



HOUSE BILL 531: Timeshare Act Changes/Education Provider Bond Repeal.

2021-2022 General Assembly

Committee:		Date:	January 28, 2022
Introduced by:		Prepared by:	Bill Patterson Staff Attorney
Analysis of:	S.L. 2021-163		

OVERVIEW: S.L. 2021-163:

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

This act became effective October 6, 2021. As amended by S.L. 2021-192, s. 5, this act's revisions to the Timeshare Act do not apply to timeshare transfer service providers before July 1, 2022.

CURRENT LAW AND BILL ANALYSIS:

Repeal Bond Requirement for Private Real Estate Education Provider Certification

Under current law, an applicant seeking to be certified as a private real estate education provider by the Real Estate Commission ("Commission") is required to execute a \$5,000 bond. **Sections 1.(a) and 1.(b)** repeal this bond requirement and make a conforming statutory change.

Revisions to the North Carolina Time Share Act

The North Carolina Time Share Act currently regulates sales of timeshares for timeshare projects in this State and does not regulate timeshare resale services and timeshare transfer services.

Section 1.(c) revises existing sections of the Timeshare Act to:

- 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
- 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

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- 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 the notice of right to cancel
- Require additional documentation in applications to register a timeshare program and give the Commission more time to act on applications
- Clarify the Commission's investigative and disciplinary authority
- Require the developer to record a release or subordination of all liens against the unit being purchased prior to closing

Section 1.(c) enacts new sections of the Act to:

- Provide that nonmaterial errors or omissions on the part of the 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 a managing entity for each timeshare program
- 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 attorneys' fees, which would arise 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 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 the developer from paying assessments that otherwise would be assessed against developer-owner timeshares during any period for which the developer guarantees that (1) timeshare owner assessments will not increase over the amount stated in the program's adopted budget during that period, and (2) the developer will pay common expenses that exceed total revenues of the timeshare program
- Establish the authority and obligations of reservation system operators
- Specify disclosures that must be included in a timeshare declaration concerning additions, subtractions and deletions of timeshare units, amenities or projects in a multisite timeshare program

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- 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 timeshare resale 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 timeshare resale and 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 act make conforming and technical changes to related statutory provisions.

EFFECTIVE DATE: This act became effective October 6, 2021. As amended by S.L. 2021-192, Sec. 5, this act's revisions to the Timeshare Act do not apply to timeshare transfer service providers before July 1, 2022.

LAD Staff Attorney Brian Gwyn substantially contributed to this summary.