospective purchaser with (i) a copy of the public offering statement and all amendments and supplements thereto, and (ii) the disclosures required in the case of resales by Section 4-107(a). Unless the purchaser has received those materials more than 7 days before execution of any contract of sale, the contract is voidable by him until he has received those materials and for 7 days thereafter or until transfer, whichever first occurs.

(b) If a purchaser elects to cancel a contract pursuant to subsection (a), he may do so by hand-delivering notice thereof to the seller or by mailing notice thereof to the developer or to his agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded within [15] days after receipt of the notice of cancellation.

(c) If a person required to deliver a public offering statement pursuant to Section 4-102(c) fails to provide a purchaser to whom a time share is transferred with the materials as required by subsection (a), the purchaser, in addition to any rights to damages or other relief, is entitled to receive from the seller an amount equal to [10] percent of the sales price of the time share.

Comment

In no event may the purchaser cancel pursuant to this section after the transfer has occurred, but it is possible that a court would require the developer to pay damages, or accept a reconveyance in exchange for a refund of the purchase price if the developer's conduct amounted to fraud.

§ 4-107. [Resales of Time Shares]

(a) Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under Section 4-101(b), a seller of a time share shall furnish to the purchaser before execution of any contract for the sale, or otherwise before the transfer of title, a copy of the time-share instrument (other than any plats or plans) and a certificate containing:

(1) a statement disclosing the effect on the proposed transfer of any right of first refusal or other restraint on transfer of the time share or any portion thereof;

(2) a statement setting forth the amount of the periodic time-share expense liability and any unpaid time-share expense or special assessment or other sums currently due and payable from the seller;

(3) a statement of any other fees payable by time-share owners; and

(4) a statement of any judgments or other matters that are or may become liens against the time share or the time-share unit and the status of any pending suits that may result in those liens.

(b) A managing entity, within 10 days after a request by a time-share owner, shall furnish a certificate containing the information necessary to enable the time-share owner to comply with this section. A time-share owner providing a certificate pursuant to subsection (a) is not liable to the purchaser for any erroneous information provided by the managing entity and included in the certificate, other than for judgment liens against the time share or the time-share unit.

(c) A purchaser is not liable for any unpaid time-share expense liability or fee greater than the amount set forth in a certificate prepared by a managing entity. A time-share owner is not liable to a purchaser for the failure or delay of a managing entity to provide the certificate in a timely manner, but the purchase contract is voidable by the purchaser until the certificate has been provided and for [5] days thereafter or until transfer, whichever first occurs.

Comment

The comment to Section 4-106 applies equally to sellers under this section.

§ 4-108. [Deposits] Any deposit made in connection with the purchase or reservation in this State of a time share from a person required to deliver a public offering statement pursuant to Section 4-102(c) must be placed in escrow, either in this State or in the State where the time-share project is located, in an account designated solely for that purpose by [a licensed title insurance company] [an attorney] [a licensed real estate broker] [an independent bonded escrow company, or] an institution whose accounts are insured by a governmental agency or instrumentality until (i) delivered to the developer at the expiration of the time for rescission or any later time specified in any contract of sale, (ii) delivered to the developer because of the purchaser's default under a contract to purchase the time share, or (iii) refunded to the purchaser.

§ 4-109. [Liens]

(a) In the case of a sale of a time share where delivery of a public offering statement is required pursuant to Section 4-102(c), a seller shall, before transferring a time share, record or furnish to the purchaser releases of all liens affecting that time share which the purchaser does not expressly agree to take subject to or assume, or shall provide a surety bond or substitute collateral for or insurance against the lien as provided for liens on real estate in [insert

appropriate references to general state law or Sections 5-211 and 5-212 of the Uniform Simplification of Land Transfers Act].

(b) If a lien other than a deed of trust or mortgage becomes effective against more than one time-share estate, any time-share owner is entitled to a release of his time-share estate from the lien upon payment of his proportionate liability for the lien in accordance with time-share expense liability unless he or his predecessor in interest agreed otherwise with the lienor. After payment, the managing entity may not assess or have a lien against that time-share estate for any portion of the time-share expenses incurred in connection with that lien.

