



# ST CHRISTOPHER AND NEVIS

## CHAPTER 10.22

# SAINT CHRISTOPHER AND NEVIS VACATION PLAN AND TIME-SHARE ACT

### **Revised Edition**

showing the law as at 31 December 2009

This is revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act, Cap. 1.03

This edition contains a consolidation of the following laws:

**Saint Christopher and Nevis Vacation Plan and Time-Share Act**

**Act No. 34 of 2005 in force 22nd March 2006**

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**Act No. 39 of 2008**



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## CHAPTER 10.22

### SAINT CHRISTOPHER AND NEVIS VACATION PLAN AND TIME-SHARE ACT

**AN ACT to provide for the creation, regulation and management of time-share and vacation projects; to provide for the protection of purchasers of time-share and vacation plans; and to provide for related or incidental matters.**

#### *PART I – PRELIMINARY*

**1. Short title.**

This Act may be cited as the Saint Christopher and Nevis Vacation Plan and Time-Share Act.

**2. Interpretation.**

In this Act, unless the context otherwise requires,

“accommodation” means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, or any private or commercial structure which is real property and designed for over-night occupancy by one or more individuals, and this definition does not include an incidental benefit as defined in this section;

“assessment lien” means a charge or lien created by this Act or the Condominium Act in favour of an owners’ association for unpaid assessments;

“Board” means the Development Control and Planning Board established under section 6 of the Development Control and Planning Act, Cap. 20.07;

“common expenses” mean

- (a) those expenses properly incurred for the maintenance, operation, repair, or replacement of the accommodations or facilities, or both, constituting the time-share plan;
- (b) any other expenses designated as common expenses in a time-share instrument; and
- (c) reserves therefor;

“completion” means that point in time when the conditions precedent to the purchaser’s right to use and enjoy the accommodations and facilities of a time-share project have been satisfied and which may be simultaneous with or subsequent to the execution of the time-share contract;

“Condominium Act” means the Condominium Act, Cap. 10.03;

- “developing” means, with reference to a time-share project, the doing of any act pertaining to the construction or operation of a building for the purpose of such project, and “development” shall be construed accordingly;
- “developing contractor” means a person who undertakes on behalf of a developing owner the duties, responsibilities and obligations of the construction and equipping, or the supervision of the construction or equipping, of a time-share project, but does not include its developing owner;
- “developing owner” means, in the case of any given real property which is subject to a time-share plan, a person who holds title under the Title by Registration Act with respect to a time-share interest, and who is in the business of creating or selling his or her own time-share interests in a time-share project, but does not include a developing contractor or a non-developing seller;
- “escrow fund” means the fund referred to in section 30;
- “exchange company” means a person who owns or operates, or who owns and operates an exchange programme;
- “exchange programme” means any method, arrangement or procedure for the voluntary exchange of the right to use accommodations and related facilities between a purchaser and another person, but does not include the assignment of a right to use and occupy accommodations and facilities to purchasers pursuant to a particular time-share plan’s reservation system; and any method, arrangement or procedure that falls within this definition, wherein the total purchaser’s contractual financial obligation exceeds \$5,000.00 per any individual recurring time-share period shall be regulated as a time-share plan under this Act;
- “facility” means any amenity, including any structure, furnishing, fixture, equipment, service, improvement, or real or personal property, improved or unimproved, other than an accommodation of the time-share plan which is made available to the purchasers of a time-share plan, but does not include an incidental benefit as defined in this section;
- “incidental benefit” means an accommodation, product, service, discount, or other benefit which is offered to a prospective purchaser prior to the expiration of the purchaser’s cancellation period pursuant to the First Schedule, which is not an exchange programme, and which complies with the provisions of the Fourth Schedule, except that it does not include an offer of the use of the accommodations and facilities of the time-share plan on a free or discounted one-time basis;
- “licensee” means a person to whom a licence is granted under section 3;
- “managing agent” means a person who undertakes the duties, responsibilities and obligations of the management of a time-share project;

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“Minister” means the Minister responsible for planning;

“mortgage lien” means a mortgage, charge or other security interest in a time-share interest created by an instrument encumbering the time-share interest;

“non-developing seller” means

- (a) a vendor of a time-share interest;
- (b) a purchaser who acquires a time-share interest for the owner’s use and occupancy and later offers the interest for resale, or an agent of that person;
- (c) a managing agent, other than a developing owner, that sells or engages a third party to sell on behalf of the owners’ association, time-share interests in the time-share project which it manages;
- (d) a person who owns or is conveyed, assigned, or transferred more than seven time-share interests and who subsequently conveys, assigns, or transfers all acquired time-share interests to a single purchaser in a single transaction, which transaction may occur in stages; or
- (e) a person who acquires or has a right to acquire more than seven time-share interests from a developing owner or other interest holder in connection with a loan, securitization, conduit, or similar financing arrangement transaction, and who subsequently arranges for all or a portion of the time-share interests to be offered by one or more developing owners in the ordinary course of business on their own behalf or on behalf of that person;

except that this definition does not include a developing owner or seller;

“obligor” means

- (a) a mortgagor;
- (b) a person subject to an assessment lien; or
- (c) a record owner of a time-share interest;

“off-site sale” means any sale and purchase of a time-share interest which is not otherwise deemed an on-site sale;

“on-site sale” means the consummation of a sale and purchase of a time-share interest that occurs within the territorial limits of Saint Christopher and Nevis, whereby the execution by the purchaser of documents in connection with the sale and purchase takes place in Saint Christopher and Nevis;

“owners’ association” means a company or body corporate comprising of purchasers of time-share interests or their designees in a time-share project or time-share-plan, including, but not limited to, a corporation formed under section 13 of the Condominium Act;

- “public offering statement” means written materials which describe a time-share plan, including text and exhibits attached to the time-share plan as required by this Act, and which must be filed with the Board pursuant to section 50;
- “purchaser” means a person, other than a developing owner, who, by means of a non-compulsory transfer, acquires a legal or equitable interest in a time-share plan, other than as security for an obligation;
- “regulations” mean regulations made under section 57;
- “seller” means a developing owner or other person, or a marketing agent or employee thereof, who advertises, markets or offers time-share interests in the ordinary course of business, but does not include a non-developing seller;
- “time-share contract” means an agreement between a seller or non-developing seller and a purchaser for the purchase and sale of a time-share interest;
- “time-share instrument” means one or more documents, by whatever name denominated, creating or governing the operation of a time-share plan;
- “time-share interest” means the right to use and occupy a unit in a condominium, which may be coupled with the right to use other facilities or other rights and privileges, pursuant to a time-share plan, together with an estate in land as provided by sections 17 and 54;
- “time-share period” means the period or periods of time whether pre-established at the time of completion or determined after the time of completion pursuant to a reservation system, when a purchaser is afforded the right to use and occupy the accommodations or facilities, or both, of a time-share project;
- “time-share plan” means, other than an incidental benefit as defined by this Act, any arrangement, plan, scheme or device, other than an exchange programme, whereby a purchaser receives, directly or indirectly, a right to use and occupy accommodations and any related facilities in a time-share project for a period of time of less than six months on a recurring basis over a period of at least three years but not necessarily for consecutive years;
- “time-share project” means, other than an incidental benefit as defined by this Act, any premises or complex of premises, whether contiguous or not, and the grounds appurtenant to the premises or complex of premises that are subject to or included within a time-share plan;
- “trustee” means a person who is duly appointed and authorized by a holder of lien under this Act, and such person shall either be
- (a) an attorney-at-law, practising in Saint Christopher and Nevis;
  - (b) a Chartered Accountant or Certified Accountant practising in Saint Christopher and Nevis; or

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- (c) such other person as may be deemed a fit and proper person by the Board; but such trustee shall not be required to be licensed under the Banking Act in order to carry out his or her duties under this Act;

“trust fund” means the fund referred to in section 31;

“unit” means that part of the accommodations of a time-share project intended for the habitation of a purchaser during his or her time-share period, and which is divided into time-share periods, notwithstanding any contrary definition in the Condominium Act;

“year” means any period of twelve consecutive months, but not necessarily all within the same calendar year.

## *PART II – DEVELOPING OWNER’S LICENCES FOR TIME-SHARE*

### **3. Developing owner’s licence.**

(1) Subject to subsection (2), a person shall not sell any form of interest, including, but not limited to, time-share interests, in a time-share project located within the territorial limits of Saint Christopher and Nevis, except under and in accordance with the terms of a developing owner’s licence granted by the Board for that purpose.

(2) Notwithstanding subsection (1), where a developing owner’s licence is granted in accordance with subsection (1), the person so licensed may appoint a developing contractor to perform, on his or her behalf, functions in relation to the time-share project under and in accordance with the terms of that licence.

(3) The Board may grant a developing owner’s licence under this section subject to such terms and conditions as may be specified in the licence or as may be prescribed by the Minister, except that the Board shall not grant the licence unless the time-share project is registered as a condominium under the Condominium Act.

### **4. Exemption from certain taxes, duties and charges.**

(1) The Minister may, if satisfied that the erection of a time-share project will be in the best interest of Saint Christopher and Nevis, enter into an agreement with the developing owner for the exemption of the developing owner from the payment of such taxes, duties and charges as the Minister responsible for finance may determine, including but not limited to customs duties in respect of any materials necessary for the construction of a time-share project which may be imported into Saint Christopher and Nevis and which are purchased or taken out of bond therein by the developing owner.

(2) If applicable, the developing owner shall furnish the Minister responsible for finance with a bond in a form to be approved by the Comptroller of Customs with such sureties, if any, as may be required by the Minister in double the amount of any customs duties which would ordinarily attach on importation of the materials for the payment of such customs duties on a date to be fixed by the Minister, such bond being conditioned to become null and void if, on or before the date specified in the bond, the materials are applied only for the purpose specified in the agreement described in subsection (1).

(3) Notwithstanding subsection (2), the Minister may, in lieu of a bond, accept an alternative assurance, in such amount and form as the Minister may require, including a letter of credit or a company guaranty issued by the developing owner, or its parent company, provided the Minister is satisfied that the issuer of the guaranty has a net worth in excess of fifty million dollars and is otherwise financially capable of paying upon the guaranty.

(4) Every agreement made pursuant to the provisions of this section shall contain mutual covenants on the part of the Minister and the developing owner providing for the following matters, namely,

- (a) that nothing contained in the agreement shall be deemed to make the developing owner liable to pay to the Government any payments in respect of any matter or thing done, executed or happening prior to the date on which the agreement shall cease in respect of which matter or thing payment is waived thereby, or to refund or to repay any customs duties which have been refunded to the developing owner under the concessions granted by the agreement except in the circumstances specified in section 44;
- (b) for the resolution of all questions and differences between the Minister and the developing owner; and
- (c) for the interpretation of the agreement according to the laws of Saint Christopher and Nevis.

(5) For the purposes of this section “materials” mean plumbing, electrical, mechanical, landscaping and construction materials of all kinds necessary for the initial construction, conversion, furnishing and equipping of buildings so that the buildings are complete and ready for occupancy, but does not include such other items as may be prescribed by the Minister.

(6) The exemption mentioned in subsection (1) shall apply

- (a) to materials of comparable quality with a price greater than the price of such materials in Saint Christopher and Nevis before the payment of customs duties;
- (b) for a period of five years after the later of the date of the grant of the developing owner’s licence in respect of the operation of the time-share project, or of the customs duties exemption by the Minister, or for such period of time as the Minister may, by Order, designate; and
- (c) to a time-share project which makes provision for the accommodation of not less than twenty-five units in Saint Christopher and not less than ten units in Nevis, which may be in phases.

