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(unannotated)  
Current through the end of the 2004 Regular Session**

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[Return](#) to the **Code of Laws** Main Page

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**Title 27 - Property and Conveyances**  
CHAPTER 32.  
VACATION TIME SHARING PLANS  
ARTICLE 1.  
VACATION TIME SHARING PLANS

**SECTION 27-32-10.** Definitions.

For purposes of this chapter:

- (1) "Accommodations" means any hotel or motel room, condominium or cooperative unit, cabin, lodge, apartment, or other private or commercial structure designed for occupancy by one or more individuals or a recreational vehicle campsite or campground.
- (2) "Person" means any individual, corporation, firm, association, joint venture, partnership, trust estate, business trust, syndicate, fiduciary, and any other group or combination.
- (3) "Contract" means any contract, promissory note, credit agreement, negotiable instrument, lease, use agreement, license, security, or other muniment conferring on the purchaser the rights, benefits, and obligations of a vacation time sharing plan.
- (4) "Commission" means the South Carolina Real Estate Commission.
- (5) "Facilities" means a structure, service, or property, whether improved or unimproved, made available to the purchaser for recreational, social, family, or personal use.
- (6) "Seller" means a person who creates a vacation time sharing plan or is in the business of selling interests in a vacation time share plan, or employs agents to do the same, or a person who succeeds to the interest of a seller by sale, lease, assignment, mortgage, or

other transfer; except that, the term includes only a person who offers interests in vacation time sharing plans in the State of South Carolina in the ordinary course of business. The term "seller" does not include the following:

(a) an owner of a time sharing interest who has acquired the time sharing interest for his own use and occupancy and who later offers it for resale on his own behalf or through a real estate broker;

(b) a managing entity or owners' association of a time sharing plan, not otherwise a seller, that offers on the association's behalf time sharing interests in the time sharing plan transferred to the association through foreclosure, deed in lieu of foreclosure, or gratuitous transfer; or

(c) a person who owns or is conveyed, assigned, or transferred time sharing interests, and who subsequently conveys, assigns, or transfers all acquired time sharing interests to a single purchaser in a single transaction, which transaction may occur in stages.

(7) "Vacation time sharing ownership plan" means any arrangement, plan, or similar devise, whether by tenancy in common, sale, term for years, deed, or other means, in which the purchaser receives an ownership interest in real property and the right to use accommodations or facilities, or both, for a period or periods of time during a given year, but not necessarily for consecutive years, which extends for a period of more than one year. A vacation time sharing ownership plan may be created in a condominium established on a term for years or leasehold interest having an original duration of thirty years or longer. An interest in a vacation time sharing ownership plan is recognized as an interest in real property for all purposes pursuant to the laws of this State.

(8) "Vacation time sharing lease plan" means any arrangement, plan, or similar devise, whether by membership agreement, lease, rental agreement, license, use agreement, security, or other means, in which the purchaser receives a right to use accommodations or facilities, or both, but does not receive an ownership interest in real property, for a period or periods of time during a given year, but not necessarily for consecutive years, which extends for a period of more than three years. These lease plans do not include an arrangement or agreement in which a purchaser in exchange for an advance fee and yearly dues is entitled to select from a designated list of facilities located in more than one state, accommodations of companies that operate nationwide in at least nine states in the United States through franchises or ownership, for a specified time period and at reduced rates and under which an interest in real property is not transferred.

(9) "Vacation time sharing plan" means either a vacation time sharing ownership plan or a vacation time sharing lease plan.

(10) "Substantially complete" means all structural components and mechanical systems of all buildings containing or comprising facilities or accommodations are finished in accordance with the plans or specifications of the vacation time sharing plan, as

evidenced by a recorded certificate of completion executed by an independent registered surveyor, architect, or engineer.

(11) "Unit week" means a number of consecutive days, normally seven consecutive days in duration, which may reasonably be assigned to purchasers of vacation time sharing plans by the seller.

(12) "Escrow agent" means a bank or trust company doing business in this State or a bonded trust agent bonded in at least the amount of the trust; except, that nothing contained in this chapter prevents investment of funds escrowed pursuant to this chapter by the bank, trust company, or bonded agent, with payment of all interest and dividends to the seller of vacation time sharing plans.

(13) "Escrow account" means funds held or maintained by an escrow agent.

(14) "Fund" and "recovery fund" means the South Carolina Vacation Time Sharing Recovery Fund.

(15) "Claim" means a monetary loss sustained or allegedly sustained by a person due to the wrongdoing of a registrant or licensee.

(16) "Real estate broker's trust account" means a demand account in a bank or savings institution in this State held by a duly licensed South Carolina real estate broker.

**SECTION 27-32-20.** Advertisement or conveyance of plan in absence of licensure of seller and prior registration of plan prohibited; materials to be furnished commission by seller of plans; exemptions.

It is a violation of this chapter for a seller of vacation time sharing plans to:

(1) sell, lease, encumber, or convey in any manner or to solicit or advertise those transactions unless the vacation time sharing plan has first been registered with the commission.

(2) fail to make available upon request to the commission the following materials and amendments or changes to them made while sales continue:

(a) a copy of the contract by which the rights and obligations of the parties are established;

(b) copies of promotional brochures, pamphlets, advertisements, or other material disseminated to the public in connection with the sale of the vacation time sharing plan and verbatim scripts of all radio and television advertising in connection with it;

(c) a statement of the type of entity through which the selling of vacation time sharing plans is to be carried out, including a list of the names and addresses of all directors,

principal officers, dealers, distributors, and sales personnel soliciting in or from the State of South Carolina, and the name and address of the seller's agent for service of process within the State;

(d) copies of all contracts between the person offering the vacation time sharing plan for sale to the public and each business providing accommodations and facilities to purchasers of the plan;

(e) copies of all rules, regulations, conditions, or limitations on use of the accommodations or facilities available pursuant to the vacation time sharing plan;

(f) synopsis of any sales presentation made by the seller to the purchaser over the telephone or other electronic device;

(g) projected budget of all recurring expenses which may become the responsibility of all time sharing purchasers.

(3) Upon receipt of all materials required by item (2), the commission shall determine their sufficiency and satisfactory compliance with this chapter. The commission then shall issue its order approving their use, and the vacation time sharing plan is then considered to be registered.

(4) The following communications are exempt from the provisions of this chapter:

(a) stockholder communication including an annual report or interim financial report, proxy material, or other material required to be delivered to a purchaser by an agency of a state or the federal government;

(b) oral or written statement disseminated by a seller to broadcast or print media, other than paid advertising or promotional material, regarding plans for the acquisition or development of vacation time sharing property. A rebroadcast or other dissemination of these oral statements to a prospective purchaser by a seller in any manner or a distribution of copies of print media to a prospective purchaser by a seller in any manner is considered an advertisement;

(c) advertisement or promotion in any medium to the general public if the advertisement or promotion clearly states that it is not an offer in a jurisdiction in which applicable registration requirements are not fully satisfied;

(d) billboard or other sign that is affixed to real or personal property, that is not disseminated by other than visual means to a prospective purchaser, and that does not suggest or invite action on the part of the prospective purchaser; and

(e) communication addressed to and relating to the account of any person who has executed previously a contract for the purchase of a time sharing interest in a time sharing plan relating to the communication.

**SECTION 27-32-30.** Materials to be kept among business records of seller of plans.

It is a violation of this chapter for a person offering vacation time sharing plans for sale to the public to fail to keep among its business records a:

- (1) copy of each item required to be submitted to the commission pursuant to Section 27-32-20;
- (2) copy of the contract from each sale of the vacation time sharing plan, which contract must be retained for at least three years after parties to the vacation time sharing plan have completely performed all of their obligations under it; and
- (3) list of all employees, and their last known mailing addresses, which list must include all current employees and all previous employees whose employment was terminated within the preceding three years.

**SECTION 27-32-40.** Furnishing copy of contract to purchaser; terms thereof.

(A) It is a violation of this chapter for the seller of a vacation time sharing plan to fail to utilize and furnish the purchaser a fully completed copy of a contract pertaining to the sale at the time of its execution. The contract must include the:

- (1) actual date the contract is executed by all parties;
- (2) name and address of the seller;
- (3) total financial obligation of the purchaser, including the initial purchase price and additional charges to which the purchaser may be subject;
- (4) specific term of the contract; and
- (5)(a) following statement in immediate proximity to the space reserved in the contract for the signature of the purchaser and in bold type:

**"YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY OR OBLIGATION WITHIN FIVE DAYS AFTER THE DATE YOU SIGN THIS CONTRACT, NOT INCLUDING SUNDAY IF THAT IS THE FIFTH DAY, OR THE DATE YOU RECEIVE THE DISCLOSURE STATEMENT PURSUANT TO Section 27-32-100, WHICHEVER OCCURS LATER. IF YOU DECIDE TO CANCEL, YOU MUST NOTIFY THE SELLER IN WRITING OF YOUR INTENT TO CANCEL BY SENDING NOTICE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY ANOTHER VERIFIABLE MEANS, TO (NAME OF SELLER) AT (SELLER'S ADDRESS)."**

(b) in the case of a vacation time sharing lease plan the following statement also must be included:

"YOU ALSO MAY CANCEL THIS CONTRACT AT ANY TIME IN CASE THE ACCOMMODATIONS OR FACILITIES PROVIDED IN THE CONTRACT OR COMPARABLE ACCOMMODATIONS OR FACILITIES ARE NO LONGER AVAILABLE."