(c) If a lien is to be foreclosed or enforced against all time shares in a time-share property, service of [specified process required by applicable state law] upon the managing entity, if any, constitutes service thereof upon all the time-share owners for the purposes of foreclosure or enforcement. The managing entity shall forward promptly, by certified or registered mail, a copy thereof to each time-share owner at his last address known to the managing entity. The cost of forwarding must be advanced by the holder of the lien and may be taxed as a cost of the enforcement proceeding. Such notice does not suffice for the entry of a deficiency or other personal judgment against any time-share owner.

§ 4-110. [Conversion Building]

(a) A developer of a time-share property which includes all or any part of a conversion building, and any person in the business of selling real estate for his own account who intends to offer time shares in such a property, shall give each of the residential tenants and any residential subtenant in possession of the proposed time-share units notice of the conversion no later than 120 days before the developer will require the tenants and any subtenant in possession to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and be

hand-delivered to the unit or mailed to the tenant and subtenant at the address of the unit or any other mailing address provided by a tenant. No tenant or subtenant may be required by the developer to vacate upon less than 120 days' notice, except by reason of nonpayment of rent, waste, or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period. Failure to give notice as required by this section is a defense to an action for possession.

(b) If a notice of conversion specifies a date by which a unit must be vacated and otherwise complies with the provisions of [insert appropriate state summary process statute,] the notice also constitutes a notice to vacate specified by that statute.

(c) Nothing in this section permits termination of a lease by a developer in violation of its terms.

§ 4-111. [Express Warranties of Quality]

(a) Express warranties made by any seller to a purchaser of a time share, if relied upon by the purchaser, are created as follows:

(1) any affirmation of fact or promise which relates to the time share, the time-share unit, rights appurtenant to either, area improvements that would directly benefit the time share, or the right to use or have the benefit of facilities not located on the time-share unit, creates an express warranty that the time share, the time-share unit, and related rights and uses will conform to the affirmation or promise;

(2) any model or description of the physical characteristics of the time-share property, including plans and specifications of or for improvements, creates an express warranty that the property will conform to the model or description;

(3) any description of the quantity or extent of the real estate constituting the

time-share property, including plats or surveys, creates an express warranty that the property will conform to the description, subject to customary tolerances; and

(4) a provision that a purchaser may put a time-share unit only to a specified use is an express warranty that the specified use is lawful.

(b) Neither formal words, such as "warranty" or "guarantee", nor a specific intention to make a warranty, is necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of the time share, the time-share unit, or the value of either does not create a warranty.

(c) Any transfer of a time share transfers to the purchaser all express warranties of quality made by previous sellers.

§ 4-112. [Implied Warranties of Quality]

(a) A developer and any person in the business of selling real estate for his own account warrants that a time-share unit will be in at least as good condition at the earlier of the time of the transfer or of the delivery of possession as it was at the time of contracting, reasonable wear and tear excepted.

(b) A developer and any person in the business of selling real estate for his own account impliedly warrants that a time-share unit and any other real property the time-share owners have a right to use in conjunction therewith are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by him, or made by any person before transfer, will be:

(1) free from defective materials; and

(2) constructed in accordance with applicable law, according to sound engineering and construction standards, and in a workmanlike manner.

(c) In addition, a developer warrants to a purchaser of a time share that an existing use of the time-share unit, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of transfer or of the delivery of possession.

(d) Warranties imposed by this section may be excluded or modified as provided in Section 4-113.

(e) For purposes of this section, improvements made or contracted for by an affiliate of a developer are made or contracted for by the developer.

(f) Any transfer of a time share transfers to the purchaser all of any developer's implied warranties of quality.

Comment

1. This section, derived from Section 4-113 of the Uniform Condominium Act, which is based upon Section 2-309 of the Uniform Land Transactions Act, overturns the rule still applied in many states that a professional seller of real estate makes no implied warranties of quality (the rule of "caveat emptor"). In recent years that rule has been increasingly recognized as a relic of an earlier age whose continued existence defeats reasonable expectations of purchasers. Since the 1930s, more and more courts have completely or partially abolished the caveat emptor rule, and it is clear that the judicial tide is now running in favor of seller liability.

2. The principal warranty imposed under this section is that of suitability of the property for ordinary uses of real estate of similar type, and of quality of construction. Both of these warranties, which arise under subsection (b), are imposed only against developers and not against time-share owners selling their time shares to others.