(7) With respect to any time-share project that is part of a particular resort complex that includes a hotel, the Minister may also determine, upon application by the developing owner, that the exemption provided for in subsection (1) shall also apply to those portions of the resort complex that comprise a hotel and its related facilities, in which case the exemption shall apply to the hotel in lieu of the exemption from customs duties set forth in the Hotels Aids Act, Cap. 18.17.

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(8) A developing owner of an existing time-share project or other improved property, other than a hotel, who desires to rehabilitate, convert or extend the same may submit to the Minister, in writing, for approval full particulars of the proposed rehabilitation or extension together with an estimate of the cost of the project, and shall supply to the Minister such other information as the Minister may require, and upon approval, the provisions of subsections (1) to (7) shall apply, with any necessary changes, to the rehabilitation or extension of the project.

(9) Where materials are purchased in Saint Christopher and Nevis for the construction, equipping, furnishing and completing of a time-share project or the rehabilitation or extension of a time-share project or other improved property, other than a hotel referred to in subsection (8), the customs duties paid on those goods shall be refunded by the Comptroller of Customs.

#### **5. Restriction on the grant of a developing owner's licence.**

Subject to section 58.(1), the Board shall not grant a developing owner's licence in respect of the operation of a time-share project unless the applicant satisfies the Board that the purchasers of the time-share interests in the project will have a right to occupy and use the accommodations and facilities of the time-share project for certain periods which are not in excess of six months per time-share interest in any year over a period of years for such time as the developing owner may determine, including perpetuity, and that any agreement relating to that purchase contains such conditions as may be prescribed under this Act or the regulations.

#### **6. Duration of developing owner's licence.**

A developing owner's licence shall come into force on the date specified in the licence, and shall remain in force throughout the life of the time-share project, unless sooner suspended or revoked, or, in the case of a corporate entity, the corporation ceases to exist, except that nothing in this Act shall be deemed to prohibit a developing owner from voluntarily divesting himself or herself of his or her licence.

#### **7. Transfer of developing owner's licences.**

(1) Where a developing owner divests himself or herself of his or her licence or dies, the Board may, upon an application in that behalf made by any person claiming the right to succeed to the licence, transfer the licence to that person, subject to such terms and conditions as the Board may see fit to impose.

(2) Before transferring any licence under subsection (1), the Board shall, where practicable, give to the licensee or to his or her personal representatives a reasonable opportunity to make any representations that either may wish to make in relation to the application, and the Board shall take into account any representations so made by either of them or on his or her behalf.

#### **8. Application for grant or transfer of developing owner's licence.**

(1) An application to the Board for the grant or transfer of a developing owner's licence may be made by or on behalf of the proposed licensee or the proposed transferee, as the case may be.

(2) Where the Board decides to grant, or approve the transfer of a licence, there shall be paid to the Accountant-General, before the licence is issued or transferred, the prescribed fee.

(3) All fees paid to the Accountant-General under subsection (2) shall be paid by the Accountant-General into the Consolidated Fund.

**9. Financial ability of applicant.**

An applicant for a licence to develop a time-share project shall, before a licence is granted, satisfy the Board regarding the applicant's financial ability to complete the development required for the time-share project with all the requirements necessary for the proper operation of the project, and whether such development consists of the construction of a new building, or the conversion or use of an existing building.

**10. Form of licence.**

A developing owner's licence granted under section 3 shall be in such form as the Board may determine.

**11. Inspection of facilities of project.**

Before approving a transfer or variation of any of the specified terms of a developing owner's licence, the Board may defer consideration of the application until the respective competent authorities constituted under the Public Health Act, Cap. 9.21, the Development Control and Planning Act, Cap. 20.07, and the Fire and Rescue Services Act, Cap. 19.04 or such one or more of them as, having regard to the nature of the application, the Board may deem appropriate, have caused the accommodations and facilities of the time-share project in respect of which application is made to be inspected and have furnished to the Board a report of such inspection in relation to such particulars as the Board may specify.

**12. Conditions for grant or transfer of licence.**

The Board shall neither grant nor approve the transfer of a developing owner's licence unless the Board is satisfied

- (a) that the applicant and the person responsible for the time-share project, if other than the applicant, including the developing owner, are financially able and are fit and proper persons to perform their respective functions under the time-share project;
- (b) that the facilities of the time-share project have, where practicable, been inspected pursuant to section 11 and that the project complies with the prescribed requirements or, in the event that it fails to so comply, that an exemption may properly be granted under section 57;
- (c) that the applicant has complied with all requisite requirements prescribed under the Act; and
- (d) that the applicant is not in breach of any other law relating to the carrying on of business by him or her in Saint Christopher and Nevis

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and which business is in the best interest of Saint Christopher and Nevis.

**13. Variation of terms of licence.**

The Board shall not of its own motion vary any of the specified terms of a developing owner's licence except as is necessary to protect the health, safety or welfare of any person in or likely to use the facilities of the time-share project, except that no variation shall be made by the Board without first giving the licensee a notice of not less than sixty days delivered to the time-share project site indicating the intention of the Board to make such variation, and the Board shall take into account any representation made by or on behalf of the licensee.

**14. Endorsement of transfer or variation in licence.**

Any transfer of a licence under section 7 or any variation of any of the specified terms of a licence under section 13 shall be endorsed on the licence by the Board together with the date when such transfer was approved or such variation made by the Board and the date from which the transfer or variation is to take effect.

**15. Power of Board to suspend or revoke licence.**

(1) Without prejudice to any other provisions of this Act, where the Board is satisfied, in relation to any time-share project, that any provision of law or any condition of a developing owner's licence, as the case may be, is alleged to be contravened,

- (a) the Board may serve upon the licensee a notice specifying the provision of law or the condition of the licence, as the case may be, that is alleged to be contravened and requiring the licensee to comply or ensure compliance with the law or condition to the satisfaction of the Board or to satisfy the Board as to why the licence should not be suspended or revoked within such reasonable period as the Board may specify in the notice, and, if at the expiry of the period the licensee has failed to comply or ensure compliance with the law or condition or to satisfy the Board, the Board may suspend or revoke the licence; or
- (b) if the Board is satisfied that the alleged contravention is likely to endanger the health or safety of any person in or likely to use the facilities of the time-share project, the Board may forthwith suspend or revoke the licence granted in respect of the project until such time as it is satisfied that the contravention has ceased.

(2) Where the Board suspends a developing owner's licence the licence shall, during the period of suspension, be of no effect.

(3) The Board may also revoke a developing owner's licence if it is satisfied that the premises to which the licence relates have ceased to be operated as a time-share project.

**16. Surrender of revoked or suspended licence.**

(1) Where a developing owner's licence is revoked or suspended under this Act the Board shall serve a notice upon the licensee notifying him or her of the revocation or suspension, as the case may be, and calling upon him or her to surrender the licence to the Board within seven days of the date of the notice.

(2) A licensee who fails to comply with a notice given under subsection (1) commits an offence, and shall be liable, on summary conviction, to a fine not exceeding one thousand three hundred and fifty dollars or to imprisonment for three months or both.

*PART III – PURCHASER'S RIGHTS AND REGISTRATION*

**17. Capacity of purchaser to acquire, dispose of, etc. his or her interest.**

A time-share shall, for all purposes including the purpose of land and house tax, constitute real property and may be separately transferred, leased, or otherwise disposed of and may be inherited or devised by will.

**18. Registration of purchaser's rights.**

Except as provided by the Condominium Act or by this Act or by regulations made under those Acts, the Title by Registration Act shall apply in respect of time-share interests and the separate title of each time-share interest shall be registrable in the Registry of Titles in which the land of which it forms part is situate and each time-share interest may belong in common ownership to more than one person.

**19. Effect of registration of purchaser's rights.**

(1) Subject to subsection (2) the developing owner shall be responsible for the preparation, stamping and presentation of the Memorandum of Transfer of a time-share interest sold to a purchaser, to the Registrar of Titles, and shall present the Memorandum of Transfer, duly executed and stamped, to the Registrar of Titles within sixty days after the closing of a purchase of the time-share interest.

(2) The purchaser shall provide the developing owner or his or her managing agent with the information necessary to enable the developing owner to carry out his or her duties under subsection (1), and shall be responsible for the payment of any amount due to the Title Assurance Fund under the Title by Registration Act in respect of the issuance of the certificate of title.

(3) Upon the issue of a certificate of title by the Registrar of Titles to a time-share interest, the developing owner shall promptly deliver the certificate to the purchaser.

**20. Purchaser's contract.**

(1) A seller or non-developing seller shall utilize and furnish each purchaser with a fully completed and executed copy of a time-share contract pertaining to the sale, which contract shall include the matters set out in the First Schedule.

(2) A seller or non-developing seller who knowingly contravenes the provisions of subsection (1) commits an offence, and shall be liable, on summary conviction, to a fine

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not exceeding thirteen thousand five hundred dollars or to imprisonment for one year or both.

**21. Protection of purchaser from other estates and interests.**

(1) Subject to subsection (2), notwithstanding any other law to the contrary,

- (a) in no event shall the foreclosure, exercise of power of sale or pursuit of other right or remedy under a mortgage or other debt instrument covering all or any portion of a time-share project extinguish or impair a purchaser's time-share interest in the same time-share project after the issuance of a certificate of title in respect of the time-share interest, irrespective of whether the mortgage or other debt instrument is given or filed for record prior to completion of the time-share interest;
- (b) a trustee shall not, in any proceedings under the Bankruptcy Act in which a time-share project is included among a bankrupt's property, be permitted to disclaim any time-share interest.

(2) Nothing in this Act is intended to prohibit the foreclosure, exercise of power of sale or pursuit of other right or remedy pursuant to any law relating to

- (a) a mortgage or other debt instrument covering a purchaser's time-share interest that was given at the time of completion of the time-share interest in order to secure all or any portion of the unpaid purchase price thereof, including any future advances made thereafter under the mortgage or other instrument between the same parties or their respective successors; or
- (b) any charge or lien upon a time-share interest arising out of any law or by contract whereby the charge or lien arises or is given in order to secure payment of a purchaser's pro-rata share of operating, maintenance or similar expenses to which the purchaser is subject under a time-share plan, including specifically any charge or lien filed on behalf of the time-share owner's association.

**22. Prohibition against overselling.**

(1) A seller shall ensure that he or she, or his or her agents or his or her independent contractors do not offer any number of time-share interests that would cause the total number of time-share interests offered in a time-share plan to exceed a one-to-one purchaser to accommodation ratio.

(2) For the purposes of this section and the Fourth Schedule, "one-to-one purchaser to accommodation ratio" means the ratio of the number of purchasers eligible to use the accommodations of a time-share plan on a given day to the number of accommodations available for use within the plan on that day, such that the total number of purchasers eligible to use the accommodations of the time-share plan during a given year does not exceed the total number of accommodations available for use in the time-share plan during that year.

- (3) For the purposes of calculating the ratio referred to in subsection (2),
- (a) a purchaser shall be counted at least once;
  - (b) an individual time-share unit shall not be counted more than 365 times per year, or more than 366 times per leap year; and
  - (c) the ratio may be determined on a rolling twelve-month period, as may be applicable.

**23. Purchaser waivers invalid.**

Any purported waiver by a purchaser of any of the requirements of this Act or of any of the rights or remedies of a purchaser set forth in this Act or under any other law shall be invalid.