(B) Notice of cancellation pursuant to this section is considered given on the date postmarked if mailed, or when transmitted from the place of origin if telegraphed, so long as the notice is actually received by the seller. If given by means of a writing transmitted other than by mail or telegraph, the notice is considered given at the time of delivery at the seller's address as identified on the contract.

**SECTION 27-32-50.** Request by buyer to cancel contract.

It is a violation of this chapter for the seller of vacation time sharing plans, or his assignees, to fail or refuse to honor a purchaser's request to cancel a contract as provided by Section 27-32-40 if the request is made; except that this section does not deny the seller the option to repair, replace, or reconstruct within a reasonable time the accommodations or facilities if destroyed or damaged.

**SECTION 27-32-55.** Fees for resale of ownership interest; unfair trade practices.

An owner of an interest in a vacation time sharing plan may not be charged an up-front appraisal fee for the resale of his interest but may be charged only an up-front marketing fee or commission upon the resale of the interest in an amount stipulated by written agreement between the owner and his sales agent. A person violating the provisions of this section has committed an unfair trade practice pursuant to Section 39-5-20 and is subject to all penalties and remedies provided by law for this violation.

**SECTION 27-32-60.** Refund upon cancellation; escrow account.

It is a violation of this chapter for a seller of vacation time sharing plans to:

- (1) fail to refund payments made by the purchaser pursuant to the contract and return a negotiable instrument, other than a check, executed by the purchaser in connection with the contract or services within twenty days after receipt of notice of cancellation made pursuant to Section 27-32-40, if the purchaser has not received benefits pursuant to the contract;
- (2) if the purchaser has received benefits pursuant to the contract, fail to refund within thirty days after receipt of notification of cancellation made pursuant to Section 27-32-40 or 27-32-50 payments made by the purchaser to the seller which exceed a pro rata portion of the total price, taking into consideration the cost and use of the time share facilities at an average rental rate, representing the proportion of contract benefits actually received by the purchaser during the time preceding cancellation;

(3) fail to place in a real estate broker's trust account, or another escrow arrangement approved by the commission, one hundred percent of the funds received from the purchasers of the plans, which trust account must provide that:

(a) its purpose is to protect the purchaser's right to refund during the five-day right to cancellation period as provided in Section 27-32-40 or 27-32-50; and

(b) funds may be withdrawn by the seller pursuant to Section 27-32-90.

**SECTION 27-32-70.** Misrepresentation of right to cancel.

It is a violation of this chapter for a seller of vacation time sharing plans, or his assignees, to misrepresent in any manner the purchaser's right to cancel provided by this chapter.

**SECTION 27-32-80.** Transfer of seller's interest in plan or facilities to third party.

It is a violation of this chapter for a seller of vacation time sharing plans to sell, lease, assign, or otherwise transfer or encumber the seller's interest in the vacation time sharing plan or the accommodations or facilities to a third party when the sale, lease, assignment, or other transfer substantially affects the rights of the purchasers of the vacation time sharing plan, unless:

(1) the third party agrees in writing to honor fully the rights of purchasers of the vacation time sharing plan to occupy and use the accommodations or facilities;

(2) the third party agrees in writing to honor fully the rights of purchasers of the vacation time sharing plan to cancel their contracts and receive an appropriate refund as provided in this chapter;

(3) the third party agrees in writing to comply with the provisions of this chapter for as long as the third party continues to sell the vacation time sharing plan, or for as long as purchasers of the vacation time sharing plan are entitled to occupy the accommodations or use the facilities, whichever is longer in time; and

(4) written notice is sent to each purchaser of a vacation time sharing plan affected by the transfer by certified mail within thirty days of the sale, lease, assignment, or other transfer.

**SECTION 27-32-90.** Escrow accounts; seller to make deposit; provisions; refunds; audits and examinations; disputed funds; investments and interest; record keeping; financial assurances.

(A) A seller of a vacation time sharing plan shall deposit into an escrow account maintained by an independent third-party agent one hundred percent of the funds received from the purchasers of the plans. The deposit of the funds must be evidenced by

an executed escrow agreement between the escrow agent and the seller, which must include provisions that:

(1) funds may be disbursed to the seller by the escrow agent from the escrow account only after the expiration of the purchaser's cancellation period and in accordance with the purchase contract, subject to subsection (B) of this section; and

(2) if the purchaser properly cancels the contract pursuant to its terms, the funds must be paid to the purchaser pursuant to Section 27-32-40 or 27-32-50.

(B) If a seller contracts to sell an interest in a vacation time sharing plan and the construction of the property in which the interest of the vacation time sharing plan is located has not been substantially completed, the seller, upon expiration of the cancellation period, shall continue to maintain in an escrow account all funds received by or on behalf of the seller from the purchaser under the contract. Funds must be released from escrow as follows, if:

(1) a purchaser properly cancels the contract pursuant to its terms, the funds must be paid to the purchaser;

(2) the purchaser defaults in the performance of his obligations under the contract, the funds must be paid to the seller;

(3) the seller defaults in the performance of his obligations under the contract, the funds must be paid to the purchaser; and

(4) the funds of a purchaser have not been previously disbursed in accordance with the provisions of this subsection, they may be disbursed to the seller by the escrow agent upon the issuance of acceptable evidence of substantial completion of construction.

(C) The commission may audit or examine the escrow account. The seller shall make available documents relating to the escrow account or escrow obligation to the commission upon the commission's request. The seller shall maintain disputed funds in the escrow account until either:

(1) receipt of written direction agreed to by signature of all parties; or

(2) deposit of the funds with a court of competent jurisdiction in which a civil action regarding the funds has been filed.

(D) An escrow agent holding funds escrowed pursuant to this section may invest the escrowed funds in securities of the United States government, or an agency of it, or in savings or time deposits in an institution insured by an agency of the United States government. Interest generated by the investments must be paid to the party to whom the escrowed funds are paid, unless otherwise specified by contract.

(E) An escrow agent holding funds escrowed pursuant to this section shall maintain separate books and records for each time sharing plan in accordance with generally acceptable accounting practices.

(F) Notwithstanding the other provisions of this section, the commission may accept from the seller a surety bond, irrevocable letter of credit, or other financial assurance acceptable to the commission in an amount equal to or in excess of the funds that otherwise would be placed in escrow.

**SECTION 27-32-95.** Reserved by 2003, Act 84, Section 1, eff October 1, 2003.

**SECTION 27-32-100.** Public offering statement to prospective purchaser required; contents.

It is a violation of this chapter for a person who sells or offers to sell an interest in a vacation time sharing plan subject to Section 27-32-20, to fail to provide to the prospective purchaser a separate written public offering statement regarding the vacation time sharing plan and the purchaser's rights and obligations associated with the purchase of an interest in that vacation time sharing plan. The written statement must be received by the purchaser before signing a contract for the sale of a vacation time sharing plan and must include:

- (1) the name and address of the seller;
- (2) a brief description of the interest being offered in the vacation time sharing plan;
- (3) the name of a person with the right to alter, amend, or add to charges to which the purchaser may be subject and the terms and conditions under which those charges may be imposed;
- (4) a general description of all furniture, fixtures, and appliances, if known, to be located in the accommodations during the time period purchased;
- (5) the nature and duration of each agreement between the person selling the vacation time sharing plans and the person managing the accommodations or other facilities of the time sharing plan;
- (6) a description of provisions to protect the purchaser's interest from loss due to foreclosure on an underlying financial obligation of the vacation time sharing plan;
- (7) a description of assurances of completion required pursuant to Section 27-32-140;
- (8) the date of availability of each amenity of the offered accommodations and facilities if they are not completed at the time of sale of each vacation time sharing plan;

(9) a statement, if applicable, that the salespersons for the vacation time sharing plan represent the seller and not the prospective purchaser;

(10) a statement, substantially similar to the following:

"You should purchase a time sharing interest as a vacation experience and for your personal use and enjoyment. You should not purchase a time sharing interest as an investment or for profit upon its rental or resale.";

(11) in immediate proximity to the space reserved on the disclosure statement for the signature of the purchaser and in bold type a statement as follows:

"A purchaser should not rely upon representations other than those included in the contract and this disclosure statement." However, inclusion of this statement shall not impair the purchaser's right to bring any legal action based upon any cause of action arising from verbal statements;

(12) a space for the signature of the purchaser acknowledging receipt of the disclosure statement and the date of receipt; and

(13) other information the seller or the Real Estate Commission considers necessary for the protection of purchasers.