3. Many recent cases have held that a seller of new housing impliedly warrants that the houses sold are habitable. The warranty of suitability under this Act is similar to the warranty of habitability. However, under the Act, the warranty of suitability applies to both units and appurtenant improvements. Moreover, this warranty of suitability arises in the case of used, as well as new buildings or other improvements.

4. The warranty of suitability and of quality of construction arises only against a developer. As in the case of sales of goods, a non-professional seller is liable, if at all, only for any express warranties made by him. However, if a non-developer fails to disclose defects of which he is aware, he may be liable to the purchaser for fraud or misrepresentation under the common law of the state where the transaction occurred. Also, the warranties imposed by this section may be used to give content to a general "guarantee" by a non-developer seller.

5. The warranty as to quality of construction for improvements made or contracted for by the developer or made by any person before the creation of the time share is broader than the warranty of suitability. Particularly, it imposes liability upon the developer for defects which may not be so serious as to render the unit unsuitable for ordinary purposes of real estate of similar type. Moreover, subsection (e) prevents a developer from avoiding liability with respect to the quality of construction warranty by having an affiliated entity make the desired improvements.

6. Under subsection (c), a developer also warrants to a time-share purchaser that an existing use contemplated by the parties does not violate applicable law. The developer, therefore, is liable for any violation of housing codes or other laws which renders any existing use of the time-share unlawful.

7. The issue of developer liability for warranties is an important one in cases where a transfer of the developer's rights occurs, either as an arms-length transaction, as a transfer to an affiliate, or as a transfer by foreclosure or a deed in lieu of foreclosure. Subsection (f) makes clear that a conveyance of a time share transfers to the purchaser all warranties of quality made by any developer, and Section 3-104(b)(1) makes clear that the original developer remains liable for all warranties of quality with respect to improvements made by him, even after he transfers all developer rights, regardless of whether the time share is purchased from the developer who made the improvements. If the successor developer is an affiliate of the original developer, it is clear under both Sections 3-104(b)(2) and 4-112(f), that the original developer remains liable for warranties of quality or improvements made by his successor even after the developer himself ceases to have any special developer rights.

8. As to the liabilities of successor developers for warranties of quality, a successor who is an affiliate of a developer is liable, pursuant to Section 3-104(e)(1), for warranties of improvements made by his predecessor. However, any non-affiliated successor of the original developer is liable only for warranties of quality for improvements made or contracted for by him, and is not liable for warranties which may lie against the the original developer even if the successor sells time shares in units completed by the original developer to a purchaser. See Section 3-104(c)(2). In the case of a foreclosing lender, this is the same result as that reached under Section 2-309(f) of Uniform Land Transactions Act. The same result is also reached under the Uniform Land Transactions Act in the case of a successor who, under the Uniform Land Transactions Act Section 3-309(b), would be a seller in the business of selling real estate since under that subsection the seller is liable only for warranties or improvements made or contracted for by him.

§ 4-113. [Exclusion or Modification of Implied Warranties of Quality]

(a) Except as limited by subsection (b) with respect to a purchaser of a time share in a time-share unit that may be used as a dwelling or for recreational purposes, implied warranties of quality:

(1) may be excluded or modified by agreement of the parties; and

(2) are excluded by expression of disclaimer, such as "as is," "with all faults," or other language that in common understanding calls the purchaser's attention to the exclusion of warranties.

(b) With respect to a purchaser of a time share in a time-share unit that may be used as a dwelling or for recreational purposes, no general disclaimer of implied warranties of quality is effective, but a developer may disclaim liability in an instrument signed by the purchaser for a specified defect or specified failure to comply with applicable law if the existence of the defect or failure entered into and became a part of the basis of the bargain.

Comment

1. This section, derived from Section 4-115 of the Uniform Condominium Act, parallels Sections 2-311(b) and (c) of the Uniform Land Transactions Act.

2. Under this section, implied warranties of quality may be disclaimed. However, a warranty disclaimer clause, like any other contract clause, is subject to a possible court holding of unconscionability. Although the section imposes no requirement that a disclaimer be in writing, except in the case of residential units, an oral disclaimer might be ineffective under the law of parol and extrinsic evidence.

3. Except as against purchasers of time shares in residential units, there are no formal standards for the effectiveness of a disclaimer clause. All that is necessary under this section is that the disclaimer be calculated to effectively notify the purchaser of the nature of the disclaimer.