**24. Action for partition.**

No action for partition of any time-share unit shall lie, unless otherwise provided in the governing time-share instruments.

*PART IV – MANAGEMENT*

**25. Creation of managing entity.**

(1) Before the first sale of a time-share interest within a time-share project, the developing owner shall create or provide for a managing agent, which shall be either the developing owner, a separate manager or management firm, the board of administration of an owners' association, or some combination thereof.

(2) A developing owner shall be considered the managing agent of the time-share plan unless and until a different party is appointed or hired to serve as managing agent, which party acknowledges or has acknowledged in writing that it accepts or has accepted the duties and obligations of serving as managing agent, and in the event that that party subsequently resigns or otherwise ceases to perform the duties of managing agent, the developing owner, or the board of administration of the owners' association if controlled by purchasers, other than the developing owner, shall again be considered the managing agent until the developing owner arranges for a new managing agent pursuant to this subsection.

(3) A developing owner shall not, in anyway, be liable for the obligations of the managing agent after the owners' association for the time-share project, if any, is controlled by the purchasers, and not the developing owner or its agent, as provided in the time-share instrument, and instead the owners' association or other managing agent shall be responsible for the obligations.

**26. Fiduciary relationship.**

The managing agent shall act in the capacity of a fiduciary to the owners' association.

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**27. Duties of managing entity.**

(1) The duties of a managing agent shall be as provided in the agreement between the managing agent and the owners' association, and may include, but not necessarily be limited to,

- (a) management and maintenance of all accommodations and facilities constituting the time-share project;
- (b) collection of all assessments for common expenses;
- (c) maintenance of all books and records concerning the time-share plan and the time-share project so that all the books and records are reasonably available for inspection by any purchaser or the authorized agent of such purchaser and
  - (i) all books and financial records of the time-share plan and of the time-share project are maintained in accordance with International Accounting Standards;
  - (ii) all purchasers are notified of the location of the books and records and the name and address of the custodian;
- (d) scheduling occupancy of the time-share units, when purchasers are not already entitled to use specific time-share periods, so that all purchasers will be provided the use and possession of the accommodations and facilities of the time-share plan with respect to which they have purchased;
- (e) performing any other functions and duties which are necessary and proper to maintain the accommodations or facilities of the time-share project as provided in the time-share plan; and
- (f) maintaining among its records and providing to the Board, upon request, a complete list of the names and addresses of all purchasers, provided that such information may be used solely for the administration of the owners' association.

(2) Notwithstanding the provisions of subsection (1)(f), no purchaser or authorized agent of the purchaser shall be allowed to have access to the list of all purchasers, except as required for the administration of the owners' association.

**28. Denial of use for delinquency.**

(1) The managing agent of any time-share plan may deny the use of the accommodations and facilities of the time-share plan to any purchaser who is delinquent in the payment of any assessments made by the managing agent against the purchaser for common expenses.

(2) If any mortgage lien provides that the holder of the mortgage lien, or its designee, may deny the use of the accommodations and facilities of the time-share plan to a purchaser who is in breach of the mortgage lien, and such holder of the lien, or its designee, provides the managing agent of the time-share plan with certification that

- (a) the mortgage lien includes the provision;
- (b) the purchaser is in breach under the mortgage lien; and

(c) the holder of the lien is entitled to exercise the remedy;

the managing agent may thereafter deny the use of the accommodations and facilities of the time-share plan to the purchaser, except that any denial of use shall not be effective to bar use by any exchange programme member whose exchange into the accommodation was confirmed prior to receipt of notice of any denial of use by the exchange company.

(3) Except as provided in subsections (1) and (2), any denial of use shall also extend to those parties claiming under the delinquent purchaser and no exchange programme or exchange company shall be liable to any of its members or third parties on account of the denial of exchange privileges.

(4) Unless a later date is specified in the time-share instrument, for the purpose of denying use of accommodations and facilities of the time-share plan pursuant to this section, a purchaser shall be considered delinquent in the payment of a given assessment only upon the expiration of sixty days after the date the assessment is billed to the purchaser or upon the expiration of sixty days after the date the assessment is declared to be due, whichever is later.

(5) The managing agent and exchange programme shall be entitled to rely on a certification from the holder of a mortgage lien or its designee as provided in subsections (1) and (2), absent and actual knowledge to the contrary as to the accuracy of the certification, and shall not be liable to any purchaser or any third party on account of any denial of use of the accommodations and facilities of the time-share plan in reliance on such certification.

#### *PART V – INSURANCE, FUNDS, TAX AND RECORDS.*

### **29. Owners' association to provide insurance.**

(1) The owners' association, at its expense, shall provide and maintain or cause to be maintained, for the benefit of all purchasers collectively as members of the owners' association, public liability insurance for the areas of the time-share project owned by the owners' association, and that insurance shall be in an amount of not less than two million seven hundred thousand dollars, or such greater amount as the Board may see fit to impose, from time to time.

(2) The owners' association, at its expense, shall keep all the property of the time-share project of an insurable nature insured against loss or damage in an amount of not less than the replacement cost of the property.

(3) An owners' association may delegate or assign to a managing agent responsibility for compliance with the requirements of subsections (1) and (2).

### **30. Escrow fund.**

(1) Subject to subsection (6), a developing owner shall, forthwith on the commencement of a time-share project to which his or her licence relates and prior to entering into any time-share contracts, establish and maintain with any financial institution (in this section referred to as the "escrow agent"), doing business in Saint Christopher and Nevis as approved by the Minister, by notice published in the Gazette, for the purposes of

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this section, an escrow fund into which the proceeds of all on-site sales of time-share interest shall be paid immediately upon receipt of the proceeds which shall be kept there until disbursed as provided in this section.

(2) The following disbursements shall be made by the escrow agent from the escrow fund upon receipt of a developing owner's sworn affidavit averring the applicable circumstances as described in this subsection:

- (a) to the purchaser, on the cancellation of his or her time-share contract within the cancellation period allowed in the contract, the total amount of all payments made by the purchaser less any contract benefits received by the purchaser;
- (b) to the developing owner, on the cancellation of a purchaser's time-share contract within the cancellation period allowed in the contract, the proportion of any contract benefits the purchaser has actually received under the time-share contract prior to the effective date of cancellation;
- (c) to the marketing agent, pursuant to a contract in writing between the developing owner and marketing agent and upon the closing of a purchase of a time-share interest from the developing owner, an amount as provided in the contract between them, not to exceed thirty-five percentum of the proceeds of the on-site sale of the time-share interest;
- (d) to the developing owner, where he or she is also the marketing agent, upon the closing of a purchase of a time-share interest from the developing owner, an amount not to exceed thirty-five percentum of the proceeds from the on-site sale of such time-share interest.

(3) The escrow agent shall, after making the disbursements authorized under subsection (2), transfer to the trust fund established under section 31 the balance of the amount in the escrow fund.

(4) Where a payment is to be made under subsection (3) into the trust fund, that payment may, at the request of the developing owner, be made to him or her instead if the escrow agent receives a sworn affidavit from the developing owner averring that

- (a) construction of the time-share project is complete and a certificate of occupancy with respect thereto has been issued pursuant to the Development Control and Planning Act, No. 14 of 2000; and
- (b) completion of the purchaser's acquisition of his or her time-share interest has in fact occurred and the purchaser's name and time-share interest have been duly submitted to the Registrar in accordance with the provisions of section 18.

(5) A developing owner who contravenes the provisions of subsection (1) or (2) (d), or who makes a false affidavit under subsection (2) or (4), or an escrow agent who contravenes the provisions of subsection (2) or (3) commits an offence, and shall be liable, on summary conviction, to a fine not exceeding twenty seven thousand dollars or to imprisonment for two years or both.

(6) Notwithstanding subsections (1) and (5), the Board may, upon application, consider and accept in lieu of the establishment of an escrow account, as provided in this section, an alternative assurance in such amount and form as the Board may accept, including a surety bond, letter of credit or a company guaranty issued by the developing owner, or its parent company, provided the Board is satisfied that the developing owner, or its parent company, has a net worth in excess of seventy-five million dollars and is otherwise financially sound.

**31. Trust fund.**

(1) Subject to section 32, a developing owner shall establish and maintain with a financial institution as is referred to in section 30.(1) (in this section called “the trustee”) a trust fund into which fund shall be paid any amount transferred from the escrow fund under section 30.(3).

(2) Disbursements from the trust fund shall be made by the trustee

- (a) to the developing owner, of the balance of the proceeds of sale of the time-share interest in relation to the accommodations and facilities of the time-share project in respect of which a certificate of occupancy was granted as provided in this Act; and
- (b) to a purchaser, in respect of any sum payable under a judgment obtained by him or her in a court of Saint Christopher and Nevis for breach of contract in connection with his or her purchase of a time-share interest;

provided there are moneys standing to the credit of the fund.

(3) A developing owner shall not be entitled to use the funds held in the trust fund as collateral security in support of any loan or other financial obligation incurred by him or her.

(4) Notwithstanding anything contained in this section, where a developing owner fails to complete the time-share project in accordance with the terms and conditions of his or her licence or is adjudged a bankrupt by a court of competent jurisdiction and his or her licence is revoked, any interested party may make application to the Supreme Court for an order enabling that person to complete the time-share project by using the funds in the trust fund, if any, or for the disbursement of such funds to the purchasers on a pro-rata basis.

(5) Where an order is made by the Supreme Court under subsection (1), moneys standing to the credit of the trust fund shall, notwithstanding anything to the contrary in any other law, be first applied for the purposes specified in that order.

(6) Any interest accruing on sums held in the trust fund shall be for the account of the developing owner.

(7) A developing owner who contravenes the provisions of subsection (1) or (3) or a trustee who contravenes the provisions of subsection (2) commits an offence, and shall be liable, on summary conviction, to a fine not exceeding thirteen thousand five hundred dollars or to imprisonment for one year or both.

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### **32. Assurances**

Notwithstanding section 31, upon application, the Board may consider and accept in lieu of the establishment of a trust fund account as provided in section 31 an alternative assurance in such amount and form as the Board may accept, including a surety bond, letter of credit or a company guaranty issued by the developing owner, or its parent company, provided the Board is satisfied that the developing owner, or its parent company, has a net worth in excess of seventy-five million dollars and is otherwise financially sound.

### **33. Books and records**

The managing agent, or where there is no managing agent, the developing owner, shall keep such books and records as will clearly show the number of purchasers of time-share interests in the time-share project.

### **34. Inspection of books and records**

The Board may, upon reasonable notice to the managing agent, or where there is no managing agent, to the developing owner, enter at any reasonable time the premises of a time-share project, to inspect and to make copies of entries in any books, records or other documents on those premises for the purpose of ascertaining whether a contravention of section 33 is being or has been committed.

### **35. Occupancy tax**

(1) There shall be paid by each occupant of a time-share project in any part of Saint Christopher and Nevis who is not a purchaser, guest of a purchaser, or exchange programme user, an occupancy tax for each period during which such occupant is provided with sleeping accommodation at the time-share project.

(2) Subject to subsection (3), the occupancy tax shall, in respect of each occupant, be six per centum of his or her total room rate for the period during which the guest is provided with sleeping accommodation at the time-share project.

(3) Notwithstanding subsection (2), the Minister may, by Order, increase or reduce the rate of the occupancy tax from a date specified in the Order.