**SECTION 27-32-110.** Certain practices prohibited.

It is a violation of this chapter for a seller of vacation time sharing plans to:

(1) use a promotional device including, but not limited to, sweepstakes, lodging certificates, gift awards, premiums, or discounts, without disclosing fully that the promotional device is used for the purpose of soliciting the sale of vacation time sharing plans;

(2) use a promotional device as described in item (1) to obtain the names and addresses of prospective purchasers without fully and prominently disclosing that names and addresses are acquired for the purpose of soliciting the sale of the vacation time sharing plans;

(3) misrepresent the amount of time or period of time the accommodations and facilities are available to a purchaser;

(4) misrepresent or deceptively represent the location of the offered accommodations and facilities;

(5) misrepresent the size, nature, extent, qualities, or characteristics of the offered accommodations and facilities;

(6) misrepresent the nature or extent of services incident to the accommodations and facilities;

(7) make misleading or deceptive representations with respect to the contents of the contract or the purchaser's rights, privileges, or benefits under it;

(8) fail to honor and comply with all provisions of the contract with the purchaser;

(9) misrepresent the conditions under which a purchaser may exchange his rights to an accommodation in one location for rights to an accommodation in another location;

(10) include in a contract a provision purporting to waive a right or benefit provided for purchasers pursuant to this chapter, or seek or solicit such a waiver during the effective period of these rules; and

(11) do any other act of fraud, misrepresentation, or failure to make a disclosure of a material fact.

**SECTION 27-32-115.** Finder's fees; limitations on finders' activities.

Notwithstanding another provision of law, a seller may pay a finder's fee to a person who is not licensed pursuant to Chapter 57 of Title 40 and who owns an interest in the seller's vacation time sharing plan. This section does not permit a person who receives the finder's fee to advertise or promote the time sharing interest, show property, discuss terms and conditions of purchase, or otherwise participate in negotiations with regard to the time sharing interests, unless the person is a regular employee of the seller or properly licensed pursuant to Chapter 57 of Title 40.

**SECTION 27-32-120.** Penalties for violation of chapter; effect on contract.

(A)(1) If, upon investigation by the Real Estate Commission, a person is found to be in violation of this chapter, the commission shall inform the person of the violation by certified mail, return receipt requested. If the commission finds the violation is of a minor nature, it may assess a monetary fine.

(2) Within ten days from receipt of the certified mail, the person found in violation of this chapter may pay the fine or take other remedial steps as the commission, in its sole discretion, may require. If a fine is not paid and other remedial agreement is not reached within the time allowed or any extension of time granted by the commission, the person may be prosecuted for the violation as otherwise provided in this section.

(3) The commission may release a person found in violation of this chapter from any further liability to the State arising from the violation, once the person pays the fine or agrees to remedial action.

(B) A person who wilfully violates a provision of this chapter is guilty of a misdemeanor and, upon conviction, for a first offense must be fined not more than five thousand dollars for each violation. Conviction for a second offense is a misdemeanor and the person must be fined not more than five thousand dollars or imprisoned not more than six months, or both, for each violation. Conviction for a third or subsequent offense is a felony and the person must be fined not more than five thousand dollars or imprisoned not more than five years, or both, for each violation. For purposes of this chapter, a wilful violation occurs when the person committing the violation knew or should have known that his conduct was a violation of this chapter.

(C) In addition to the penalties provided in this section, a contract for the sale of an interest in a vacation time sharing plan in violation of this chapter is voidable at the sole option of the purchaser and entitles the purchaser to a refund of all consideration paid by him pursuant to the contract.

**SECTION 27-32-130.** Enforcement and implementation of chapter; regulations.

The Real Estate Commission is responsible for the enforcement and implementation of this chapter and the Department of Labor, Licensing and Regulation, at the request of the Real Estate Commission, shall prosecute a violation under this chapter. The commission shall promulgate regulations for the implementation of this chapter, subject to the State Administrative Procedures Act. The provisions of this section do not limit the right of a purchaser or lessee to bring a private action to enforce the provisions of this chapter.

**SECTION 27-32-140.** Materials required to be filed with plans concerning facilities not substantially completed.

(A) A seller who files with the commission a vacation time sharing plan or an amendment to it which describes or concerns the vacation time sharing plan, accommodations, or facilities not substantially completed, upon request of the commission also shall file with the commission the following:

- (1) a verified statement showing all costs involved in completing the property;
- (2) a verified statement of the time of completion of construction of the property;
- (3) satisfactory evidence of sufficient funds to cover all costs to complete the property;
- (4) a copy of the executed construction contract and other contracts for the completion of the property;
- (5) a one hundred percent payment bond covering the entire cost of construction of the property;

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

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

(b) disbursements of the balance of purchasers' funds remaining after completion of the 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 or the right to claim those liens has been waived or adequate provision has been made for satisfaction of any claimed mechanics' or materialmen's liens;

(c) other requirements of the commission relative to the retention and disbursement of purchasers' funds have been met; and

(d) other materials or information required by the commission have been provided.

(B) The commission shall not register or issue an order approving a vacation time sharing plan unless the commission determines, on the basis of materials submitted by the seller, that the accommodations or facilities or additions to it will be completed.

**SECTION 27-32-150.** Fee for registration and renewal of vacation time sharing plans; examination of documentation pertaining to advertisement or sale; expenses for investigation and prosecution.

(A) An initial filing fee of ten dollars per each seven-day use availability, but not exceeding a maximum initial filing fee of five hundred dollars, must accompany an application for registration of a vacation time sharing plan. Upon amending an existing registration to add interests in a vacation time sharing plan, a filing fee of five dollars for each seven-day use availability added by the amendment, but not exceeding a maximum filing fee of two hundred fifty dollars, must be submitted. The annual vacation time sharing plan renewal fee is two hundred fifty dollars.

(B) All books, files, accounts, and other documents pertaining to the advertisement and sale of vacation time sharing plans located outside the State filed with the commission are subject to examination by the commission and the examinee shall pay a fee for each examiner employed to make such examination of fifty dollars per day or fraction of it, plus the actual expenses, including the cost of transportation of the examiner, while he is absent from his office for purposes of conducting the examination.

(C) The commission shall retain fees and other funds that come into its possession to use to defray expenses in the administration and enforcement of this chapter.

(D) If the commission determines that the registration, sale, or operation of a vacation time sharing plan violates this chapter in a manner that indicates bad faith or dishonesty, the commission, after notice and hearing, may assess all reasonable costs of investigation and prosecution of those violations.

**SECTION 27-32-160.** Grants in aid and contracts with similar agencies to further objectives.

The commission may accept grants-in-aid from a private or public source and may contract with agencies charged with similar functions in this or other jurisdictions, in furtherance of the objectives of this chapter.

**SECTION 27-32-170.** Proceeds from sale or exchange of vacation time sharing plan exempt from sales tax.

The gross proceeds from the sale or resale of a vacation time sharing plan and the exchange of an interest in a vacation time sharing plan are exempt from sales tax imposed by Chapter 36 of Title 12 pursuant to the provisions of Section 12-36-2120.

**SECTION 27-32-180.** Registration of persons engaging in the sale of vacation time sharing plans; form and contents; exemption for regular employees of seller; fees; seller's supervision and control; renewal.

(A) Except as provided in subsection (B) of this section, a person desiring to engage in the sale of vacation time sharing plans on behalf of a seller shall first register with the commission. The registration must be submitted to the commission by the person on a form prescribed by the commission and including the name, address, and telephone number of the person and additional information as requested by the commission.

(B) Regular employees of the seller are exempt from the registration requirements of subsection (A) and from all licensing requirements of Chapter 57 of Title 40.

(C) A person registering pursuant to this section shall pay an initial registration fee in the amount of one hundred dollars. This fee must accompany the registration application submitted to the commission.

(D) The seller shall supervise, manage, and control all aspects of the offering and sale of a vacation time sharing plan. A violation of this chapter by a registrant employed by a seller as an independent contractor, either directly or through a third party, in connection with the offering or sales of interests in vacation time sharing plans may be considered to be a violation by the seller, as well as by the registrant who committed the violation, if the seller knew or should have known of the conduct constituting the violation.

(E) The registration of a person registered pursuant to this section is subject to annual renewal, on or before June thirtieth, upon submission of a renewal application in a form

as the commission prescribes and payment of a fifty-dollar renewal fee. Failure to timely renew results in cancellation of the registration.