4. Under subsection (b), general disclaimers of implied warranties are not permitted with respect to purchasers of time shares in residential units. However, a developer may disclaim liability for a specified defect or a specified failure to comply with applicable law in an instrument signed by such a purchaser. The requirement that the disclaimer as to each defect or failure be in a signed instrument is designed to insure that the developer sufficiently calls each defect or failure to the purchaser's attention and that the purchaser has the opportunity to consider the effect of the particular defect or failure upon the bargain of the parties. Consequently, this section imposes a special burden upon the developer who desires to make a "laundry list" of defects or failures by requiring him to emphasize each item on such a list and make its import clear to prospective purchasers. For example, the developer of a conversion property might, consistent with this subsection, disclaim certain warranties for "all electrical

wiring and fixtures in the building, the furnace, all materials comprising or supporting the roof, and all components of the air conditioning system."

5. This section is not intended to be inconsistent with, or to prevent, the use of insured warranty programs offered by some home builders. However, under the Act, the implied warranty that a new time-share unit will be suitable for ordinary uses (i.e. habitable) and will be constructed in a sound, workmanlike manner, and free of defective materials, cannot be disclaimed by general language.

§ 4-114. [Statute of Limitation for Warranties]

(a) A judicial proceeding for breach of any obligation arising under Section 4-111 or 4-112 must be commenced within 4 years after the [claim for relief] [cause of action] accrues, but the parties may agree to reduce the period of limitation to not less than 2 years. With respect to a time-share unit that may be used as a dwelling or for recreational purposes, an agreement to reduce the period of limitation must be evidenced by a separate instrument executed by the purchaser.

(b) Subject to subsection (c), a [claim for relief] [cause of action] for breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach accrues, unless extended by agreement:

(1) as to a unit, at the time of the first transfer of a time share therein by the seller to a bona fide purchaser; and

(2) as to other improvements, at the time each is completed.

(c) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the property, the [claim for relief] [cause of action] accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

Comment

1. Under subsection (a), the parties may agree that the statute of limitations be reduced to as little as 2 years. However, such a contract provision (which, in the case of residential units, must be reflected in a separate written instrument executed by the purchaser) could, like other contract provisions, be subject to attack on grounds of unconscionability in particular cases.

2. Except for warranties of quality which explicitly refer to future performance or duration, a cause of action for breach of a warranty of quality would normally arise when the purchaser to whom it is first made enters into possession. Suit on such a warranty would thus have to be brought within 4 years thereafter unless extended by agreement. Even an inability to discover the breach would not delay the running of the statute of limitation in this regard.

3. Real estate sales frequently include warranties that certain components (e.g., furnaces, hot water heaters, air conditioning systems, and roof) will last for a particular period of time. In the case of such warranties, the statute of limitation would not start running until the breach is discovered, or if not discovered before the end of the warranty term, until the end of the term.

§ 4-115. [Effect of Violations on Rights of Action; Attorney's Fees]

If a developer or any other person subject to this Act fails to comply with any provision of this Act or of the time-share instrument, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. Punitive damages may be awarded for a willful failure to comply with this Act. The court may also award reasonable attorney's fees.

Comment

This section provides a general cause of action or claim for relief for failure to comply with the Act by either a developer or any other person subject to the Act's provisions. Such persons might include time-share owners, persons exercising developer's rights of appointment pursuant to Section 3-103, or the managing entity. A claim for appropriate relief might include damages, injunctive relief, specific performance, rescission or reconveyance if appropriate under the law of the state, or any other remedy normally available under state law. The section specifically refers to "any person or class of persons" to indicate that any relief available under the state class action statute would be available in circumstances where a failure to comply with this Act has occurred. This section specifically permits punitive damages to be awarded in the case of willful failure to comply with the Act and also permits attorney's fees to be awarded in the discretion of the court to any party that prevails in an action.

§ 4-116. [Labeling of Promotional Material] If any improvement in the time-share property is not required to be built, no promotional material may be displayed or delivered to prospective purchasers which describes or portrays that improvement unless the description or portrayal of the improvement is conspicuously labeled or identified as "NEED NOT BE BUILT."

§ 4-117. [Developer's Obligation to Complete] The developer shall complete all promised improvements described in the time-share instrument and promotional materials.