### **36. Payment of stamp duty**

(1) For the purposes of stamp duty, fifty percent of the purchase price of the time-share interest and fifty percent of the amount of any mortgage on a time-share interest shall be allocated to the real property portion of the time-share interest.

(2) If a purchaser of a time-share interest purchases another time-share of greater value and re-conveys the first time-share interest to the seller or non-developing seller of the time-share interest, the stamp duty due on the purchase of the time-share of greater value shall be based on the difference in value of the time-share interests and calculated in accordance with the provisions of subsection (1) of this section.

(3) Where a purchaser re-conveys the first time-share interest as provided in subsection (2) there shall be no stamp duty due on the re-conveyed time-share interest, provided that the stamp duty due on the purchase of that time-share was paid to the Accountant General.

*PART VI – INSPECTION*

**37. Inspection of projects**

The Board shall make or cause to be made periodic inspections with such scope and frequency as the Board shall determine of every time-share project in order to ascertain whether compliance with this Act is being made, and for the purpose of investigating any complaints made by any aggrieved purchaser regarding the application of this Act to any particular project.

**38. Power of entry and inspection without warrant.**

(1) Without prejudice to any other law, but subject to subsection (2), any public officer duly authorised by the Board for such purposes or an officer of the Department of Health, the Department of Planning or a police officer or fire service officer of a rank designated by the Minister may, without a warrant, enter upon and inspect any premises licensed as a time-share project.

(2) Before an inspection is carried out under the authority of section 37 or of subsection (1) of this section, the managing agent of the of the premises to be inspected, or some agent or servant of the managing agent, shall be given notice of the intention to carry out the inspection as may, in the circumstances of the case and having regard to the objects of the inspection, be reasonable, and the managing agent or, as the case may be, his or her agent or servant shall be given an opportunity to be present or have some person selected by him or her to be present at the inspection.

(3) If any person authorised under the provisions of section 37 or of subsection (1) of this section has reason to believe that a contravention of any provision of law is being committed on a time-share project and that the contravention is of such a nature that there is a likelihood of danger there from to the safety or health of persons therein if such contravention is not promptly remedied, then that person may give such directions to the person for the time being in charge of the premises as will, in his or her opinion, prevent or minimize such danger, and may require such persons or classes of persons as he or she may specify, to vacate the premises or such part of the premises as he or she may specify until the danger is, in his or her opinion, prevented or minimized and may, if such directions or requirements are not carried out, call to his or her assistance such persons as may necessary for the purpose of enforcing compliance with the directions or requirements or carrying out such works of an emergency nature as may be necessary.

(4) Any person giving directions or making requirements under the authority of subsection (3) shall forthwith report the action he or she has taken to the Board.

**39. Power of magistrate to issue warrant to enter premises.**

Where it is made to appear to a magistrate that premises not licensed as a time-share project are being operated as such, the Magistrate may issue a warrant to a police officer of or above the rank of sergeant authorizing the officer, with or without assistance, to enter upon and inspect the premises and to conduct such enquiries in the premises for the purpose of determining whether there is a contravention of this Act.

*PART VII – PROHIBITIONS AND PENALTIES*

**40. Prohibited transactions.**

(1) The happening of any of the following events occurring after the coming into operation of this Act shall, notwithstanding anything to the contrary in this Act, be deemed to be a prohibited transaction and a contravention of this Act, that is to say,

- (a) for a seller or non-developing seller to sell a time-share interest where such interest was previously sold and not otherwise re-acquired by the seller or non-developing seller;
- (b) the advertising, marketing or sale of any time-share interests otherwise in contravention of the provisions of this Act;
- (c) the advertising, marketing or sale of any time-share interests in or from any place within the territorial limits of Saint Christopher and Nevis, other than a place approved by the Board or the place where the time-share project is located; and
- (d) the charging or collection of any advance fee in connection with the listing of any time-share interest for re-sale.

(2) Any person who carries out a prohibited transaction commits an offence, and shall be liable, on summary conviction, to a fine not exceeding twenty seven thousand dollars or to imprisonment for two years or both.

**41. Responsibility of developing owner.**

(1) Notwithstanding anything to the contrary, it is the responsibility of a developing owner to supervise, manage and control all aspects of the offering of a time-share plan, including, but not limited to, promotion, advertising, contracting and closing.

(2) Where a violation of this section is shown to have been done by someone, other than a seller, then the seller commits an offence of the like nature and is liable to be punished accordingly, unless he or she proves that the act or omission constituting the offence took place without his or her knowledge or consent or that he or she exercised all due diligence to prevent the commission of the offence.

**42. Penalty for statements.**

(1) A person who, in connection with an application for a licence, makes a statement which to his or her knowledge is false in any material particular commits an offence.

(2) A person who, in the course of developing, managing, advertising, marketing or selling a time-share project,

- (a) makes a statement which he knows to be false; or
- (b) recklessly makes a statement which is false as to any of the following matters, that is to say,
  - (i) the nature, extent or scope of any services, accommodations or facilities provided with respect to the time-share project or the time-share plan;

- (ii) the time at which, manner in which or persons by whom any services or accommodations or facilities are so provided;
- (iii) the location of the project, amenities offered or any accommodation or facilities provided;
- (iv) a prediction of any increase in the price or value of a time-share interest; or
- (v) any matter set forth in the public offering statement;

commits an offence, and shall be liable, on summary conviction, to a fine not exceeding thirteen thousand five hundred dollars or to imprisonment for one year or both.

(3) For the purposes of subsection (2),

- (a) anything, whether or not a statement as to any of the matters specified in subsection (2), likely to be taken for such a statement as to any of those matters as would be false shall be deemed to be a false statement as to that matter; or
- (b) a statement made without reasonable knowledge and investigation as to whether it is true or false shall be deemed to have been made recklessly, whether or not the person to whom the statement is made might suspect that the statement is false.

(4) The Board may, after giving the licensee an opportunity to be heard, suspend or revoke his or her licence where the licensee is convicted of an offence under this section.

#### **43. Penalty for false declaration.**

A person who knowingly makes a false declaration for the purpose of obtaining a benefit pursuant to the provisions of this Act commits an offence, and shall be liable, on summary conviction, to a fine not exceeding thirteen thousand five hundred dollars or to imprisonment for one year or both.

#### **44. Penalty for wrongful application of materials.**

(1) A person who applies any materials in respect of which customs duties have been exempted pursuant to the provisions of any agreement made under the provisions of this Act for any purpose, other than the purpose specified in the agreement, commits an offence, and shall be liable, on summary conviction, to a fine not exceeding sixty seven thousand five hundred dollars or to imprisonment for one year or both.

(2) If a person convicted of an offence under subsection (1) is the developing owner or the director of a company that is the developing owner such agreement may be cancelled by the Minister in which case all customs duties from the payment of which the developing owner has been exempted pursuant to the provisions of an agreement made under the provisions of this Act may be recovered from the developing owner as liquidated damages.

#### **45. Penalty for irregular operation of project.**

(1) A person who sells interests in a time-share project when there is not in force a licence granted to that person by the Board to sell interests in the project commits an

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offence, and shall be liable, on summary conviction, to a fine not exceeding thirteen thousand five hundred dollars and, in addition, to a fine not exceeding two thousand seven hundred dollars for each day during which the offence continues or to imprisonment for a term of one year or both.

(2) A licensee who sells interests in a time-share project otherwise than in accordance with the terms and conditions of a licence granted to that person by the Board commits an offence, and shall be liable, on summary conviction, to a fine not exceeding two thousand seven hundred dollars for each day during which the offence continues or to imprisonment for a term of six months or both.

*[Amended by Act No. 7/2006]*

(3) A person who, having been granted a licence, subsequently makes any material variation in a time-share contract referred to in section 5.(3) without the written approval of the Board, commits an offence, and shall be liable, on summary conviction, to a fine not exceeding thirteen thousand five hundred dollars for each time-share contract so varied and executed by a purchaser.

#### **46. Penalty for obstructing officers.**

A person who obstructs an authorized officer of the Board, an officer of the Department of Health, an officer of the Department of Planning, a police officer, or a fire service officer in the exercise of any power conferred on any such officer or the performance of any power conferred on any such officer by this Act commits an offence, and shall be liable, on summary conviction, to a fine not exceeding thirteen thousand five hundred dollars or to imprisonment for one year or both.

#### **47. Institution of proceedings.**

(1) Proceedings in respect of an offence against this Act shall not be instituted by any person without the written consent of the Director of Public Prosecutions.

(2) Proceedings in respect of a summary offence under this Act or the regulations may be commenced at any time within two years from the time the offence is committed.

#### **48. Non-application of section 47 to civil proceedings.**

The provisions of section 47 shall not be construed to prohibit or impair the right of any purchaser or other aggrieved person to enforce in any civil proceedings any right or remedy conferred upon such person under this Act or under any time-share contract.

### *PART VIII – MISCELLANEOUS PROVISIONS*

#### *Information to be supplied to board*

#### **49. Information to be supplied to Board.**

(1) A developing owner or managing agent of a time-share project shall, whenever required to do so by the Board, satisfy the Board that the time-share project in relation to which the developing owner has been granted a licence, or which the managing agent manages, has made provision for the matters set out in the Second Schedule.

(2) Failure by a developing owner or managing agent of a time-share project to satisfy the Board with respect to any of the matters set out in the Second Schedule shall be deemed to be a breach of the conditions of the licence and the Board may, if it considers the breach to be of a grave nature, and subject to subsection (3), suspend or revoke the developing owner's licence.

(3) Before suspending or revoking the licence under subsection (2), the Board shall serve upon the licensee, by delivering to the project site, a notice specifying the alleged contravention and requiring the licensee to comply or ensure compliance with the notice to the satisfaction of the Board within such period as the Board may specify in the notice being not less than seven days from the date of delivery of the notice, and, if at the expiry of that period the licensee fails to comply or ensure compliance to the satisfaction of the Board, the Board may suspend or revoke the licence.

(4) Where the Board suspends or revokes the licence in accordance with subsection (3), it shall serve on the licensee a notice of the suspension or revocation and no licence shall, during the period of suspension, be of any effect.

#### **50. Public Offering Statement.**

(1) A developing owner shall, unless exempted by the Board, file with the Board a form of public offering statement, which shall be in conformity with the requirements outlined in the Third Schedule, and the Board shall, upon receiving a public offering statement from a developing owner, deliver by courier service or personal delivery, or by facsimile or e-mail with a copy by mail, to the developing owner an acknowledgement of receipt.

(2) The public offering statement shall be delivered by the developing owner to each on-site purchaser before executing the time-share contract, and the public offering statement may be provided in written form, electronic form or through the use of digital media.

(3) A developing owner who contravenes the provisions of this section commits an offence, and shall be liable, on summary conviction, to a fine not exceeding thirteen thousand five hundred dollars or to imprisonment for a term of one year or both.

#### **51. Incidental benefits.**

(1) A developing owner shall, unless exempted by the Board, file with the Board, prior to use of the time-share facility, an acknowledgment and disclosure statement with respect to all incidental benefits, which benefits shall be in conformity with the requirements outlined in the Fourth Schedule.

(2) The acknowledgement and disclosure statement shall be delivered to the on-site purchaser by the developing owner before executing his or her time-share contract.

(3) A developing owner who contravenes the provisions of this section commits an offence and shall be liable, on summary conviction, to a fine not exceeding thirteen thousand five hundred dollars or to imprisonment for a term of one year or both.

## **Exemptions**

### **52. Power to grant exemption.**

(1) The Board may, at any time, if it sees fit, exempt the holder of a developing owner's licence from complying, in whole or in part, with any one or more of the provisions of this Act.