**SECTION 27-32-190.** Plans to be registered; registration requirements; powers of the commission.

(A) A vacation time sharing plan for sale or offered for sale in this State must be registered with the South Carolina Real Estate Commission as follows:

(1) Upon receipt of an application for registration in proper form, the commission must initiate an examination to determine that the:

(a) seller may sell, convey, otherwise transfer, or cause to be sold, conveyed, or otherwise transferred the vacation time sharing plan offered for sale if the purchaser complies with the terms of the offer;

(b) advertising material and general promotional plan are not false or misleading;

(c) requirements of this chapter have been fulfilled;

(d) seller or its officers, directors, and principals have not been convicted of a crime involving land dispositions, crimes of moral turpitude, securities law violations, fraudulent business activities, or any aspect of the vacation time sharing business in this State, the United States, or another state or foreign country within the past ten years, and have not been subject to an injunction or administrative order within the past ten years restraining a false or misleading promotional plan involving any of the activities above; and

(e) interests in accommodations and facilities conveyed to a purchaser are free and clear of all liens, mortgages, and encumbrances of every kind, the existence or foreclosure of which may result in loss or diminution of the purchaser's ownership or use rights, as represented in the vacation time sharing plan. The seller shall provide adequate assurances to the commission that all interests conveyed to purchasers in accommodations and facilities, and the accommodations and facilities themselves, shall remain unencumbered excepting only tax liens, owners' association assessments, encumbrances including mortgage liens which are subordinate to the vacation time sharing plan or other encumbrances arising from the purchaser's actions, and purchase money mortgages, contracts for deed, or similar purchase money security interests arising from transactions in which the purchasers acquired their interests. Those assurances may consist of bonds, nondisturbance instruments, and recorded instruments advising third parties of the existence of purchaser use rights and providing for subordination of future liens. For those plans in which an interest in accommodations and facilities is not conveyed, the commission may require either a cash or surety bond, or both, in an amount up to but not to exceed a combined total of two hundred fifty thousand dollars.

(2) Within thirty days from the date the commission receives an application for registration, the commission must enter an order registering the vacation time sharing plan or rejecting the registration. If an order of rejection is not entered within thirty days from the date of application, the vacation time sharing plan is considered registered unless the applicant has consented in writing to a delay. A reasonable request for an extension of time by the commission must not be withheld.

(a) If the commission affirmatively determines, upon inquiry and examination, that the requirements of this chapter have been met, it must enter an order registering the plan.

(b) If the commission determines, upon inquiry and examination, that any of the requirements of this chapter have not been met, the commission must notify the applicant that the application for registration must be corrected in the particulars specified within fifteen days. The commission has the discretion to grant a longer period of time for the applicant to make the required corrections. If the requirements are not met within the time allowed, the commission must enter an order rejecting the registration and including the findings of fact upon which the order is based. The order rejecting the registration is not effective for twenty days during which the applicant may petition for reconsideration and must be granted a hearing.

(c) If it appears that a person, company, or a business organization has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter or any rule or order under it, the commission, through the Department of Labor, Licensing and Regulation, with or without prior administrative proceedings, may bring an action in the circuit court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order under it. The commission must notify, whenever practicable, a person or business violating this chapter before recourse in the circuit court. Upon proper showing, injunctive relief or temporary restraining orders may be granted, and a receiver or conservator may be appointed. Neither the commission nor the Department of Labor, Licensing and Regulation is required to post bond in a court proceeding.

(B) The commission may:

(1) make a public or private investigation it considers necessary, either within or outside of this State, to determine if a person has violated or is about to violate this chapter or any rule or order under it, or to aid in the enforcement of this chapter or in the prescribing of rules and forms under it;

(2) require or permit a person to file a statement in writing, under oath or otherwise as the commission determines, as to all facts and circumstances concerning the matter to be investigated;

(3) for the purpose of any investigation or proceeding pursuant to this chapter, the commission or an officer designated by rule may administer oaths or affirmation and, upon its own motion or upon request of a party, must subpoena witnesses, compel their

attendance, take evidence, and require the production of a matter relevant to the investigation, including the existence, description, nature, custody, condition, and location of books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or another matter reasonably calculated to lead to the discovery of material evidence;

(4) apply to the circuit court for an order compelling compliance upon a person's failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected by it, through the Department of Labor, Licensing and Regulation;

(5) issue an order requiring the seller to cease and desist from an unlawful practice and to take affirmative action to carry out the purposes of this chapter if, after notice and hearing, the commission determines that a seller has:

(a) violated a provision of this chapter;

(b) directly or through an agent or employee knowingly engaged in false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of an interest in a vacation time sharing plan;

(c) made a substantial change in the plan of development and sale of the vacation time sharing plan after the order of the registration without obtaining the prior written approval of the commission; or

(d) violated a lawful order or rule of the commission;

(6) make findings of fact in writing that the public interest is irreparably harmed by delay in issuing an order and issue a temporary cease and desist order. Before issuing the temporary cease and desist order, the commission, whenever possible by telephone or otherwise, must give notice to the seller of the proposal to issue a cease and desist order. Each temporary cease and desist order must include in its terms a provision that, upon request, a hearing must be held promptly to determine whether or not the order becomes permanent;

(7) revoke a registration of a vacation time sharing plan if, after notice and hearing upon a written finding of fact, the commission determines that the seller has:

(a) failed to comply with the terms of a cease and desist order;

(b) been convicted in a court of competent jurisdiction, after the filing of the application for registration, of a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing;

(c) disposed of, concealed, or diverted funds or assets of a person so as to defeat the rights of vacation time sharing plan purchasers;

(d) failed to faithfully perform any stipulation or agreement made with the commission as an inducement to grant a registration, to reinstate a registration, or to approve any promotional plan or advertisement; or

(e) made intentional misrepresentations or concealed material facts in an application for registration; and

(8) issue a cease and desist order instead of revoking a registration if it finds, after notice and hearing, that the seller has been guilty of a violation for which revocation could be ordered.

**SECTION 27-32-200.** Vacation Time Sharing Recovery Fund.

(A) There is created a special fund known as the " Vacation Time Sharing Recovery Fund", which must be maintained by the commission and funded as provided for the payment of claims to persons injured by the acts of persons registered or licensed pursuant to this chapter.

(B) The funds must be held and accumulated from year to year in the State Treasury in a special fund for the commission, designated as the "South Carolina Vacation Time Sharing Recovery Fund". The fund is a continuing fund not subject to fiscal year limitations, and is under the administrative direction of the commission. Expenditures from this fund must be made in accordance with the provisions of this chapter without legislative appropriation. Warrants for expenditures from the fund must be drawn by the Comptroller General pursuant to claims approved and signed by the commission.

**SECTION 27-32-210.** Persons aggrieved may seek recovery from fund; conditions.

(A) A person aggrieved by the conduct of a registrant or licensee may seek recovery from the Vacation Time Sharing Recovery fund if:

(1) the facts giving rise to the applicant's claim occurred on or after January 1, 1982, and were based on a specific violation of this chapter;

(2) the applicant has made demand upon the registrant or licensee by certified mail, return receipt requested, for his actual damages and the demand has been refused or ignored;

(3) the applicant is not:

(a) related by blood or marriage to the registrant or licensee;

(b) registered or licensed pursuant to this chapter;

(c) the employer, principal, or broker in charge of the registrant or licensee; or

(d) a party jointly responsible for the claim; and

(4) application for recovery is made not later than one year from the date of discovery of the loss.

(B) Application for recovery must be made under oath and upon a form prescribed by the commission and containing the following minimum information:

(1) name and address of the applicant;

(2) name and address of the registrant or licensee and his last known working address;

(3) amount of recovery sought, together with evidence supporting the claim;

(4) copies of all complaints or other legal process initiated;

(5) disclosure of any partial satisfaction received, offered, or otherwise available from the registrant or licensee, his broker-in-charge, or from a bond or policy of insurance or other source; and

(6) a detailed statement of the events precipitating the loss, together with documents and other evidence supporting the claim.

(C) Upon receiving a claim in proper form, the commission shall forward the claim by certified mail, return receipt requested, to the last known address of the registrant or licensee and to the broker-in-charge of the registrant or licensee. The registrant or licensee and the broker-in-charge shall file a verified answer to the claim within twenty days. If an answer is not filed within twenty days, the broker or registrant or licensee is in default and the commission shall schedule an arbitration of the claim. If the broker or registrant or licensee files a timely answer, the commission shall investigate the claim for a period not to exceed sixty days and after that promptly schedule an arbitration of the claim. The registrant or licensee, broker, commission, and claimant are entitled to present evidence, and question and cross examine witnesses as parties to the arbitration.