§ 4-118. [Certain Advertising Practices Regulated] Any advertisement of a time-share property which includes the offer of a prize or other inducement must prominently disclose the approximate fair market value and number of, and criteria to qualify for, each prize or inducement offered.

[OPTIONAL]

ARTICLE V

ADMINISTRATION AND REGISTRATION

Prefatory Comment of Article V

Administrative agencies have become an essential and accepted part of state government. Accordingly, the procedures by which those agencies adopt their rules and reach their decisions, as well as the powers of those agencies, have assumed great importance.

The existence of government regulation reflects the common belief that adequate enforcement of a particular field of law requires both public oversight of private compliance with law, and an ability in government to promulgate new regulations to meet new circumstances. Often, regulation also reflects the regulated industry's desires for certainty and for an administrative agency knowledgeable of, and perhaps sympathetic to, the needs of the industry.

At the same time, in some states the public's response to administrative regulation has

become increasingly negative. The adoption of so-called "sunshine" and "sunset" laws, consolidation or merger of many agencies, and abolition of some outmoded boards and commissions, reflect a growing public perception that administrative enforcement may at times be neither efficient nor effective.

The debate on the general desirability of state agency regulation is reflected in the question of regulation of condominium development. While some states with widespread time-share activity have placed the regulation of time shares in existing governmental bodies, other states with substantial time-share activity have chosen not to regulate time shares, relying instead on the free market and lenders for consumer protection.

State administrative law does not demand uniformity between the States. For example, the Model State Administrative Procedure Act (1961) noted that there was a demand for an act covering that subject, but that administrative procedure was a subject upon which uniformity among the states was neither necessary nor desirable. "Every student of administrative law recognizes that many of the procedural details involved in administrative action must necessarily vary more or less from state to state and even from agency to agency within the same state." Comment, *Content of the Model State Administrative Procedure Act*, Uniform Laws Annotated, Master Edition (see U.L.A. Directory of Acts for location).

The same reasoning applies to the law of time shares. While uniform substantive law regarding time shares and the protection to be provided to consumers is important, the means by which the substantive law is enforced does not require uniformity. Nevertheless, it appears desirable to provide the states the option of choosing agency regulation of time shares, as some states have already chosen to do, by providing an option article on agency administration which is closely integrated with the Uniform Law Commissioners' Model Real Estate Time-Share Act.

Accordingly, Article V may or may not be adopted, depending on whether or not a state chooses to have agency regulation. The article has been drafted in such a way as to minimize the number of changes necessary in the body of the first four articles of the Act. However, in order to provide for close integration of Article V with the remainder of the Act, there are some sections in the Act where bracketed references to the agency or to Article V now exist. These sections are Sections 1-102(c), 1-103(b), 3-104(e)(3), and 4-105. In the event that a state determines not to adopt Article V, the bracketed clauses or provisions in each of the above sections which refer to Article V should be deleted. In the event a state adopts Article V, the brackets should be removed and the clauses or provisions retained.

§ 5-101. [Administrative Agency] As used in this Act, "agency" means [insert appropriate administrative agency], which is an agency within the meaning of [insert appropriate reference to state administrative procedure act]. [Insert any related provisions on creation,

selection, and remuneration of personnel, budget, annual reports, fees, and other administrative provisions appropriate to the particular state].

Comment

1. Each state should insert in lieu of the bracketed language in the first sentence that agency, whether it be the Real Estate Commission, the Attorney General's Office, or any other existing or new agency, which the state deems appropriate for regulation of time shares.

2. The Model State Administrative Procedure Act (1961) (the "Model Act") had been adopted in 26 states and the District of Columbia by 1976. The appropriate reference in those states to the definition of "Agency" would be the statute adopting Section 1(1) of the Model Act. In those states which have not adopted the Model Act, reference to a similar statute should be made to insure that the procedures of the agency regulating condominiums are undertaken in accordance with the principles of procedural due process which underlie the Model Act. In those states which do not have an administrative procedure act, appropriate administrative procedures should be included, either in this section or elsewhere in this article, to provide for hearings, appellate review, regulations, and other administrative matters.

3. As indicated, Article V was not designed to solve all procedural matters which are appropriate for an agency. Rather, the Act relies on the cross reference to a state administrative procedure act. Even in such states, however, it may be appropriate to include other provisions, either in Section 5-101 or elsewhere in this article, which are necessary under state practice to insure the proper functioning of a state agency. This might include budget authority, salary levels, civil service requirements, and the like. This may be particularly important when a new state agency is created.