(2) An exemption may be granted for such period as the Board sees fit and may be extended from time to time.

(3) An exemption shall not have any effect unless particulars of the exemption have been endorsed on the licence.

(4) Subject to subsection (5), an exemption may be revoked in whole or in part at any time by the Board and such revocation shall be endorsed on the licence.

(5) The Board shall, before effecting the revocation referred to in subsection (4), give the licensee, by delivery to the time-share project site, written notice of its intention to revoke the exemption unless the licensee shows good cause to the satisfaction of the Board, within seven days from the date of delivery of the notice, as to why the revocation should not be made, and the Board shall thereafter take into account any representations made by or on behalf of the licensee.

### **53. Exemption for foreign project or offerings.**

Without prejudice to the provisions of section 52, with respect to any time-share project that is located outside Saint Christopher and Nevis but which is advertised, marketed or sold within the territorial limits of Saint Christopher and Nevis, the Board shall grant the developing owner or managing agent of the time-share project an exemption from the requirements of this Act if the Board

- (a) determines that the foreign jurisdiction in which the time-share project is located makes adequate protection for purchasers of time-share interests in the project and that such protection is, by statute, contract or otherwise, in fact extended to the purchasers who purchase their time-share interest as a result of the advertising, marketing or sale activity within the territorial limits of Saint Christopher and Nevis;
- (b) is satisfied that the person making the application is financially sound; and
- (c) is presented with evidence that the person making the application is the holder of a valid developing owner's licence subject to this Act.

## **Application of Condominium Act, etc.**

### **54. Application of the Condominium Act.**

(1) Notwithstanding the provisions of sections 3.(1) and 3.(2) of the Condominium Act, property which is subject to a time-share plan and conveyed or transferred as time-share interests may be described in a declaration and description under the Condominium Act, and upon registration shall be governed by the Condominium Act.

(2) Notwithstanding the provisions of section 4.(4) of the Condominium Act, each unit of a condominium property which is subject to a time-share plan and conveyed or transferred as time-share interests shall be deemed to be divided into the same number of separate interests in the unit as there are time-share interests relative to such unit as provided in the time-share instruments.

(3) Notwithstanding the provisions of section 7.(1) of the Condominium Act, with respect to property which is subject to a time-share plan, the declaration may be amended with the consent of the holders of a majority of the time-share interests in the time-share project, the developing owner, and all persons having registered encumbrances against the units and common property, except as otherwise provided in the time-share instruments.

(4) Notwithstanding the provisions of section 23.(1) of the Condominium Act, with respect to property which is subject to a time-share plan, the owners' association may, by a vote of members who own a majority, or such greater percentage as is specified in the declaration of the time-share interests in the time-share project, amend the by-laws.

(5) Notwithstanding the provisions of section 25.(1) of the Condominium Act, with respect to property which subject to a time-share plan, the owners' association may, by a vote of members who own a majority, or such greater percentage as is specified in the declaration of the time-share interests in the time-share project, make any substantial addition, alteration or improvement to or renovation of the common property or may make any substantial change in the assets of the owners' association.

(6) Declarations, descriptions, by-laws and other instruments respecting land which is subject to a time-share plan and governed by the Condominium Act shall be registered and recorded in accordance with the Condominium Act and the regulations made under that Act.

(7) The term "owner" as defined in the Condominium Act shall include the owners of the time-share interests in a unit of a condominium.

(8) Notwithstanding anything contained in the Condominium Act to the contrary, the Board may accept other assurances including, but not limited to, a surety bond issued by a company authorized and licensed to do business in Saint Christopher and Nevis as surety or an irrevocable letter of credit in lieu of any requirement that completion of construction of one or more accommodations or facilities of a time-share plan be accomplished prior to closing of a purchase of a time-share interest therein.

(9) Any notices required to be provided to purchasers pursuant to the Condominium Act, or this Act, may be delivered via electronic mail, provided that the purchaser has indicated a willingness to receive notices via electronic mail.

(10) A time-share project which is included in any time-share plan which is fully in compliance with this Act may be registered as a condominium under the Condominium Act, and shall be exempt from sections 8.(1)(a), (b), and (e), 24.(6), 39, 40, 41, and 42 of the Condominium Act.

(11) Sections 28, 29, and 30 of the Condominium Act shall not apply to any time-share project which is included in a time-share plan governed by this Act, provided that the time-share instruments contain alternative provisions regarding the matters referred to in those sections.

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(12) Notwithstanding anything contained in section 7(4) or section 8 of the Condominium Act, a developing owner who wishes to build condominium properties subject to a time-share plan in phases, may amend the original declaration to address additional phases if

- (a) he or she stated in the original declaration that he or she intends to develop the condominium properties in phases;
- (b) he or she states, in the amending declaration, the share of the common expenses that is to be paid by the owner of each time-share interest after the addition of the new condominium property;
- (c) he or she files in the Condominium Register with the amending declaration:
  - (i) a legal description of any unimproved property to be added to the existing condominium property together with such structural and other plans in relation to the units to be constructed thereon as the Minister responsible for planning may require; and
  - (ii) a legal description of any improved land to be added to the existing condominium property together with building plans of the existing buildings.

(13) A developing owner may, at any time and from time to time, make any amendments, variations and/or modifications to any existing buildings (except to any part or parts of a building comprising units in which time-share interests have been sold or agreed to be sold), or to any structural or building plans referred to in subsection (12), which do not in the opinion of the Minister responsible for tourism, materially and adversely affect the time-share interests of existing owners in the time-share plan.

(14) A developing owner shall make an application for the approval of the Minister, and the approval of the Minister shall not be unnecessarily withheld.

*[Inserted by Act No. 7/2006]*

(15) To the extent that any provisions of the Condominium Act conflict with any provision of this Act, this Act shall prevail.

## **55. Application of the Alien Land Holding Regulation Act.**

The provisions of the Alien Land Holding Regulation Act shall not apply to the acquisition, mortgage, transfer or otherwise of time-share interests.

### **Power of sale by trustee**

## **56. Power of sale by trustee.**

(1) A holder of a lien, including, but not limited to a developing owner or an owners' association, may exercise the remedy of a power of sale to collect mortgage liens and assessment liens by the appointment of a trustee for that purpose (in this Act referred to as a trustee's power of sale) except that the exercise of that remedy shall be in substitution for any and all other remedies available to a holder of a lien under the law or contract, including, without limitation, the right of action against an obligor for a deficiency judgment if funds received from the sale of the time-share interest are less than

the unpaid balance of any mortgage or other loan relating to the time-share interest in favour of the holder of a lien.

(2) The trustee's power of sale shall be conducted by public auction or private contract by a trustee appointed by the holder of the lien, from time to time, and the trustee's appointment may be terminated by the holder of the lien at any time by delivering to the trustee a notice of termination of the trustee's appointment.

(3) A trustee appointed to exercise a power of sale shall have a duty to the owner of the time-share interest to obtain a fair price having regard to the special circumstances of the sale of the time-share interests in the secondary market, and the trustee may sell a time-share interest to the holder of the lien, or any of its affiliates, of such time-share interest, in which case the holder of the lien may set off the unpaid debt of the owner against the sales price of the time-share interest.

(4) For the purposes of subsection (3), a price shall be deemed to be a fair price where the price equates to the debts due to the holders of all mortgage liens registered on the time-share interest, except that where there is only one mortgage lien registered on the time-share interest and the purchaser of the time-share interest is the holder of that mortgage lien, any price obtained by the trustee in his or her absolute discretion shall be deemed to be a fair price.

*[Amended by Act No. 39/2008]*

(5) The trustee shall, before selling any time-share interest pursuant to the provisions of this section, ensure that the conditions set out in the Fifth Schedule have been fully complied with.

(6) For the purposes of subsection (4), each obligor shall inform the holder of a mortgage lien on the subject time-share interest and the managing agent of any changes in address and, if a service agent is appointed, the obligor shall also inform the service agent of any changes in address.

(7) The failure of the trustee to comply with the conditions set out in the Fifth Schedule shall not entitle an obligor or an aggrieved party to annul or avoid the sale, except that the obligor or the aggrieved party shall have his or her remedy in an action for damages against the trustee.

(8) Except as otherwise provided in the time-share instrument, any unpaid assessment due from the owner of a time-share interest in favour of the owner's association together with interest on the unpaid assessment at such rate as may be prescribed by the time-share instrument, shall constitute a charge on the time-share interest with effect from the date on which the assessment became payable, and the charge shall rank prior to all other incumbrances on the time-share interest except a lien or mortgage covering the owner's time-share interest that was given in order to secure all or any portion of the unpaid purchase price of the time-share interest, or any charge under section 5 of the Land and House Tax Act.

(9) The charge referred to in subsection (8) shall not become effective until a notice, in writing under the common seal of the owner's association, is lodged for record in the registry, which notice shall contain the following information:

- (a) the name of the owner's association and the address of the time-share project or time-share plan;

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- (b) the volume and page of the record of the relevant time-share instrument;
- (c) the name of the owner of the time-share interest and the time-share interest description; and
- (d) the amount due and the date on which it was payable.

(10) The charge referred to under this section shall continue in force

- (a) until all sums secured thereby with interest on such sums have been fully paid;
- (b) until the holder of the lien has exercised its power of sale as provided in this section; or
- (c) until the expiration of six years from the date on which the assessment was levied or from the date on which the last payment, if any, on account of such contribution was made, whichever occurs first.

(11) When the owner of the time-share interest pays the charge referred to in subsection (8) he or she shall be entitled, on demand to the owner's association, to a certificate under the owner's association common seal that the amount due has been paid, and upon lodging the certificate for record at the registry and the payment of the recording fee the charge shall thereupon be satisfied.

(12) The proceeds of sale obtained by a trustee on the exercise of a trustee's power of sale shall be applied in the following order of priority:

- (a) all fees reasonably incurred by the trustee in exercising the trustee's power of sale, including but not limited to legal fees;
- (b) the amount owing to the holders of liens, mortgagees and encumbrances in order of their respective priorities including all accrued interest to the date of payment; and
- (c) the balance, if any, to the owner or owners of the time-share interest.

(13) Notwithstanding any provision of the Stamps Act, Cap. 20.40 to the contrary, on a sale of a time-share interest by a trustee appointed pursuant to subsection (1), or on a sale of a time-share interest pursuant to sections 71 to 94 of the Title by Registration Act, Cap. 10.19, the stamp duty payable on such a sale shall be 2.5% of the price paid which shall be payable by the purchaser only.

[Subsections (12) & (13) inserted by Act No. 39/2008]

## **Regulations**

### **57. Transfer in lieu of mortgage sale.**

(1) Without prejudice to the provisions of section 56 of this Act, the holder of a lien, including but not limited to a mortgagee or an owners' association, may, in lieu of taking steps to enforce the lien, whether under this Act or any other enactment, or of exercising the remedy of power of sale pursuant to section 56, accept a transfer of the time-share interest or time-share interests over which the holder has the lien.

(2) A transfer made pursuant to subsection (1) must be signed by the registered proprietor of the time-share interest and the holder of the lien and must contain a declaration that it is made in lieu of any proceedings that may be taken by the holder of a lien to enforce the lien against the time-share interest.

(3) Upon acceptance of a transfer made by the registered proprietor of a time-share interest pursuant to subsection (1) the debt secured by the lien shall be extinguished in its entirety.