(D) Failure of the applicant to comply fully with this section is a waiver of all rights under the section.

**SECTION 27-32-220.** Limitations on payments from fund.

These limitations apply to payments from the recovery fund:

(1) Only the applicant's actual damages are paid from the recovery fund. An applicant may not recover punitive, special, or consequential damages or attorney's fees.

(2) The fund is not liable for more than five thousand dollars for each transaction, regardless of the number of persons aggrieved or the number of time sharing interests involved in the transaction.

(3) The liability of the fund may not exceed in the aggregate ten thousand dollars for any one registrant or licensee in a single calendar year and in no event may exceed twenty thousand dollars for any one registrant or licensee.

(4) If the maximum liability of the fund is insufficient to pay in full the valid claims of all aggrieved persons whose claims relate to the same transaction or to the same registrant or licensee, the amount for which the fund is liable must be distributed among the claimants in a ratio that their respective claims bear to the total of the valid claims or in the manner as the Board of Arbitrators in its sole discretion shall decide. The Board of Arbitrators in its sole discretion is empowered to join in one action all claims having a common factual basis so that an equitable distribution from the fund may be achieved.

(5) If valid claims against the fund exceed the monies it contains, the commission shall satisfy the unpaid claims or portions of them as soon as a sufficient amount of money has been deposited, together with interest at the rate of eight percent a year from the date of award. All claims against the fund must be made in the same order as the awards from it were authorized by the Board of Arbitrators. An award is not a claim against the State if it is not paid due to a lack of funds in the Vacation Time Sharing Recovery Fund.

**SECTION 27-32-230.** Arbitration; automatic revocation of license; applicant receiving award to subrogate rights.

(A) A person registered or licensed pursuant to this chapter and a person claiming an interest in the fund shall submit to the decision of a Board of Arbitrators, which is final and binding. The Board of Arbitrators must be composed of three arbitrators, one chosen by the applicant, one chosen by the registrant or licensee, and the commission or its designee. If the registrant or licensee fails to nominate an arbitrator within five days of request or does not respond to the claim, the commission shall nominate the third arbitrator. The decision of the majority rules. Arbitrations must be held at the office of the commission at a time and according to rules of procedure it prescribes.

(B) Upon payment of a claim, the registration or license, of the offending licensee is revoked automatically. The registrant or licensee is not qualified for reregistering or relicensing until all amounts paid on his account are repaid in full to the recovery fund, together with annual interest at the rate of eight percent. This section does not prevent the commission or another authority from pursuing another remedy at law or equity.

(C) An applicant receiving an award from the fund shall subrogate all rights relative to the claim to the commission to the full extent of all amounts paid, including interest, and shall cooperate with the commission in the prosecution of the subrogated claim. Any amounts so recovered against a registrant or licensee or other responsible parties must be deposited into the fund, less the costs and expenses of collection.

**SECTION 27-32-240.** Property taxation of time share units; valuation; assessment; enforcement.

(1) For purposes of property taxation, a time share unit operating under a vacation time sharing ownership plan as defined in item (7) of Section 27-32-10, must be valued in the same manner as if the unit were owned by a single owner. The total cumulative purchase price paid by the time share owners for a unit may not be utilized by the tax assessor as a factor in determining the assessed value of the unit. A unit operating under a vacation time sharing lease plan as defined in item (8) of Section 27-32-10, may, however, be assessed as other income producing and investment property is assessed.

(2) The assessment and taxation of real property committed to a vacation time ownership plan must be in the name of the person that is designated to provide or receive the funds for payment of the taxes.

(3) Should the person fail to pay the taxes, an execution for the taxes must be issued in the joint name of all the owners of the time sharing periods and must be collected as provided by law.

**SECTION 27-32-250.** Sales or exchanges of vacation multiple ownership interests.

(1) Trusts, partnership interests, undivided interests as tenants in common, corporate shares, or other membership or use interests in a dwelling unit, in which thirteen or fewer undivided interests, corporation shares, partnership interests, trust interests, or other membership or use interests are conveyed, are referred to in this section as vacation multiple ownership interests and are not considered a vacation time sharing plan or a time sharing unit for purposes of this chapter. Debts, encumbrances, or liens, except for purchaser financing, may not exist on the dwelling unit at the time fee simple title is conveyed to the tenants in common, corporation, trust, partnership, or other purchasing organization. The contract of sale and sale of a vacation multiple ownership must be handled by a real estate salesman duly licensed pursuant to Chapter 57 of Title 40 unless handled by a regular employee of the seller. It is a violation of this chapter for a seller of a vacation multiple ownership interest to sell, lease, encumber, or convey in any manner, or to solicit or advertise those transactions, unless the seller is in compliance with the provisions of Sections 27-32-20, 27-32-30, 27-32-40, 27-32-50, 27-32-60, 27-32-70, 27-32-80, 27-32-100, 27-32-110, 27-32-120, 27-32-140, 27-32-150, and 27-32-190. Where the phrase "time sharing" is used in those sections, it also means "multiple ownership" for purposes of this section.

(2) The sale or resale of a vacation multiple ownership interest and the exchange of an interest in a vacation multiple ownership interest is exempt from sales tax imposed by Chapter 36 of Title 12 pursuant to the provisions of Section 12-36-2120.

(3) An owner selling vacation multiple ownership interests in not more than one dwelling unit a year is not subject to the provisions of this section. An individual or a corporation, trust, business, or partnership in which the individual is an owner, partner, stockholder,

trustee, beneficiary, or affiliate is considered the owner of the dwelling unit for purposes of this section.

(4) Funds received from purchasers of vacation multiple ownership interests must be placed in an escrow account with an insured institution and must not be disbursed until a sufficient number of vacation multiple ownership interests is sold to satisfy all outstanding debts, liens, and encumbrances on the dwelling unit, except for purchaser financing, and all furniture and furnishings in the dwelling unit, or until the posting with the Real Estate Commission of a bond, letter of credit, or other equivalent security satisfactory to the commission, to ensure payment of all outstanding debts, liens, and encumbrances on the dwelling unit and all furniture and furnishings in the dwelling unit.

(5) Definitions:

(a) The definitions contained in Section 27-32-10, items 1, 2, 3, 4, 5, 6, 10, 12, 13, and 16 are applicable to this section.

(b) "Dwelling unit" means the actual accommodations and related facilities which are the subject of the vacation multiple ownership interest.

(c) "Purchaser" means one who receives an undivided interest in a dwelling unit, a partner in a partnership that owns a dwelling unit, a shareholder in a corporation that owns a dwelling unit, a beneficiary in a trust that owns a dwelling unit, a holder of a leasehold interest in a dwelling unit, or a member of another organization that owns a dwelling unit.

### ARTICLE 3. TIMESHARE LIEN FORECLOSURES

**SECTION 27-32-300.** Short title.

This article may be cited as the "Timeshare Lien Foreclosure Act".

**SECTION 27-32-305.** Purpose.

The purposes of this article are to:

(1) recognize that timeshare estates are interests in real property used for vacation experience rather than for homestead purposes and that there are numerous timeshare estates in South Carolina;

(2) recognize that the economic health and efficient operation of the vacation ownership industry are in part dependent upon the availability of an efficient and economical process for foreclosure;

(3) recognize the need to assist vacation ownership resort owners' associations by simplifying and expediting the process of foreclosure of assessment liens and mortgage liens;

(4) reduce court congestion and cost to taxpayers by establishing streamlined procedures for foreclosure of assessment liens and mortgage liens against timeshare estates;

(5) establish those streamlined procedures by giving statutory recognition to the right of persons to privately contract for a power of sale as their remedy in lieu of a judicial foreclosure of liens on timeshare estates while specifically limiting the application of such nonjudicial foreclosure procedures to timeshare estates only.

**SECTION 27-32-310. Definitions.**

As used in this article:

(1) "Assessment lien" means:

(a) a lien for delinquent assessments as to timeshare estates; or

(b) a lien for unpaid taxes and special assessments.

(2) "Claim of lien" means a claim of a recorded assessment lien.

(3) "Junior interest holder" means any person who has a lien or interest of record prior to the recording of the notice of sale against a timeshare estate in the county in which the timeshare estate is located which is inferior to the mortgage lien or assessment lien being foreclosed under this article.

(4) "Lienholder" means a holder of an assessment lien or a holder of a mortgage lien, as applicable.

(5) "Mortgage lien" means a security interest in a timeshare estate created by a mortgage encumbering the timeshare estate.

(6) "Mortgagee" means a person holding a mortgage lien.

(7) "Mortgagor" means a person granting a mortgage lien.

(8) "Notice address" means:

(a) as to an assessment lien, the address of the current obligor of a timeshare estate as reflected by the books and records of the timeshare plan.