§ 5-102. [Registration Required] A developer may not offer or transfer a time share unless the time share is registered with the agency, but an offering by a developer of time shares in no more than one time-share unit at any one time is exempt from the requirements of this section and Section 5-103(b).

Comment

An offering of time shares in no more than one time-share unit at any one time is exempt from the requirement of registration. However, such an offering is still subject to scrutiny by the agency under its general powers, despite the fact that no registration is required.

§ 5-103. [Application for Registration; Approval of Uncompleted Units]

(a) For the purposes of this section, "substantially completed" means that all structural components and mechanical systems of all buildings constituting or containing any time-share units or portions thereof are finished in accordance with the plans, as evidenced by a recorded certificate of completion executed by an independent [registered] engineer, surveyor, or architect.

(b) An application for registration must contain the information and be accompanied by any reasonable fees required by the agency's [rules] [regulations]. A developer shall promptly file amendments to report any actual or expected material change in any document or information contained in his application.

(c) If a developer files with the agency the time-share instrument or proposed time-share instrument, or an amendment or proposed amendment to the time-share instrument, describing time-share units consisting in whole or in part of buildings or portions of buildings that have not been substantially completed, the developer shall also file with the agency:

(1) a verified statement showing all costs involved in completing the time-share property;

(2) a verified estimate of the time of completion of construction of the time-share property;

(3) satisfactory evidence that he has sufficient funds to cover all costs to complete the time-share property;

(4) a copy of the executed construction contract and any other contracts for the completion of the time-share property;

(5) a 100 percent payment and performance bond covering the entire cost of

construction of the time-share property;

(6) if purchasers' funds are to be utilized for the construction of the time-share property, an executed copy of the escrow agreement with an escrow company or financial institution authorized to do business within the state which provides:

(i) that disbursements of purchasers' funds may be made from time to time to pay for construction of the time-share property, architectural, engineering, finance, and legal fees, and other costs for the completion of the time-share property in proportion to the value of the work completed by the contractor as certified by an independent [registered] architect or engineer, on bills submitted and approved by the lender of construction funds or the escrow agent;

(ii) that disbursement of the balance of purchasers' funds remaining after completion of the time-share property may be made only after the escrow agent or lender receives satisfactory evidence that the period for filing mechanics' and materialmen's liens has expired, the right to claim those liens has been waived, or adequate provision has been made for satisfaction of any claimed mechanics' or materialman's lien; and

(iii) any other restriction relative to the retention and disbursement of purchasers' funds required by the agency; and

(7) any other materials or information the agency may require by its [rules] [regulations].

The agency may not register the time share described in the time-share instrument or the amendment unless the agency determines, on the basis of the material submitted by developer, that all of the time-share units will be substantially completed.

§ 5-104. [Receipt of Application; Order of Registration]

(a) The agency shall acknowledge receipt of an application for registration within [5] business days after receiving it. Within [60] days after receiving the application, the agency shall determine whether:

(1) the application and the proposed public offering statement satisfy the requirements of this Act and the agency's rules;

(2) the time-share instrument complies with this Act; and

(3) it is likely that the improvements the developer has undertaken to make can be completed as represented.

(b) If the agency makes a favorable determination, it shall promptly issue an order registering the time shares. Otherwise, unless the developer has consented in writing to a delay, the agency shall promptly issue an order rejecting registration.

§ 5-105. [Cease and Desist Orders] If the agency determines, after notice and hearing, that any person has disseminated or caused to be disseminated orally or in writing any false or misleading promotional materials in connection with a time share, or that any person has otherwise violated any provision of this Act or the agency's [rules] [regulations] or orders, the agency may issue an order to cease and desist from that conduct, to comply with the provisions of this Act and the agency's [rules] [regulations] and orders, or to take affirmative action to correct conditions resulting from that conduct or failure to comply.