(4) Notwithstanding any provisions of the Stamp Act, Chapter 257 to the contrary, the stamp duty payable on a transfer made pursuant to this section shall be 2.5 % of the debt extinguished pursuant to subsection (3) which shall be payable by the holder of the lien only.

*[Inserted as section 56A by Act No. 39/2008]*

## **58. Regulations**

(1) The Minister may generally make regulations to give effect to the provisions of this Act, and in particular, but without prejudice to the generality of the foregoing, the Minister may make regulations

- (a) governing the development, management, advertising, marketing, and sale of time-share projects in such manner as to be likely to enhance the growth of tourism through fair and honest business practices and the creation of safe hygienic and sanitary facilities which are equal to the generally accepted standards of legitimate hotels in Saint Christopher and Nevis;
- (b) regulating the number of persons who may be accommodated in the units and facilities of a time-share project;
- (c) prescribing standards of equipment for the sanitation of time-share projects, standards for the preparation and serving of food and drink in such projects and standards for ventilation;
- (d) for the medical examination of employees of licensees so as to restrict and control the employment in time-share projects of persons suffering from disease or infection or who have been in contact with persons suffering from disease or infection, and for prescribing standards of personal cleanliness to be observed by employees or licensees;
- (e) prescribing standards for the maintenance of the exteriors and interiors of the building comprising time-share projects and the roads, pathways and grounds thereof;
- (f) prescribing precautions to be taken against the outbreak or spread of fire in time-share projects and for the protection of persons therefrom;
- (g) prescribing the manner in which any application may be made to the Board;
- (h) for the keeping of registers and log-books by licensees in relation to the operation of time-share projects;

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- (i) for the making of reports to the Board, the Department of Health, the Department of Planning and the authority responsible for fire services upon any matters connected with the observance of the regulations;
- (j) requiring that the licence, the regulations, or any part or extract from either, shall be displayed in any prescribed place;
- (k) providing for the proof of any matter in proceedings under the provisions of this Act;
- (l) identifying and investigating the operators of time-share projects;
- (m) regulating generally the functions and the operations of marketing agents in advertising, promoting and selling time-share projects;
- (n) prescribing the financial requirements to be fulfilled under section 12 (a) by an applicant for a licence before the licence may be granted;
- (o) requiring the developing owner, where the Board considers it necessary, to furnish the Board with a payment and performance bond or other bond executed by one or more sufficient sureties in such amount, for such periods and on such terms as the Board may prescribe, to cover maintenance obligations as well as latent and other defects and repairs likely to be necessary as a result of materials used in the construction of the roof or other components of the premises of the time-share projects;
- (p) for the imposition and payment of such fees as are prescribed in relation to the occupancy of time-share projects;
- (q) providing for anything required under this Act to be prescribed.

(2) The Minister may make regulations setting out the items eligible to receive concessions under the Act.

(3) The developing owner of a time-share project granted concessions under this Act may be required to provide evidence that he or she attempted to obtain the materials locally or attempted to obtain locally produced materials at comparable quality, price and quantity.

### **Savings and transitional provisions**

#### **58. Savings and transitional provisions.**

(1) Nothing in this Act shall derogate from the provisions of any other law but, in the event of any conflict between this Act and any other law, other than the Constitution, this Act, in so far as they wholly relate to the development, management, advertising, marketing or sale of a time-share interest, shall prevail.

(2) Any person who, immediately before the coming into force of this Act, was developing, marketing or managing a time-share project whether in the capacity of a developing owner, marketing agent, managing agent or otherwise, may continue to develop, market or manage such time-share project for a period of six months during which period an application shall be made for the grant of the relevant licence under section 8 of this Act.

## FIRST SCHEDULE

(Section 20. (1))

### **Matters which shall be included in every purchaser's contract.**

1. Each seller shall utilize and furnish each purchaser a fully completed and executed copy of a time-share contract pertaining to the sale, which copy shall include the following information:

- (a) the actual date the contract is executed by each party;
- (b) the names and addresses of the developing owner and seller (if different from the developing owner), any holder of a mortgage or other security instrument encumbering all or a portion of the time-share project (excluding those mortgages or other security instruments described in section 21.(2)), and any owner or lessor of any underlying estate in freehold or leasehold;
- (c) the total financial obligation of the purchaser, including the initial purchase price plus information describing any additional charges to which the purchaser may be subject, such as financing, reservation, maintenance, management and recreation charges;
- (d) the estimated date of completion of construction of each accommodation or facility of the time-share project which is not completed at the time the time-share contract is executed and which is the subject of the time-share contract;
- (e) immediately prior to the space reserved in the time-share contract for the signature of the purchaser, in conspicuous type, substantially the following statement:

“YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR OBLIGATION WITHIN SEVEN DAYS FROM THE DATE YOU SIGN THIS CONTRACT, AND UNTIL SEVEN DAYS AFTER YOU RECEIVE THE PUBLIC OFFERING STATEMENT, WHICHEVER IS LATER. IF YOU DECIDE TO CANCEL THIS CONTRACT, YOU MUST NOTIFY THE SELLER IDENTIFIED IN THIS CONTRACT IN WRITING OF YOUR INTENT TO CANCEL. YOUR NOTICE OF CANCELLATION SHALL BE EFFECTIVE UPON THE DATE SENT AND SHALL BE SENT TO (NAME OF SELLER) AT (ADDRESS OF SELLER). ANY ATTEMPT TO OBTAIN A WAIVER OF YOUR CANCELLATION RIGHT IS UNLAWFUL. WHILE YOU MAY EXECUTE ALL COMPLETION DOCUMENTS IN ADVANCE, THE COMPLETION, AS EVIDENCED BY DELIVERY OF YOUR OWNERSHIP CERTIFICATE OR OTHER DOCUMENT, BEFORE EXPIRATION OF YOUR SEVEN DAY CANCELLATION PERIOD, IS PROHIBITED.”;

- (f) a statement that, in the event the purchaser cancels the time-share contract during the seven day cancellation period, the seller will refund to the purchaser the total amount of all payments made by the purchaser under the time-share contract, reduced by the proportion of

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any contract benefits (such as an overnight stay at the time-share project), the purchaser has actually received under the time-share contract prior to the effective date of the cancellation; and the statement shall further provide that the refund will be made within twenty days after receipt of notice of cancellation or within five days after receipt of funds from the purchaser's cleared cheque, whichever is later; and a seller and a purchaser shall agree in writing on a specific value for each contract benefit received by the purchaser for purposes of this paragraph; and the term "contract benefit" shall not include public offering statements or other documentation or materials that must be furnished to a purchaser pursuant to any law.

2. Notwithstanding paragraph 1, each non-developing seller may use a resale time-share contract which shall contain all of the following:

- (a) the name and address of the time-share plan and of the managing agent of the time-share plan;
- (b) the following statements in substantially the same form in conspicuous type located immediately prior to the disclosure required by paragraph 2(c):

THE CURRENT YEAR'S ASSESSMENT FOR COMMON EXPENSES ALLOCATED TO THE TIME-SHARE INTEREST YOU ARE PURCHASING IS ... THIS ASSESSMENT, WHICH MAY BE INCREASED FROM TIME TO TIME BY THE MANAGING AGENT OF THE TIME-SHARE PLAN, IS PAYABLE IN FULL EACH YEAR ON OR BEFORE ... THIS ASSESSMENT (INCLUDES/DOES NOT INCLUDE) YEARLY REAL ESTATE TAXES, WHICH (ARE/ARE NOT) BILLED AND COLLECTED SEPARATELY. (IF REAL PROPERTY TAXES ARE NOT INCLUDED IN THE CURRENT YEAR'S ASSESSMENT FOR COMMON EXPENSES, THE FOLLOWING STATEMENT MUST BE INCLUDED: THE MOST RECENT ANNUAL ASSESSMENT FOR REAL ESTATE TAXES FOR THE TIME-SHARE INTEREST YOU ARE PURCHASING IS ... ). (IF THERE ARE ANY DELINQUENT ASSESSMENTS FOR COMMON EXPENSES OR OUTSTANDING TAXES WITH RESPECT TO THE TIME-SHARE INTEREST IN QUESTION, THE FOLLOWING STATEMENT MUST BE INCLUDED: A DELINQUENCY IN THE AMOUNT OF ... FOR UNPAID COMMON EXPENSES OR TAXES CURRENTLY EXIST WITH RESPECT TO THE TIME-SHARE INTEREST YOU ARE PURCHASING, TOGETHER WITH A PER DIEM CHARGE OF ... FOR INTEREST AND LATE CHARGES.) EACH OWNER IS PERSONALLY LIABLE FOR THE PAYMENT OF SUCH OWNER'S ASSESSMENTS FOR COMMON EXPENSES, AND FAILURE TO PAY THE ASSESSMENTS ON TIME MAY RESULT IN RESTRICTION OR LOSS OF YOUR USE AND/OR OWNERSHIP RIGHTS.

THERE ARE MANY IMPORTANT DOCUMENTS RELATING TO THE TIME-SHARE PLAN WHICH YOU SHOULD REVIEW PRIOR TO PURCHASING A TIME-SHARE INTEREST, INCLUDING (THE DECLARATION OF CONDOMINIUM OR COVENANTS AND RESTRICTIONS; THE ASSOCIATION ARTICLES AND BY-LAWS OR MEMORANDUM OF ASSOCIATION, IF APPLICABLE); THE CURRENT YEAR'S OPERATING AND RESERVE BUDGETS; AND ANY RULES AND REGULATIONS AFFECTING THE USE OF TIME-SHARE PLAN ACCOMMODATIONS AND FACILITIES.

- (c) the following statement in substantially the same form in conspicuous type located immediately prior to the space in the resale time-share contract reserved for the signature of the purchaser:

“YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR OBLIGATION WITHIN SEVEN DAYS AFTER THE DATE YOU SIGN THIS CONTRACT. IF YOU DECIDE TO CANCEL THIS CONTRACT, YOU MUST NOTIFY THE NON-DEVELOPING SELLER IDENTIFIED IN THIS CONTRACT IN WRITING OF YOUR INTENT TO CANCEL THE CONTRACT. YOUR NOTICE OF CANCELLATION SHALL BE EFFECTIVE ON THE DATE SENT AND SHALL BE SENT TO THE NON-DEVELOPING SELLER AT (ADDRESS). ANY ATTEMPT TO OBTAIN A WAIVER OF YOUR CANCELLATION RIGHT IS UNLAWFUL. WHILE YOU MAY EXECUTE ALL COMPLETION DOCUMENTS IN ADVANCE, THE COMPLETION AS EVIDENCED BY DELIVERY OF YOUR OWNERSHIP CERTIFICATE OR OTHER DOCUMENT, BEFORE EXPIRATION OF YOUR SEVEN DAYS CANCELLATION PERIOD, IS PROHIBITED.”;

- (d) the year in which the purchaser will first be entitled to occupancy of a time-share period associated with the time-share interest that is the subject of the resale time-share contract.

3. If a resale time-share contract used by a non-developing seller does not comply with the provisions of paragraph 2 of this Schedule, the contract shall be voidable at the option of the purchaser for a period of one year after the date of completion.

