



# HOUSE BILL 531: Timeshare Act Changes.

2021-2022 General Assembly

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<b>Committee:</b>	House Rules, Calendar, and Operations of the House	<b>Date:</b>	May 4, 2021
<b>Introduced by:</b>	Reps. Howard, Hastings, Moffitt, K. Hall	<b>Prepared by:</b>	Brian Gwyn
<b>Analysis of:</b>	First Edition		Staff Attorney

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**OVERVIEW:** *House Bill 531 would make various changes to the North Carolina Timeshare Act.*

**CURRENT LAW:** Article 4 of Chapter 93A of the General Statutes governs timeshares in North Carolina.

## **BILL ANALYSIS:**

Sections 1.(a) and (b) remove the requirement that private real estate education providers execute a \$5,000 bond prior to being certified by the Real Estate Commission to operate in the State.

Section 1.(c) modifies Article 4 of Chapter 93A in the following ways:

### 93A-40. Registration required of timeshare programs; real estate license required

- Eliminates requirement that timeshare developer obtain a certificate of registration for the time share project to be offered for sale issued by the North Carolina Real Estate Commission.
- Creates various exemptions from the requirement that timeshare salespersons have a real estate broker license, including if the total financial obligation is \$3,000 or less, or, in certain situations, if the initial term or renewal term are five years or less.

### 93A-41. Definitions

- Adds definitions for various terms used in Article 4 and modifies existing definitions.

### 93A-42. Timeshare estates deemed real estate; timeshare uses.

- Deems a timeshare estate to be an interest in real estate that is governed by State real estate laws. A timeshare estate would include a right to use a timeshare unit as well as:
  - A freehold estate
  - An estate for years with a future interest in property
  - An ownership interest in a condominium unit
  - A direct or indirect beneficial interest in a trust in certain situations
- Removes certain developer recording requirements for timeshares, and instead requires developers, unless the instrument provides otherwise, to close on the sale and record a

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# House Bill 531

Page 2

timeshare instrument no later than 180 days following the contract of sale, provided the purchaser has placed all payments with an independent escrow agent in accordance with law.

- Removes the subsection related to independent escrow agents to be included in a revised G.S. 93A-45.
- Clarifies that a timeshare use (where the owner receives a right to occupy but not ownership) is not an interest in real property and would be governed by State personal property laws. Also requires the following for timeshare use transfers:
  - The developer must deliver an instrument evidencing the transfer to the purchaser at closing.
  - Unless the instrument provides otherwise, the developer shall close on the timeshare use not later than 180 days following the execution of the contract, provided the purchaser has placed all payments with an independent escrow agent in accordance with law.
- A developer may not sell or close on the sale of any timeshare that would cause the total number of timeshares available for use or sold in the timeshare program to exceed the one-to-one use right to use right ratio.

## 93A-43. Partition.

- Replaces "purchaser" with "owner" with respect to the prohibition on maintaining a proceeding for partition of a timeshare unit, timeshare project, or timeshare program.

## 93A-44. Contract of sale; public offering statement.

- Deletes the existing language in the statute.
- Describes what must be included in a contract of sale between a developer and a purchaser for the sale and purchase of a timeshare.
- Requires developers to provide purchasers with a public offering statement prior to the execution of a contract of sale. The purchaser must provide written acknowledgement of receipt.
- Describes what must be included in the public offering statement.
- Requires that certain other documents must be provided to a purchaser prior to execution of a contract of sale, such as the timeshare declaration, the owners' association articles of incorporation and bylaws, and an estimate of the current year's operating budget for the timeshare program.
- Requires the developer to offer the purchaser the option to electronically sign the contract of sale or any other document required by the developer.
- Requires the developer to provide the purchaser with a separate paper or email copy of cancellation rights if the purchaser elects to receive documents electronically.

## 93A-45. Purchaser's right to cancel; escrow; violation.

- Removes language regarding the public offering statement, which would be included in G.S. 93A-44.

# House Bill 531

Page 3

- Clarifies that the purchaser has the right to cancel the sales contract until midnight on the 5th day of the contract's execution or the receipt of other required documents – whichever is later. This right is not waivable by the purchaser and the closing may not occur until after this cancellation period has expired.
- Establishes how notice of cancellation can be given.
- Cancellation within this window would be without penalty and payments must be refunded within 20 days of demand or within 5 days after receipt of cleared funds from the purchaser, whichever is later.
- Requires a developer to establish an escrow account with an independent escrow agent for the purpose of protecting the funds of purchasers required to be escrowed and sets requirements for how those funds must be handled.
- Authorizes the owner of a timeshare to void a transfer if the developer fails to provide the owner with notice of right to cancel within 5 days. Additionally, the owner would be entitled to 10% of the sales price not to exceed \$3,000.
- Clarifies that timeshare declarations, or other instruments governing a timeshare program or an underlying timeshare property regime are not encumbrances for the purposes of Chapter 93A, and do not require a subordination and notice to creditors instrument.