§ 5-106. [Revocation of Registration]

(a) The agency, after notice and hearing, may issue an order revoking the registration of time shares upon determination that a developer or any officer or principal of a developer has:

(1) failed to comply with a cease and desist order issued by the agency affecting time shares;

(2) concealed, diverted, or disposed of any funds or assets of any person in a manner impairing rights of purchasers of those time shares;

(3) failed to perform any stipulation or agreement made to induce the agency to issue an order relating to those time shares;

(4) misrepresented or failed to disclose a material fact in the application for registration; or

(5) failed to meet any of the conditions described in Sections 5-103 and 5-104 necessary to qualify for registration.

(b) A developer may not transfer, cause to be transferred or contract for the transfer of a time share while an order revoking the registration of the time share is in effect, without the consent of the agency.

(c) In appropriate cases the agency, in its discretion, may issue a cease and desist order in lieu of an order of revocation.

§ 5-107. [General Powers and Duties of Agency]

(a) The agency may adopt, amend, and repeal [rules] [regulations] and issue orders consistent with and in furtherance of the objectives of this Act, but the agency may not intervene in the internal activities of the managing entity or of time-share owners undertaking self-management except to the extent necessary to prevent or cure violations of this Act. The agency may prescribe forms and procedures for submitting information to the agency.

(b) If it appears that any person has engaged, is engaging, or is about to engage in any act or practice in violation of this Act or any of the agency's rules or orders, the agency without prior

administrative proceedings may bring suit in the [appropriate court] to enjoin that act or practice or for other appropriate relief. The agency is not required to post a bond or prove that no adequate remedy at law exists.

(c) The agency may intervene in any action or suit involving the powers or responsibilities of a developer in connection with any time share for which an application for registration is on file.

(d) The agency may accept grants in aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions, in furtherance of the objectives of this Act.

(e) The agency may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices, and may develop information that may be useful in the discharge of the agency's duties.

(f) In issuing any cease and desist order or order rejecting or revoking registration of time shares, the agency shall state the basis for the adverse determination and the underlying facts.

(g) The agency, in its sound discretion, may require bonding, escrow of portions of sales proceeds, or other safeguards it may prescribe by its [rules] [regulations] to guarantee completion of all promised improvements pursuant to Section 4-117 (Developer's Obligation to Complete).

§ 5-108. [Investigative Powers of Agency]

(a) The agency may initiate public or private investigations within or outside this State to determine whether any representation in any document or information filed with the agency is false or misleading or whether any person has engaged, is engaging, or is about to engage in any unlawful act or practice.

(b) In the course of any investigation or hearing, the agency may subpoena witnesses and documents, administer oaths and affirmations, and adduce evidence. If a person fails to comply with a subpoena or to answer questions propounded during the investigation or hearing, the agency may apply to the [appropriate court] for a contempt order or injunctive or other appropriate relief to secure compliance.

Comment

The powers specified in this section are expressly granted to the agency because of judicial determinations in various states that, in the absence of such an express statutory grant agencies do not have such powers.

§ 5-109. [Annual Report and Amendments]

(a) A developer within 30 days after the anniversary date of the order of registration, annually shall file a report to bring up to date the material contained in the application for registration and the public offering statement. This provision does not relieve the developer of the obligation to file amendments pursuant to subsection (b).

(b) A developer promptly shall file amendments to the public offering statement with the agency.

(c) If an annual report reveals that a developer owns or controls time shares representing less than [25] percent of the time shares in the time-share units and that a developer has no power to increase the number of time shares in the units, the agency shall issue an order relieving the developer of any further obligation to file annual reports. Thereafter, so long as the developer is offering any time shares for sale, the agency has jurisdiction over the developer's activities, but has no other authority to regulate the time shares.

§ 5-110. [Agency Regulation of Public Offering Statement]

(a) The agency at any time may require a developer to alter or supplement the form or substance of a public offering statement to assure adequate and accurate disclosure to prospective purchasers.

(b) The public offering statement may not be used for any promotional purpose before registration and afterwards only if it is used in its entirety. No person may advertise or represent that the agency has approved or recommended the time shares, the disclosure statement, or any of the documents contained in the application for registration.

(c) In the case of any time-share property situated wholly outside of this State, no application for registration or proposed public offering statement filed with the agency which has been approved by an agency of the State in which the time-share property is located and substantially complies with the requirements of this Act may be rejected by the agency on the grounds of non-compliance with any different or additional requirements imposed by this Act or by the agency's [rules] [regulations]. However, the agency may require additional documents or information in particular cases to assure adequate and accurate disclosure to prospective purchasers.