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## SECOND SCHEDULE

(Section 49.(1))

### **Matters as to which every developing owner or managing agent of a time-share project must satisfy the Board**

Every developing owner, marketing agent or managing agent shall, whenever required to do so by the Board and not otherwise exempted by it, satisfy the Board that the time-sharing project in relation to which he or she has been granted a licence or which he or she manages, has

- (a) made provision for the inclusion of a non-disturbance clause in all debt instruments, where there is recourse against the time-share project, for the protection of the interests of all purchasers;
- (b) made provision for the purchasers to directly or indirectly cancel and terminate, on commercially reasonable terms, the contract of any managing agent for reasons other than breach after the sellout of seventy-five per centum of all time-share interests in the project, through the creation of an advisory membership structure or owner's association as selected by the developing owner for each time-share project; and such structure or association, as the case may be, shall have the right to the names and addresses of all purchasers in the project; and the managing agent shall co-operate with such structure or association in all ways feasible; and the Board shall periodically review comments received from any such structure or association and take any suggestions into consideration as part of the periodic inspection under section 37;
- (c) provided the Board, prior to their use, copies of all contracts and other legally binding documents being used by the parties in connection with the time-share project, including all rules, regulations, conditions or limitations on and charges for use of the accommodations or facilities as may be in force, from time to time;
- (d) provided for the keeping of proper and detailed records concerning all aspects of the development, management, advertising, marketing and sale of the time-share project, and such records shall include a copy of the time-share contract for each on-site sale under the time-share project and records detailing the disposition of all funds realized from such sales;
- (e) provided the Board, prior to their use or implementation, as the case may be, and every purchaser, prior to the execution of the time-share contract by such purchaser, a copy of the time-share contract transferring the time-share interests and the public offering statement, if required, full information concerning the terms and conditions of any financing offered; and a detailed statement of all annual or periodic charges and assessments that defines the basis for such charges and assessments and the means by which all periodic charges and assessments, if any, will be made and the amounts thereof, and,

- all rules, regulations, conditions or limitations on the use of the accommodations or facilities of the project;
- (f) afforded every on-site purchaser a cancellation period of not less than seven days from the date of the execution of the time-share contract or until seven days after the receipt of the public offering statement, whichever is the later, during which time such purchaser shall be entitled to cancel the contract;
  - (g) made satisfactory financial arrangements for the refund to the purchaser of the total amount of all payments made by the purchaser, reduced by the proportion of any contract benefit by any purchaser who cancels his or her time-share contract as provided in this Act within the time prescribed by this Act;
  - (h) made provision that if the titles, rights, obligations and responsibilities of a developing owner or managing agent are transferred to a third party, such third party agrees, in writing, to honour fully the rights of the purchasers under the time-share project;
  - (i) made provision for the inclusion of a clause in all time-share contracts to the effect that such time-share contracts shall, in so far as they relate to the purchase or transfer of a time-share interest, be interpreted and construed according to the laws of Saint Christopher and Nevis, and if not so provided, then the laws of the place of the situs of the time-share contract's execution shall govern;
  - (j) made provision whereby a compensating use period, similar alternative accommodation or monetary compensation may be granted to a purchaser where the facilities of the time-share project that he or she is entitled to use and occupy are not available for the period or any part thereof during which the purchaser is entitled to occupy and use the facilities due to any gross negligence on the part of the managing agent;
  - (k) provided a policy and procedure for disciplining a purchaser for failure to comply with any provision of the rules and regulations of the time-share project or this Act, including the late payment of any annual, periodic, or special assessment, and such procedure shall include the imposition of monetary penalties, the suspension of a purchaser's right to use the facilities of the time-share project and ultimately the forfeiture of a purchaser's time-share interest in the time-share project for violations including the failure of a purchaser to vacate promptly a unit in accordance with the terms and conditions of purchase, and any disturbance affecting the use and enjoyment of the facilities of the time-share project by other purchasers; and further made provision for giving a purchaser proper notice and a reasonable opportunity to be heard before any penalty is imposed or the rights and privileges of such purchaser are suspended or forfeited;
  - (l) made provision whereby a special assessment, that is to say, any assessment in respect of any costs in connection with the time-sharing project payable by a purchaser, other than annual or periodic charges

and assessment, shall be submitted to the Board together with a detailed statement thereof for its approval before any demand is made on the said purchaser for payment;

- (m) provided a plan of payment by purchasers, either individually or through a body contemplated in paragraph (b), to the managing agent or interim managing agent for the costs of operating and maintaining the time-share project and such plan shall provide, inter alia,
  - (i) for the payment of reserves for deferred maintenance and reserves for capital expenditures; and all reserves for any accommodations and facilities of the time-share project located in Saint Christopher and Nevis shall be calculated by a formula which is based on estimated life and replacement cost of each reserve item; and reserves for deferred maintenance for the accommodations and facilities shall include accounts for roof replacement, building painting, pavement resurfacing, replacement of time-share unit furnishings and equipment, and any other component, the useful life of which is less than the useful life of the overall structure; and
  - (ii) for the owners' association, from time to time, to reallocate reserves for deferred maintenance and capital expenditures required by this paragraph from any deferred maintenance or capital expenditure reserve account to any other deferred maintenance or capital expenditure reserve account or accounts in its discretion without the consent of the purchasers; and funds in any deferred maintenance or capital expenditure reserve account may not be transferred to any operating account without the consent of the majority of the purchasers; and the owners' association may, from time to time, transfer excess funds in any operating account to any deferred maintenance or capital expenditure reserve account without the vote or approval of purchasers; and the owners' association shall not commingle operating funds with reserve funds; however, the owners' association may maintain operating and reserve funds within a single account for not exceeding thirty days after the date on which the owners' association receives payment of the funds;
  - (iii) for the submission by the managing agent or interim managing agent to the Board of an annual audited statement of accounts;
- (n) made provision not to encumber all or a portion of any interest underlying a time-share project in which time-share interests are to be offered, with a mortgage or other similar instrument, subsequent to the sale of any time-share interests in the project, without the written consent of not less than fifty-one per centum of the then existing purchasers, other than the developing owner or managing agent, as the case may be.

### THIRD SCHEDULE

(Section 50)

#### **Matters which every developing owner must include in the public offering statement**

1. Every developing owner shall, unless exempted by the Board, include in his or her public offering statement the following information, where applicable, to his or her time-share project:

- (a) the name of the developing owner and the principal address of such developing owner, the project and its primary location, and the time-share interests being offered for sale;
- (b) a complete description of the time-share project and the facilities and amenities of the time-share project made available to purchasers, including provisions, if any, that have been made for public utilities in the time-share project, including water, electricity, telephone and sewerage facilities and also including, without limitation, the developing owner's good faith estimate, schedule of commencement and completion of the time-share project, its facilities and amenities or, if completed, a statement and the date of such completion;
- (c) the description contemplated in paragraph (b) shall include a description of any recreational and other commonly used facilities which will not be used exclusively by purchasers of the time-share project and which require the payment of any portion of the maintenance and expenses of such facilities, either directly or indirectly, by the purchasers, and such description shall include, but not be limited to, the following:
  - (i) each building or facility committed to be built;
  - (ii) facilities not committed to be built, except under certain conditions, and a statement of those conditions or contingencies;
  - (iii) as to each facility committed to be built, or which will be committed to be built upon the happening of one of the conditions of subparagraph (ii), a statement whether it will be owned by the purchasers having the use thereof or by an association or other entity which will be controlled by the purchasers, or others, and the location in the exhibits of the lease or other document providing for use of those facilities;
  - (iv) the year in which each facility will be available for use by the purchasers or, in the alternative, the maximum number of purchasers in the time-share project at the time each of the facilities is committed to be completed;
  - (v) if there are leases, descriptions thereof, including the length of their terms, the rents payable, and descriptions of any options to purchase;

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- (d) if it is mandatory that the purchasers pay fees, rent, dues or other amounts under a recreational facilities lease or club membership for the use of any facilities of the time-share project as referred to in paragraph (c), the following statement in conspicuous type:
  - (i) membership in the recreational facilities club is mandatory for purchasers;
  - (ii) purchasers are required, as a condition of ownership, to be lessees under the recreational facilities lease; and
  - (iii) purchasers are required to pay their share of the costs and expenses of maintenance, management, upkeep, replacement, rent and fees under the recreational facilities lease or the other instruments providing the facilities; or similar statements of the nature of the organization or the manner in which the use rights are created, and that purchasers are required to pay;
- (e) a description (including the amount) of all amounts due from the purchaser at completion, together with a description of the purpose and method of calculating such amounts;
- (f) an explanation of the status of the title to the real property underlying the time-share plan, including a statement of the existence of any lien, defect, judgment, mortgage or other encumbrance affecting the title to the property, and how such lien, defect, judgment, mortgage or other encumbrance will be removed, satisfied or subordinated prior to completion;
- (g) a general description of any financing offered the time-share purchaser by the developing owner;
- (h) a statement of any pending suits against the developing owner which may materially and adversely impact the offering of the time-share interests and of which such developing owner has actual knowledge;
- (i) a description of the insurance coverage provided for the benefit of purchasers;
- (j) the name and address of the managing agent, a statement whether the developing owner may change the managing agent or its control and, if so, the manner by which the developing owner may change the managing agent, a statement of the arrangements for management, maintenance and operation of the accommodations and facilities of the time-share project and other property (other than an incidental benefit) that will serve the purchasers; and a description of the management arrangement and any and all contracts for these purposes having a term in excess of one year, including the names of the contracting parties, the term of the contract, the nature of the services included, and the compensation, stated for a month and for a year, and provisions for increases in the compensation; and copies of all described contracts shall be attached as exhibits;

- (k) any current or expected fees or charges to be paid by purchasers for the use and enjoyment of any facilities of the time-share project which are not already disclosed under paragraph (d);
- (l) the extent to which financial arrangements, if any, have been provided for completion of any part of the time-share project;
- (m) the extent to which a purchaser in a time-share project can exchange his or her time-share interest in that project with that of another purchaser, in another project, and the procedures and costs necessary to do so;
- (n) a brief narrative description of the significant features of the time-share instrument and any document referred to therein, any contract or lease to be signed by the purchaser at closing, and any contract or lease that will or may be subject to cancellation by the purchasers;
- (o) any services which the developing owner provides or expense he or she pays and which he or she expects may become at any subsequent time a time-share expense of the purchasers;
- (p) a description of the restrictions, if any, to be imposed on time-share interests concerning the use of any of the accommodations or facilities of the time-share project, including statements whether there are restrictions upon children and pets, and references to the volumes and pages of the time-share plan document where such restrictions are found, or, if such restrictions are contained elsewhere, then a copy of the document containing the restrictions shall be attached as an exhibit; and if there are no restrictions, there shall be a statement of such fact;
- (q) an estimated operating budget for the time-share project and a schedule of the purchaser's expense shall be attached as an exhibit and shall contain the following information:
  - (i) the estimated annual expenses of the time-share project collectible from purchasers by assessments; the estimated payments by the purchaser for assessments shall also be stated in the estimated amounts for the times when they will be due; expenses shall also be shown for the shortest time-share period (or smallest time-share interest, as the case may be) offered for sale by the developing owner; if the time-share plan provides for the offer and sale of units to be used on a non time-share basis, the estimated monthly and annual expenses shall be set forth in a separate schedule; and
  - (ii) the estimated weekly, monthly, and annual expenses, if any, of the purchaser of each time-share interest, other than assessments payable to the managing agent as contemplated in subparagraph (i); expenses which are personal to purchasers that are not uniformly incurred by all purchasers or that are not provided for or contemplated by the time-share plan documents may be excluded from the estimate;