## 93A-47. Timeshare proxies.

- With regards to the existing one-year limitation on proxy or power of attorney for timeshare purchasers, replaces "purchaser" with "owner" and clarifies that the limitation exists with regards to voting in a timeshare owners' association.

## 93A-52. Application for registration of timeshare program; denial of registration; renewal; reinstatement; and termination of developer's interest.

- Requires developer to register timeshare programs with the Commission prior to offering any timeshare located in the State.
- Requires the application for registration to include copies of particular documents, such as the proposed timeshare declaration and timeshare program governing documents.
- Provides the Commission 30 days instead of 15 days to notify the developer that an application is incomplete.
- Requires the Commission to either issue a certificate of registration or notify the developer of any specified objections to the registration within 60 days, instead of 45 days.
- Establishes or modifies various other requirements related to registration, such as no longer requiring a copy of the exchange program report required under GS 93A-48 and increasing the fee for a duplicate certificate from \$1 to \$5.

## 93A-54. Disciplinary action by Commission.

# House Bill 531

Page 4

- Clarifies that the Commission has the authority to take disciplinary action for violation of the Article's provisions in the offering or sale of a timeshare program to a purchaser.
- Instead of specifying that enforcement action can be taken against any timeshare salesperson, developer, or project broker, or anyone assuming to act in such a capacity, authorizes the Commission to investigate, on its own motion or on the complaint of any person, the actions of any regulated party or other person or entity who assumes to act in such capacity of a regulated party.
- Expands possible penalties for violating this Article beyond suspension/revocation of license/certificate of registration or \$500 fine to include any other specified penalty in the Article.
- Makes various other clarifying and technical changes.

## 93A-57. Release of liens or subordination and notice to creditors instrument.

- Prior to closing, requires a developer to either record a release of all liens or encumbrances affecting the purchaser's timeshare or the timeshare property or comply with one of the following:
  - Execute and record a subordination and notice to creditors instrument.
  - Make alternative arrangements adequate to protect the rights of the owners of the timeshares and timeshare property, subject to Commission approval.

## 93A-58. Registrar required; criminal penalties; program broker.

- Makes it a Class E felony for any developer or independent escrow agent to intentionally fail to comply with the Article regarding the establishment of an escrow account, deposits of funds into escrow, and withdrawal therefrom.

## 93A-60. Substantial Compliance

- Provides that if a developer or managing entity has, in good faith, attempted to comply with the Article and the developer has in fact substantially complied, nonmaterial errors or omissions are deemed not actionable and do not give rise to any purchaser cancellation rights provided that the developer or managing entity has the burden of proof under this provision.

## 93A-61. Management.

- Sets the requirements for the managing entity of the timeshare program.
- Regulates how the managing entity may use the name, address, e-mail address, or contact information of any owner, and the frequency and purposes for which the managing entity must contact the owners.
- Sets requirements for providing information about timeshare instruments to the managing entity when timeshare estates or timeshare uses are transferred.
- Sets requirements for making books and records available to owners and authorized agents.

# House Bill 531

Page 5

- Requires an owner's consent to provide notices and other information via e-mail.
- Requires officers, directors, or agents of a timeshare owners' association to discharge their duties in good faith and sets the standard of care they must follow. These individuals would be exempt from liability for monetary damages except in certain situations.
- Sets out additional provisions that apply when a state of emergency has been declared under the North Carolina Emergency Management Act or by any governmental agency with authority where the timeshare property is located.

## 93A-62. Delinquent assessments.

- Sets allowable costs for delinquent assessments that can be imposed on owners, including the assessment amount, interest, late fees, and cost of collection. Additionally provides the managing entity with a lien on the timeshare.
- Authorizes the managing entity to take the following additional actions for nonpayment of assessments, and sets the procedures for each:
  - Deny the use of the timeshare units or facilities.
  - Rent the delinquent owner's timeshare.
- Sets parameters for establishing and enforcing a lien on a timeshare for nonpayment of assessments or other costs.
- Makes a successor in interest jointly and severally liable with their predecessor in interest for all unpaid assessments up to the time of transfer, though the successor may be able to recover from the predecessor in interest.
  - Exempts from liability a first mortgagee or its successor or assignee who acquires interest due to or in lieu of the foreclosure of the mortgage or deed.

## 93A-63. Reservation system.

- Sets parameters for reservation systems through which an owner reserves the use and occupancy of a timeshare unit for one or more timeshare periods, requiring developers and reservation system operators to generally take into account the best interests of the owners as a whole.
- Sets procedures that must be followed if the management agreement of a reservation operator who is not the timeshare owners' association is terminated, including a requirement that the operator transfers relevant data within 90 days of termination.