(b) as to a mortgage lien:

(i) the address of the mortgagor set forth in the mortgage, the promissory note, or a separate document executed by the mortgagor at the time the mortgage lien was created, or the most current address of the mortgagor according to the records of the mortgagee; and

(ii) the address of the current obligor of the timeshare estate as reflected by the books and records of the timeshare plan.

(c) as to a "junior interest holder", the address set forth in the recorded instrument creating the junior interest or lien or any recorded supplement thereto changing the address and written notification by the "junior interest holder" to the foreclosing lienholder of a change in address.

(9) "Obligor" means either the mortgagor, the person obligated under a claim of lien, or the record owner of the timeshare estate as the context requires.

(10) "Power of sale" means:

(a) an express written agreement in a mortgage identifying the mortgagor, mortgagee, and the trustee; or

(b) an express written provision in a timeshare instrument identifying the managing entity and the trustee which authorizes the trustee to sell the timeshare estate without judicial action at a foreclosure sale regularly conducted and duly held in accordance with this article.

(11) "Timeshare instrument" means the document or documents which provide the legal framework for the establishment of the method of interval ownership of the timeshare estate and is or are recorded at the office of Register of Deeds in the county in which the timeshare estate is located.

(12) "Trustee" means any person entitled to exercise a power of sale.

**SECTION 27-32-315.** Who may serve as trustee; appointment of successor trustee; notice of substitution of trustee.

(A) A trustee may be any:

(1) attorney who is an active licensed member of the South Carolina Bar in good standing or a law firm whose members include such an attorney; or

(2) title insurance company, title insurance agent, or title insurance agency licensed to do business in this State.

(B) An attorney who is a trustee under subsection (A)(1) may represent the lienholder foreclosing under this article in addition to performing the duties of a trustee under a power of sale.

(C) Successor trustees may be appointed by a lienholder at any time by recording a notice of substitution of trustee in the public records for the county in which the timeshare estate is located. From the time the substitution of trustee is recorded, the successor trustee succeeds to all the powers, duties, and authority of the original trustee and successor trustees, if any.

(D) The recorded notice of substitution of trustee must identify:

(1) the mortgage or timeshare instrument;

(2) the names of the original parties to the mortgage or timeshare instrument;

(3) the date of recordation of the mortgage or timeshare instrument;

(4) the official record book and page number where the mortgage or timeshare instrument is recorded;

(5) the name of the successor trustee; and

(6) the name of the trustee being replaced. The notice must recite acceptance by the successor trustee of his or her duties and must be dated, signed, and acknowledged by the lienholder and the successor trustee. A notice of substitution of trustee is valid for purposes of this article when made and recorded in accordance with this section. A resignation of the original or prior trustee is not required.

(E) The lienholder may not serve as the trustee.

**SECTION 27-32-320.** Mortgage and assessment lien foreclosure statements; Resolution Trust Corporation mortgages.

(A) In order to foreclose a mortgage lien pursuant to this article, the following conditions must have been met:

(1) The mortgage recorded in the public records of the county in which the timeshare estate being foreclosed is located must contain the following statement in conspicuous type:

"There is a mortgage lien against your timeshare estate which must be repaid in accordance with this mortgage. Your failure to make timely payments required by this mortgage may result in foreclosure of the mortgage lien. The mortgagor acknowledges that, if the obligations established by this mortgage are not satisfied and the mortgagor does not cure the default in accordance with the terms hereof, the mortgage lien created

by this mortgage may be foreclosed through a nonjudicial procedure in accordance with Article 3 of Chapter 32 of Title 27 of the Code of Laws of South Carolina. The mortgagor understands that he or she will not be subject to a deficiency judgment or personal liability for the mortgage lien resulting from a nonjudicial foreclosure procedure even if the sale of his or her timeshare estate resulting from the foreclosure for the mortgage lien is insufficient to satisfy the amount of the mortgage lien. The mortgagor further acknowledges that the trustee will send the notice required by this procedure to the mortgagor's notice address, and the mortgagor agrees to inform the mortgagee of any change in the mortgagor's address. The mortgagor consents to notification by certified or registered mail and agrees that any person at the mortgagor's notice address may acknowledge receipt of any correspondence received in connection with this procedure. The mortgagor understands that the trustee may notify mortgagor of the commencement of the procedure by publication if delivery of the notice is not accepted at the notice address. If the mortgagor sends the trustee a written objection to the nonjudicial procedure stating the reasons for such objection, the matter will be transferred to a judicial foreclosure procedure, but the mortgagor understands and agrees that in the judicial foreclosure procedure, he or she may be subject to a deficiency judgment or personal liability for the mortgage lien if the sale of his or her timeshare estate resulting from the foreclosure is insufficient to satisfy the amount of the mortgage lien. The mortgagor further understands and agrees that in the judicial foreclosure procedure if the court finds that there is a complete absence of a justifiable issue of either law or fact raised by the objection or defense, the mortgagor may be personally liable for the costs and attorney's fees incurred by the mortgagee in the judicial foreclosure."

(2) The mortgage, promissory note, or a separate instrument signed by the mortgagor must contain the mortgagor's notice address.

(B) In order to foreclose an assessment lien pursuant to this article, the following conditions must have been met:

(1) The timeshare instrument recorded in the public records of the county in which the timeshare estate being foreclosed is located must contain the following statement in conspicuous type:

"Each obligor understands that, if the obligations owed for assessments of the association and for ad valorem taxes and special assessments are not satisfied and the obligor does not timely cure the default, the assessment lien may be foreclosed through a nonjudicial procedure in accordance with Article 3 of Chapter 32 of Title 27 of the Code of Laws of South Carolina. The obligor understands that he or she will not be subject to a deficiency judgment or personal liability for the assessment lien resulting from a nonjudicial foreclosure procedure, even if the sale of his or her timeshare estate resulting from the foreclosure for the assessment lien is insufficient to offset the amount of the assessment lien. The obligor acknowledges the trustee will send the notice required by this procedure to the obligor's notice address, and the obligor agrees to inform the managing entity of any change in the obligor's address. The obligor consents to notification by certified or registered mail and agrees that any person at the obligor's notice address may

acknowledge receipt of any correspondence received in connection with this procedure. The obligor understands that the trustee may notify the obligor of the commencement of the procedure by publication if delivery of the notice is not accepted at the notice address. If the obligor sends the trustee a written objection to the nonjudicial procedure stating the reasons for the objection, the matter will be transferred to a judicial foreclosure procedure, but the obligor understands and agrees that in the judicial foreclosure procedure, the obligor may be subject to a deficiency judgment or personal liability for the assessment lien if the sale of his or her timeshare estate resulting from the foreclosure of the assessment lien is insufficient to offset the amount of the assessment lien. The obligor further understands and agrees that in the judicial foreclosure procedure for the assessment lien, if the court finds that there is a complete absence of a justifiable issue of either law or fact raised by the obligor's objection or defense, the obligor may be personally liable for the costs and attorney's fees incurred by the assessment lienholder in the judicial foreclosure."

(2) The public offering statement text must contain the following statement in conspicuous type:

"There is a lien or lien right against each timeshare estate to secure the payment of assessments or other amounts due from obligors to the association in accordance with the operating budget and special assessments and to secure payment of assessments for ad valorem real estate taxes. A purchaser's failure to make the required payments may result in foreclosure of an assessment lien. Assessment liens may be foreclosed in accordance with judicial procedures established by law or with a nonjudicial procedure established by Article 3 of Chapter 32 of Title 27 of the Code of Laws of South Carolina. By purchasing a timeshare estate in the timeshare plan described in this public offering statement, a purchaser acknowledges and agrees that any assessment lien against the timeshare estate owned by a purchaser may be foreclosed by a nonjudicial procedure and agrees that the notice of a foreclosure by a nonjudicial procedure may be made by the use of certified or registered mail. The purchaser is required to provide an address for the delivery of all notices required by law and to inform the managing entity of any changes in the purchaser's notice address."

(3) As to any timeshare instrument recorded prior to the effective date of this article, an amendment to the timeshare instrument must include the notice required by item (1) of this subsection and upon approval of the amendment to the timeshare instrument, a copy of the amendment must be sent by the managing entity to each timeshare estate obligor. The amendment must be approved by the association on the affirmative vote of fifteen percent of the obligors of the association. If an amendment is adopted, the notice required under item (2) of this subsection is not required to be given to persons who are obligors on the date the amendment to the timeshare instrument is adopted.

(C)(1) This subsection applies only to mortgage lienholders of record who possess nonperforming mortgages in timeshare estates originating on or before December 31, 1990, and who have no successors in interest of record or whose successor in interest in the then existing mortgages was the Resolution Trust Corporation.

