



# HOUSE BILL 531: Timeshare Act Changes/Ed. Prov. Bond Repeal.

2021-2022 General Assembly

<b>Committee:</b>	Senate Judiciary. If favorable, re-refer to Rules and Operations of the Senate	<b>Date:</b>	September 3, 2021
<b>Introduced by:</b>	Reps. Howard, Hastings, Moffitt, K. Hall	<b>Prepared by:</b>	Bill Patterson
<b>Analysis of:</b>	Amendment to First Edition H531-ATG-38		Committee Co-Counsel

**OVERVIEW:** *The amendment to House Bill 531 would make a number of technical, clarifying and conforming changes to the provisions in Section 1.(c) of the original bill, and would make a conforming change to the long title of the bill.*

*As amended, the bill would:*

- *Eliminate bond requirements for applicants seeking certification by the North Carolina Real Estate Commission as a real estate education provider*
- *Substantially rewrite the North Carolina Time Share Act*
- *Make conforming and technical changes to related statutory provisions*

### CURRENT LAW AND BILL ANALYSIS:

Under current law, applicants seeking certification by the Real Estate Commission ("Commission") as a private real estate education provider are required to execute a \$5,000 bond.

**Sections 1.(a) and 1.(b)** of the bill would repeal the bond requirement for applicants seeking Commission certification as a private real estate education provider and would make a conforming statutory change.

Under current law, sales of timeshares for timeshare projects in this State are regulated by the Commission pursuant to Article 4 of Chapter 93A of the General Statutes, the North Carolina Time Share Act ("Act"). The operations of providers of timeshare resale services and timeshare transfer services are not currently regulated in this State.

**Section 1.(c)** of the bill, as amended, would modify existing sections of the Act, add new sections to the Act, and make conforming and technical changes to related statutory provisions.

**Existing sections** in the Act would be amended to do the following:

- Rename the Act as the "North Carolina Timeshare Act"
- Exempt additional activities from the Act's requirements
- Define new terms used in the Act, including "timeshare estate" and "timeshare use"
- Provide that a timeshare estate is subject to the laws governing real property and that a timeshare use is subject to the laws governing personal property

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- Require developers to:
  - Close and record an instrument conveying title to a timeshare estate within 180 days after contract execution if the instrument does not provide otherwise
  - Deliver to the purchaser of a timeshare use at closing an instrument evidencing transfer of legal title
- Prohibit developers from selling a timeshare if the sale would, for any given calendar year, cause the total number of timeshare owners eligible to use units in a program to exceed the total number of units available for use
- Require disclosure of additional information in sale contracts and public offering statements
- Permit purchasers to cancel a sale for five days after the later of:
  - The execution of the sale contract of sale
  - The receipt of all documents required to be provided to the purchaser
- Prohibit closing before this cancellation period expires
- Require all escrowed funds to be returned to the purchaser within 20 days of the later of:
  - The purchaser's demand for return of the funds
  - Receipt of cleared funds
- Require the developer to submit an affidavit attesting to its entitlement to release of escrowed funds, and require the escrow agent to retain the affidavit for five years
- Make intentional violation of escrow requirements a Class E felony
- Give purchasers the right to void a transfer and recover all funds paid plus 10% of the sales price, not to exceed \$3,000, if the developer did not provide notice of right to cancel
- Require an applicant to submit additional documentation to register a timeshare project and increase the amount of time for the Commission to act on applications
- Clarify the Commission's investigative and disciplinary authority

**New sections** would be added to the Act to do the following:

- Provide that nonmaterial errors or omissions on the part of a developer or managing entity are not a basis for a purchaser's claim or defense if the developer or managing entity proves that it has otherwise substantially complied with the Act's requirements
- Require the developer to designate for each timeshare program a managing entity
- Establish the duties and obligations of the managing entity
- Provide that delinquent timeshare assessments bear interest at the highest rate permitted by law or any lesser rate established by the managing entity
- Impose a lien in favor of the managing entity to secure the cost of collecting delinquent assessments, including reasonable collection agency and attorney's fees
- Provide that the lien arises on the date the delinquent assessment was due for timeshare estates located in this State
- Define the managing entity's authority to deny a delinquent owner the use of timeshare units or facilities, and to rent the delinquent owner's timeshare
- Impose a lien in favor of the managing agent to secure collection of the cost of any maintenance, repairs, or replacement resulting from damage to the timeshare property caused by an act of the owner or the owner's guest or lessee
- Provide that certain successors in interest in a timeshare are jointly and severally liable with the predecessor in interest for all unpaid assessments against the predecessor in interest prior to transfer of the timeshare
- Excuse a developer from paying assessments that otherwise would be assessed against developer-owner timeshares during any period for which the developer guarantees that timeshare

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owner assessments will not increase over the amount stated in the program's adopted budget during that period

- Establish the authority and obligations of reservation system operators
- Specify disclosures that must be included in a timeshare declaration with respect to additions, subtractions and deletions of timeshare units, amenities or projects in a multisite timeshare program
- Require a timeshare resale contract to disclose the amount of the unit's current year's assessment and any delinquent assessments, the right to cancel within five days, and the year in which the purchaser will first be entitled to use the unit
- Make a transaction voidable at the purchaser's option for one year for failure to make the required disclosures in the timeshare resale contract
- Prohibit resale brokers from collecting any advance fee for listing a timeshare
- Require resale service providers, transfer service providers, and lead dealers to maintain certain records for at least three years after obtaining personal contact information from a lead dealer
- Regulate the operations of providers of resale and timeshare transfer services and make any violation an unfair or deceptive act or practice prohibited by G.S. 75-1.1
- Establish procedures for the extension and termination of a timeshare program

**Sections 2.(a), 2.(b), and 2.(c)** of the bill would make conforming and technical changes to related statutory provisions.

***EFFECTIVE DATE: This act would be effective when it becomes law.***