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- (r) if the developing owner intends to subsidize or guarantee the level of assessments, such subsidy or guarantee must be based upon a good faith estimate of the revenues and expenses of the time-share plan; and the subsidy or guarantee must include a description of the following:
  - (i) the specific time period measured in one or more calendar or fiscal years during which the subsidy or guarantee will be in effect; and
  - (ii) the level, expressed in total dollars, at which the developing owner subsidizes or guarantees the budget, as well as the developing owner's good faith estimate of the fiscal impact upon the annual budget immediately after the expiration of the subsidy or guarantee; and

no owner of a time-share interest may be excused from the payment of the owner's share of the common expenses unless all owners are likewise excused from payment, except that the developing owner may be excused from the payment of the developing owner's share of the common expenses which would have been assessed against the developing owner's time-share interests during a stated period of time during which the developing owner has guaranteed to each purchaser in the time-share instrument, or by agreement between the developing owner and a majority of the owners of time-share interests, other than the developing owner, that the assessment for common expenses imposed on the owners would not increase over a stated dollar amount, and in the event of such a guarantee, the developing owner is obliged to pay all common expenses incurred during the guarantee period in excess of the total revenues of the time-share plan;

- (s) all other circumstances or features affecting the time-share project determined by the developing owner in good faith to be unusual and material to such project;
- (t) a statement or provision on the face of the public offering statement, in bold face type and separated from the other text as follows:

**“THIS PUBLIC OFFERING STATEMENT CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A TIME-SHARING INTEREST. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCE EXHIBITS HERETO, CONTRACT DOCUMENTS AND SALES MATERIALS. YOU SHOULD NOT RELY UPON ORAL REPRESENTATIONS AS BEING CORRECT. REFER TO THIS DOCUMENT AND ACCOMPANYING EXHIBITS FOR CORRECT REPRESENTATIONS. THE SELLER IS PROHIBITED FROM MAKING ANY REPRESENTATIONS OTHER THAN THOSE CONTAINED IN THE CONTRACT AND THIS PUBLIC OFFERING STATEMENT.”;**

- (u) copies of the following documents and plans, to the extent they are applicable, shall be filed with the Board and included as exhibits, except as otherwise provided in this paragraph:
  - (i) if the time-share project is part of a condominium, the declaration of condominium, or the proposed declaration if the declaration has not been recorded;
  - (ii) any declaration of covenants and restrictions, or proposed declaration if the declaration has not been recorded;
  - (iii) if the owner's association is established as a body corporate, the articles of incorporation creating the association;
  - (iv) the bye-laws or memorandum of association of the owner's association;
  - (v) the ground lease or other underlying lease of the real property on which the time-share project is situated;
  - (vi) the management agreement and all maintenance and other contracts regarding the management and operation of the time-share property which have terms in excess of one year;
  - (vii) the estimated operating budget for the time-share project and the required schedule of purchaser's expenses;
  - (viii) the floor plan of each type of unit and the plot plan showing the location of all accommodations and facilities of the time-share project;
  - (ix) any lease of recreational facilities and other facilities of the time-share project which will be used only by purchasers of the time-share plan;
  - (x) any lease of facilities of the time-share project used by purchasers and others;
  - (xi) a statement of condition of the existing building or Buildings of the time-share project, if the offering is of time-share interests in an operation being converted from an existing building;
  - (xii) the form of time-share contract or lease of the time-share interests;
  - (xiii) the documents containing any restrictions on use of the property described in paragraph (p);
  - (xiv) any other documents or instruments creating a time-share plan; and
  - (xv) any other contract or lease to be signed by the purchasers.

2. The public offering statement provided to purchasers shall only be required to include copies of the exhibits required to be filed with the Board pursuant to subparagraphs (u)(i) or (ii), (iii), (iv), (viii), and (xiv) of this Schedule, provided that the purchasers are also given a receipt for time-share plan documents and a list describing any exhibit required to be filed with the Board which is not delivered to the purchasers.

## FOURTH SCHEDULE

(Section 51)

### Requirements with respect to all incidental benefits

1. Accommodations, products, services, discounts, or other benefits which satisfy the requirements of this paragraph, shall be subject to the provisions of this paragraph and exempt from the other provisions of this Act which, otherwise, would apply to such accommodations or facilities if, and only if,

- (a) the use of or participation in the incidental benefit by the prospective purchaser is completely voluntary, and payment of any fee or other cost associated with the incidental benefit is required only upon such use or participation;
- (b) no costs of acquisition, operation, maintenance, or repair of the incidental benefit are passed on to purchasers of the time-share plan as common expenses of the time-share plan;
- (c) the continued availability of the incidental benefit is not necessary in order for any accommodation or facility of the time-share project to be available for use by purchasers in a manner consistent in all material respects with the manner portrayed by any promotional material, advertising, or the acknowledgment and disclosure statement delivered to the purchasers;
- (d) the continued availability to purchasers of time-share plan accommodations on no greater than a one-to-one purchaser to accommodation ratio is not dependent upon continued availability of the incidental benefit;
- (e) the incidental benefit will continue to be available in the manner represented to prospective purchasers for three years or less after the first date that the time-share plan is available for use by the purchaser, and nothing herein shall prevent the renewal or extension of the availability of an incidental benefit; and
- (f) the aggregate represented value of all incidental benefits offered by a developing owner to a purchaser may not exceed 30% of the purchase price paid by the purchaser for his or her time-share interest.

2. Each purchaser shall execute a separate acknowledgment and disclosure statement with respect to all incidental benefits, if any, which shall be offered only as provided in this paragraph, and the acknowledgment and disclosure statement shall include:

- (a) a fair description of the incidental benefit, including, but not limited to, all user fees or costs associated therewith and any restrictions on use or availability;
- (b) a statement that use of or participation in the incidental benefit by the prospective purchaser is completely voluntary, and that payment of any fee or other cost associated with the incidental benefit is required only upon such use or participation;

- (c) if applicable, a statement that the incidental benefit is not assignable or otherwise transferable by the prospective purchaser or purchaser;
- (d) the following disclosure in conspicuous type in the acknowledgment and disclosure statement;

“THE INCIDENTAL BENEFIT(S) DESCRIBED IN THIS DOCUMENT IS (ARE) OFFERED TO PROSPECTIVE PURCHASERS OF THE TIME-SHARE PLAN. THIS (THESE) BENEFITS IS (ARE) AVAILABLE FOR YOUR USE FOR (STATE PERIOD 3 YEARS OR LESS). THE AVAILABILITY OF THE INCIDENTAL BENEFIT(S) MAY OR MAY NOT BE RENEWED OR EXTENDED. YOU SHOULD NOT PURCHASE AN INTEREST IN THE TIME-SHARE PLAN IN RELIANCE ON THE CONTINUED AVAILABILITY OR RENEWAL OR EXTENSION OF THIS (THESE) BENEFIT(S).”

Revision Date: 31 Dec 2009

## FIFTH SCHEDULE

(Section 56.(4))

Matters to be complied with prior to a trustee exercising a power of sale under a mortgage instrument

1. A trustee may exercise the power of sale provided the following notice provisions have been complied with:

- (a) the trustee has sent written notice of default and intent to sell the time-share interest to the obligor and a copy to any subsequent encumbrances of which the trustee has actual notice at the respective notice addresses of the obligor and subsequent encumbrances with a statement in conspicuous type in substantially the following form;

“IF YOU FAIL TO CURE THE DEFAULT WITH REGARD TO THIS MATTER WITHIN SIXTY CALENDAR DAYS AFTER THE DATE OF THIS NOTICE, YOU WILL RISK LOSING YOUR INTEREST IN THIS TIME-SHARE PROJECT THROUGH A NON-JUDICIAL TRUSTEE’S POWER OF SALE PROCEDURE. HOWEVER, UNDER THIS NON-JUDICIAL PROCEDURE, YOU WILL NOT BE SUBJECT TO A DEFICIENCY JUDGMENT OR PERSONAL LIABILITY, EVEN IF THE SALE OF YOUR TIME-SHARE INTEREST RESULTING FROM THE NON-JUDICIAL SALE IS INSUFFICIENT TO SATISFY THE AMOUNT IN WHICH YOU ARE IN DEBT. YOU HAVE THE RIGHT TO CURE YOUR DEFAULT AT ANY TIME BEFORE THE SALE OF YOUR TIME-SHARE INTEREST BY PAYMENT OF ALL PAST DUE LOAN PAYMENTS, FEES OR ASSESSMENTS; ACCRUED INTEREST; LATE FEES, TAXES; AND ALL FEES AND COSTS INCURRED BY THE LIEN HOLDER AND TRUSTEE, INCLUDING ATTORNEY’S FEES AND COSTS, IN CONNECTION WITH THE DEFAULT.”

- (b) a period of at least sixty 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 all past due loan payments or assessments and all costs in connection with the default;
- (c) the notice of default and intent to sell shall set forth;
- (i) the names and notice addresses of the obligor, including the record owner of the time-share interest, if different, and the subsequent encumbrancers;
- (ii) the name, address, and telephone number of the trustee, and a statement that the trustee has been appointed by the lien holder pursuant to this Act;
- (iii) a description of the existence of a default under the mortgage, the time-share instrument, or applicable law;

- (iv) the official record book and page numbers where the mortgage lien or assessment lien is recorded, if available;
  - (v) the description of the time-share interest or account number assigned by the lien holder to identify the time-share interest;
  - (vi) the amount secured by the mortgage or the assessment lien; 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 time-share interest; and costs of the sale, including a title search fee and reasonable trustee's and attorneys' fees and costs;
  - (vii) a statement of the trustee's intention to sell the time-share interest to satisfy the obligation by public auction or private contract; and
  - (viii) the right of the obligor to cure the default up to the date of the sale and the right of the subsequent encumbrancer to redeem its interest up to the date of the sale;
- (d) the trustee shall send a copy of the notice of default and intent to sell to the obligor to his or her notice address by verified mail return receipt requested or courier service, and shall be deemed effective on such delivery; and a person at the obligor's notice address may acknowledge receipt of any correspondence received in connection with such procedure.
2. For the purposes of this Schedule, "notice address",
- (a) with respect to an assessment lien, means the address of
    - (i) the current owner of a time-share interest as reflected by the books and records of the owners' association or managing agent; or
    - (ii) a service agent of the current owner with an address and physical presence in Saint Christopher and Nevis; and
  - (b) with respect to a mortgage lien, means
    - (i) the address of the mortgagor as set forth in the mortgage, amendment to the mortgage, promissory note, or a separate document executed by the mortgagor and received by the mortgagee;
    - (ii) the most current address of the mortgagor according to the records of the mortgagee; or
    - (iii) the address of a service agent of the mortgagor duly appointed by the mortgagor with an address and physical presence in Saint Christopher and Nevis.

**SIXTH SCHEDULE**

(Section 57)

**SAINT CHRISTOPHER AND NEVIS VACATION PLAN AND TIME-SHARE (FEES) REGULATIONS**

**1. Citation.**

These regulations may be cited as the Saint Christopher and Nevis Vacation Plan and Time-Share (Fees) Regulations.

**2. Fees to be paid to the Accountant General**

The fees set out in the second and third columns of the Schedule hereto shall be fees payable in respect of the transactions set out in the first column of that Schedule.

**Schedule**

(Regulation 2)

**Fees to be paid to the Accountant General**

<b>Matter in respect of which fee is payable</b>	<b>Amount of fee XCD</b>	<b>Amount of fee USD</b>
For application for grant or transfer of developing owner's licence	5400	2000

XCD= Dollars of the Eastern Caribbean Currency Union; USD= Dollars of the United States of America.