(2) Mortgage lienholders as defined in item (1) of this subsection are considered to have received notice of the intent to sell the timeshare estate pursuant to this article when the notice of the intent to sell is sent certified mail, return receipt requested, to the last known address of the corporate offices of the mortgage lienholder of record in the county Register of Deeds office where the timeshare estate is located. The notice shall provide a complete property description of the timeshare estate as well as the date and time for the sale. If the date and time of the sale is not available at the time that the notice of intent to sell is mailed, a second notice must be sent providing that information. In any event, the mortgage lienholder must be provided at least thirty days' notice of the date and time of the sale.

(3) At the conclusion of the foreclosure sale, the issuance of the trustee's deed is considered to terminate all other interests, and the successful bidder receives clear and unencumbered title to the timeshare estate. In addition, the trustee must prepare the necessary release and satisfaction and file it with the trustee's deed at the appropriate Register of Deeds office.

**SECTION 27-32-325.** Conditions for exercise of power of sale by trustee.

A trustee may exercise a power of sale provided that:

(1) the requirements of Section 27-32-320 have been met and any substitution of trustee is filed for record in the public records of the county in which the timeshare estate is located;

(2) there is a default by the obligor under a provision of the mortgage, the timeshare instrument, or applicable law which authorizes foreclosure in the event of default;

(3) there is no lis pendens recorded and pending regarding a judicial action for foreclosure of the mortgage lien or the assessment lien against the same timeshare estate, and the trustee has not been served notice of the filing of any action to enjoin the power of sale procedure;

(4) if an assessment lien is to be foreclosed, a claim of lien, together with all amendments and assignments, if any, is recorded in the public records of the county in which the timeshare estate is located;

(5) the trustee has sent written notice of default and intent to sell the timeshare estate to the obligor's and junior interest holder's notice addresses as required by Section 27-32-330 with the following statement in conspicuous type:

"If you fail to cure the default or take other appropriate action with regard to this matter within thirty calendar days after the date of this notice, you will risk losing your interest in this timeshare estate through a nonjudicial foreclosure procedure. However, under the nonjudicial procedure, you will not be subject to a deficiency judgment or personal liability for the lien being foreclosed even if the sale of your timeshare estate resulting

from the nonjudicial foreclosure is insufficient to satisfy the amount of the lien being foreclosed. You may object to the sale of your timeshare estate through the nonjudicial foreclosure procedure and require foreclosure of your timeshare interest to proceed through the judicial process. An objection must be made in writing and received by the trustee before the end of the thirty-day time period. You must state the reason for your objection and include your address on the written objection. In a judicial foreclosure proceeding that results from your objection, you may be subject to a deficiency judgment and personal liability for the lien being foreclosed if the sale of your timeshare estate resulting from the judicial foreclosure is insufficient to satisfy the amount of the lien being foreclosed. Furthermore, you also may be subject to a personal money judgment for the costs and attorney's fees incurred by the lienholder in the judicial foreclosure proceeding if the court finds that there is a complete absence of a justifiable issue of either law or fact raised by your objections or defenses. You have the right to cure your default at any time before the sale of your timeshare estate by payment of all past due loan payments or assessments, accrued interest, late fees, taxes, and all fees and costs incurred by the lienholder and trustee, including attorney's fees and costs, in connection with the default;"

(6) the default being foreclosed, mortgage lien, assessment lien, or both, is clearly identified in the written notice required in item (5);

(7) a period of at least thirty calendar days has elapsed since the sending of the notice of default and intent to sell by the trustee without receipt by the trustee of a written objection to the sale.

(a) If the trustee receives a written objection to the sale from the obligor setting forth a specific objection to a sale of the timeshare estate by the trustee, the trustee may not proceed under this article. When a trustee is prohibited from proceeding under this article, the lienholder is required to file a foreclosure action as provided in Article 7 of Chapter 3 of Title 29.

(b) If the court determines that there was a complete absence of justifiable issues of either law or fact raised by the objection received by the trustee under this section or the defenses raised in the subsequent judicial foreclosure proceeding, the lienholder is entitled to entry of a separate personal judgment against the obligor for reasonable attorney's fees and costs incurred by the mortgagee or managing entity, as applicable, in the judicial foreclosure action;

(8) the notice of sale required by Section 27-32-335 has been recorded in the public records of the county in which the timeshare estate is located.

**SECTION 27-32-330.** Notification of obligor; perfection of notice.

(A) In any foreclosure proceeding under this article, the trustee is required to notify the obligor including persons in this State, outside of this State, or in foreign countries by delivering a written notice of default and intent to sell under Section 27-32-325 to the

notice addresses of the obligor and junior interest holders, as applicable, by certified or registered mail, as follows:

- (1) The trustee must place a copy of the notice of default and intent to sell in a sealed envelope with adequate postage addressed to the obligor, the record owner of the timeshare estate if different from the obligor, and any junior interest holders.
- (2) The envelope must be placed in the mail as certified or registered mail, return receipt requested.
- (3) Notice under this section is considered perfected upon the signing of the return receipt by a person at the notice address.

(B) If the certified or registered mail sent pursuant to subsection (A) is returned with an endorsement or stamp showing "refused", the trustee may send the notice by first class mail to the notice address. The failure to claim certified or registered mail is not refusal of notice within the meaning of this subsection. Notice pursuant to this subsection must be delivered as follows:

- (1) the trustee must place a copy of the notice of default and intent to sell in a sealed envelope with adequate postage addressed to the obligor, the record owner of the timeshare estate if different from the obligor, and any junior interest holders;
- (2) the envelope must be mailed by first class mail with the return address of the trustee on the envelope;
- (3) notice under this subsection is considered perfected upon the mailing of the envelope.

(C) If notice is perfected under subsection (A), the trustee must file an affidavit setting forth the manner of notice as part of the certificate of compliance set forth in Section 27-32-340. The affidavit must state the nature of the process, the date on which the process was mailed by certified or registered mail, the name and address on the envelope containing the notice, the fact that the notice was mailed certified or registered mail, return receipt requested, the name of the person who signed the return receipt, if known, and the basis for that knowledge. The return receipt from the certified or registered mail must be attached to the affidavit.

(D) If notice is perfected under subsection (B), the trustee must file an affidavit setting forth the manner of notice as part of the certificate of compliance set forth in Section 27-32-340. The affidavit must state the nature of the notice, the date on which the notice was mailed by certified or registered mail, the name and address on the envelope containing the notice, the fact that the notice was mailed certified or registered mail and was returned with the endorsement or stamped "refused", the date, if known, on which the notice was "refused", the date on which the notice was mailed by first class mail, the name and address on the envelope containing the notice that was mailed by first class mail, and the fact that the notice was mailed by first class mail with the return address of

the trustee on the envelope. The return envelope from the attempt to mail notice by certified or registered mail and the return envelope, if any, from the attempt to mail the envelope by first class mail must be attached to the affidavit.

(E) If the trustee is unable to perfect notice pursuant to either subsection (A) or subsection (B) because the copy of the notice mailed by certified or registered mail is returned by the United States Post Office as "undeliverable" or for any other reason and if by a diligent search and inquiry the trustee cannot obtain a different address for the obligor for service required by subsection (A), the trustee may perfect notice by publication in a newspaper of general circulation in the county in which the timeshare estate is located. The notice must appear once a week for two successive weeks. A copy of the notice must be sent to the obligor by first class mail to the notice address of the obligor and to any other address of the obligor obtained through the trustee's diligent search and inquiry. If notice is perfected by publication under this subsection, the trustee must attach an affidavit of publication to the certificate of compliance set forth in Section 27-32-340 and must state that the notice was perfected by publication after diligent search and inquiry was made for the obligor's address, attaching the returned envelope with the notation from the United States Post Office. No other action of the trustee is necessary to perfect notice. If the diligent search and inquiry has produced an address different from the notice address, that address may be used in lieu of the notice address of the obligor for subsequent mailings required under this article.

**SECTION 27-32-335.** Contents, recording and publication of notice of sale; right to cure default; copy to obligor; subsequent interests.

(A) The notice of sale must set forth:

- (1) the names and notice addresses of the obligor, the record owner of the timeshare estate if different from the obligor, and the junior interest holders;
- (2) the name and address of the trustee;
- (3) a description of the existence of a default under the mortgage, the timeshare instrument, or applicable law;
- (4) the official record book and page numbers where the mortgage or the claim of lien is recorded;
- (5) the legal description of the timeshare estate;
- (6) the amount secured by the mortgage or the assessment lien, whichever is being foreclosed, accrued interest, and late charges as of the date of notice of sale and including a per diem amount to account for further accrual of interest and late charges, advances for the payment of taxes, insurance, and maintenance of the timeshare estate, and cost of the sale including a title search fee and reasonable trustee's and attorney's fees and costs;

(7) a statement of the trustee's intention to sell the timeshare estate to satisfy the obligation;

(8) the date, time, and place of sale to be held after 9:00 a.m. but before 4:00 p.m. on a regular business day not less than thirty days after the recording of the notice of sale.