## 93A-64. Multisite timeshare program additions, substitutions, and deletions.

- Identifies information that must be provided in the timeshare declaration related to:
  - The addition of timeshare units, amenities, or timeshare projects to the multisite timeshare program.
  - The substitution of timeshare units, amenities, or timeshare projects for existing timeshare units, amenities, or timeshare projects in a multisite timeshare program.
  - The deletion of timeshare units, amenities, or timeshare projects.

# House Bill 531

Page 6

## 93A-65. Resale purchase contracts; prohibition against advance listing fee.

- Sets requirements for a resale purchase contract, making a contract that does not meet this criteria voidable for one year.
- Prohibits a resale broker from collecting any advance fee for listing any timeshare.

## 93A-66. Recordkeeping by resale service providers, transfer service provider, and lead dealers.

- Requires resale service providers, lead dealers, and transfer service providers to keep certain records for three years.
- Provides that in any civil or criminal action relating to the wrongful possession or wrongful use of personal contact information by a resale service provider or lead dealer, any failure by a resale service provider, transfer service provider, or lead dealer to produce the required records leads to a presumption that the personal contact information was wrongfully obtained.
- Sets out penalties for the use of wrongfully obtained personal contact information, including \$1,000 for each owner or member about whom personal contact information was wrongly obtained or used.

## 93A-67. Resale service providers.

- Requires a resale service provider to disclose certain information before engaging in resale advertising services, including any fees or costs related to the services and a description of when the fees or costs are due.
- Requires a resale service provider to have a license to engage in real estate broker activities.
- Prohibits certain activities by a resale advertiser, such as stating or implying that the resale advertiser will provide or assist in providing any type of direct sales or resale brokerage services other than the advertising of the consumer resale timeshare for sale or rent by the consumer timeshare reseller.
- Makes a contract voidable for one year if the resale service provider uses a contract for resale advertising services that fails to comply with the requirements of this statute.
- Imputes a violation of this statute by any agent or employee to the resale service provider.
- Declares that providing resale advertising services to property located or offered in the State to constitute operating, conducting, engaging in, or carrying on a business or business ventures in the State.
- Makes it a violation of the Act to use unfair or deceptive trade practices in connection with resale advertising.

## 93A-68. Timeshare transfer services.

- Prohibits certain actions by any person in the course of advertising, marketing, promoting, offering, sale, or performance of any timeshare transfer services.

# House Bill 531

Page 7

- Provides consumer timeshare resellers with the right to cancel the timeshare transfer services agreement until midnight of the fifth day after execution of the contract.
- Sets out items that must be included in a timeshare transfer services agreement.
- Prohibits certain actions by the timeshare transfer service provider when the timeshare transfer services to be provided include relief to be obtained from the consumer timeshare reseller's managing entity, mortgagee, or lienor.
- Sets requirements for an independent escrow agent, including when the funds may be released.
- Makes failure to comply with the provisions concerning the establishment of an escrow account, deposits of funds into escrow, withdrawal therefrom, and maintenance of records a Class E felony.
- Excludes specified resale brokers, attorneys, and mortgagee or servicer or lienor, or their agents, from the provisions that apply to transfer service providers.
- Excludes from the statute the transfer of ownership of a consumer resale timeshare from a consumer timeshare reseller to the developer or managing entity of that timeshare program unless and only to the extent the transfer includes the assistance of a transfer service provider.
- Provides that only an attorney licensed in this state or any person authorized to perform nonjudicial foreclosures may offer services to a consumer timeshare reseller in connection with an involuntary transfer, or proposed involuntary transfer, of a consumer resale timeshare.
- Imputes a violation of this statute by any agent or employee to the transfer service provider.
- Declares that providing timeshare transfer services to property located or offered in the State to constitute operating, conducting, engaging in, or carrying on a business or business ventures in the State.
- Makes it a violation of the Act to use unfair or deceptive trade practices in connection with timeshare transfer services.
- Allows an owner, managing entity, or developer to bring an action for injunctive relief and recover their reasonable attorneys' fees and costs against a timeshare service provider for a violation of this statute.

## 93A-69. Timeshare program extensions.

- Sets out requirements to be met in order to extend the term of a timeshare program, including the required percentage of votes, the establishment of a quorum, voting eligibility, the use of a voting proxy, and the effect on projects of a multisite timeshare program.

## 93A-69.1 Timeshare program termination.

- Sets out requirements to be met in order to terminate the term of a timeshare program, including the required percentage of votes and the impact on the timeshare owners' association.

# House Bill 531

Page 8

- Limits this statute's application to a timeshare program that has been in existence for at least 25 years as of the effective date of the termination vote or consent, unless the timeshare declaration provides otherwise.

Other technical changes would be made throughout Article 4, including:

- Changing "time share" to "timeshare"
- Conforming language throughout with more specific definitions added in G.S. 93A-41.

Section 2 makes various conforming changes.

**EFFECTIVE DATE:** The bill would be effective when it becomes law.