(B) The right of the obligor to cure the default or the right of the junior interest holder to redeem its interest continues up to the date the trustee issues the certificate of sale in accordance with Section 27-32-345.

(C) The trustee must send a copy of the notice of sale on the date it is submitted for recording, by first class mail, postage prepaid, to the notice addresses of the obligor, the owner, if different from the obligor, and the junior interest holders. In addition, a copy of the notice of sale must be sent by certified or registered mail to the lienholder.

(D) Except as provided in this article, no notice is required to be given to any person claiming an interest subsequent to the recording of the notice of sale as set forth in this section. The recording of the notice of sale has the same force and effect as the filing of a lis pendens in a judicial proceeding.

(E) The trustee must publish the notice of sale in a newspaper of general circulation in the county in which the sale is to be held once a week for two consecutive weeks prior to the date of the sale. The last publication must occur at least five days prior to the sale.

**SECTION 27-32-340.** Certificate of compliance; contents; recording; reliance on lienholder for facts and circumstances of default.

(A) On the date the trustee conducts a sale, the trustee must execute a duly acknowledged certificate of compliance and must record the certificate of compliance in the public records of the county in which the timeshare estate is located.

(B) In the certificate of compliance, the trustee must:

(1) set forth the manner of delivery of the notice of default and intent to sell under Section 27-32-330 with the required affidavit, state that the notice contained the conspicuous language required by Section 27-32-325, state that the default was not cured and the timeshare estate was not redeemed, and state that the trustee did not receive any written objection within the period required under Section 27-32-325.

(2) confirm that the notice of sale was published as required by subsection (D) of Section 27-32-335 and attach an affidavit of publication for the notice of sale.

(3) confirm that the notice of sale was mailed pursuant to Section 27-32-335 together with a list of the parties to whom the notice of sale was mailed and the address used for each party.

(C) In furtherance of the execution and recording of the certificate of compliance required pursuant to this section, the trustee is entitled to rely upon an affidavit or certification from the lienholder as to the facts and circumstances of default and failure to curb the default.

**SECTION 27-32-345.** Public sale procedures; certificate of sale.

(A) The sale of a timeshare estate by public auction must be held in the county in which the timeshare estate is located, on the date and at the time and place designated in the notice of sale.

(B) Any person, including the lienholder, may bid at the sale. The trustee may bid for the lienholder but not for himself or herself. If the trustee designates another person to bid for the lienholder, the trustee may conduct the sale and act as the auctioneer.

(C) The person conducting the sale may postpone the sale from time to time. In such case, notice of postponement must be given by oral public proclamation thereof by the person conducting the sale at the time and place last appointed for the sale. The notice of sale regarding the postponed sale must be mailed and recorded pursuant to Section 27-32-330. The effective date of the initial notice of sale for purposes of Section 27-32-330 is not affected by a postponed sale.

(D) The buyer must pay in cash or certified funds at the day of sale the price bid to the person acting as the auctioneer. The lienholder must receive a credit on its bid for the amount set forth in the notice of sale as required by Section 27-32-330.

(E) Upon the issuance of the trustee's deed, the buyer at the sale is entitled to possession and use of the timeshare estate in accordance with the timeshare instrument. Foreclosure by an assessment lienholder does not affect the interest of the mortgage lienholder except as provided in Section 27-32-320(C). Any other person thereafter claiming possession of the timeshare estate is considered to be a tenant at sufferance, and the buyer is entitled, upon application to a court of competent jurisdiction, to a writ of possession.

(F) On the date of the sale and upon receipt of the amount bid, the trustee must issue to the buyer a certificate of sale stating that a foreclosure conforming to the requirements of this article has occurred, including the time, place, and date of the sale; that the property was sold; the amount of the mortgage lien or the assessment lien, as applicable; the amount of the purchase price; and the name and address of the successful bidder. A copy of the certificate of sale must be mailed by certified or registered mail, postage prepaid, to all persons entitled to receive a notice of sale under Section 27-32-330.

**SECTION 27-32-350.** Effect of sale on rights of parties; lienholder deficiency judgment; validity of sale presumed.

(A) A sale conducted pursuant to Section 27-32-345 forecloses and terminates all interest in the timeshare estate of all persons to whom notice is given under Sections 27-32-325

and 27-32-330 and of any other person claiming by, through, or under such person. A failure to give notice to any person entitled to notice does not affect the validity of the sale as to persons notified. A person entitled to notice but not given notice has the rights of a person not made a defendant in a judicial foreclosure. Any subsequent foreclosure required by failure to notify a party under Section 27-32-330 may be conducted under this article.

(B) On the issuance of a certificate of sale pursuant to Section 27-32-345, all rights of redemption foreclosed pursuant to this article terminate.

(C) The lienholder has no right to any deficiency judgment against the obligor after a sale of the obligor's timeshare estate under this article as to the lien foreclosed.

(D) The validity of the sale is presumed upon the recording of the certificate of compliance and issuance of the certificate of sale.

**SECTION 27-32-355.** Trustee's deed; release of lien extinguished by sale.

Ten days after a sale, absent the filing and service on the trustee of a judicial action to enjoin issuance of the trustee's deed to the timeshare estate or objecting to the sale on the grounds that the requirements of this article were not met by the trustee, the trustee must issue a trustee's deed to the purchaser at the sale. This deed must be recorded in the Register of Deeds office in the county in which the timeshare estate is located. In addition, the trustee must prepare the necessary release or satisfaction of any lien extinguished by the sale and file those documents and the trustee's deed at the appropriate Register of Deeds office.

**SECTION 27-32-360.** Disposition of proceeds of sale; costs and fees.

(A) The trustee must apply the proceeds of the sale as follows:

(1) to the expenses of the sale, including compensation of the trustee and a reasonable fee by the person who conducted the sale, if applicable;

(2) to the amount owed set forth in the notice as required by Section 27-32-335;

(3) to all junior interest holders as their liens or interests may appear of record in the order of priority;

(4) the surplus, if any, to an obligor entitled to such surplus.

(B) In disposing of the proceeds of sale, the trustee may rely on the information provided in the public records as to the claims of junior interest holders and, in the event of a dispute or uncertainty over such claims, the trustee has the discretion to submit the matter to adjudication by court, by interpleader, or otherwise. All costs and fees, including

attorney's fees and costs, of adjudication must be paid out of the proceeds of sale after payment of the amounts required to be paid by items (1) and (2) of subsection (A).

**SECTION 27-32-365.** Trustee's deed; contents; effect; liability of trustee.

(A) The trustee's deed must include the name and address of the trustee, the name and address of the buyer, the name of the obligor, including the owner of the timeshare estate on the date of the recordation of the notice of sale, and the name and address of the preparer of the trustee's deed. The trustee's deed must recite that the certificate of compliance was recorded after the regular conduct of a sale, and shall contain no warranties of title from the trustee.

(B) Upon the recording of the trustee's deed, the certificate of compliance and trustee's deed together are conclusive evidence of the truth of the matters set forth therein.

(C) The trustee's deed conveys to the purchaser all right, title, and interest in the timeshare estate that the obligor had, or had the power to convey, at the time of the execution of the mortgage or recording of the claim of lien together with all right, title, and interest in the owner or his successors in interest acquired after the execution of the mortgage or recording of the claim of lien.

(D) If an action is filed based on any claim that the trustee failed to follow the procedures in this article or that the sale was otherwise improper, it is presumed that the trustee was acting solely as the agent of the lienholder, and any liability resulting therefrom is the sole responsibility of the lienholder, mortgagee or managing entity and not the trustee.

**SECTION 27-32-370.** Relation of article to other foreclosure proceedings; right of action preserved; severability; managing entity to release address of timeshare owner.

(A) The procedures set forth in this article do not impair or otherwise affect the continuing right to bring a judicial action to foreclose a mortgage lien or claim of lien which has not been satisfied by a sale conducted pursuant to Section 27-32-345.

(B) Nothing in this article shall be construed to impair the right of any person to assert his or her legal and equitable rights in a court of competent jurisdiction; however, no such action may be pursued to set aside a sale or void a trustee's deed subsequent to the recordation of the trustee's deed.

(C) The procedures in this article must be given effect in the context of any reference to judicial foreclosure proceedings or procedures set forth in this chapter.

(D) If any provision of this article or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application. To this end, the provisions of this article are declared severable.

(E) Notwithstanding anything to the contrary, a managing entity must release the address of the owner of a timeshare estate to a lienholder who can demonstrate that the timeshare estate is subject to an assessment lien or a mortgage lien held by the lienholder. This information may be used by the lienholder solely for purposes of complying with the foreclosure procedures described in this article.

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